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BY 

Attorney for Appellants
ARK OF HOPE PRESCHOOL and
LUTHERAN CHURCH OF THE HOLY SPIRIT

BOARD OF SUPERVISORS

CITY & COUNTY OF SAN FRANCISCO

ARK OF HOPE PRESCHOOL and LUTHERAN)	Appeal No.: _____
CHURCH OF THE HOLY SPIRIT,)	
Appellants)	APPEAL OF PLANNING COMM.'S
)	APPROVAL OF CONDITIONAL USE
vs.)	FOR 2505 NORIEGA STREET
)	
SAN FRANCISCO PLANNING COMMN.,)	Date: Sept. 5, 2017
Respondent)	Time: 3 p.m.
)	Location: City Hall, Room 250
)	1 Dr. Carlton B. Goodlett Place
)	San Francisco, CA 94102

INTRODUCTION

ARK OF HOPE PRESCHOOL (“Ark of Hope” or the “Preschool”) and LUTHERAN CHURCH OF THE HOLY SPIRIT (“Holy Spirit” or the “Church”) is appealing the conditional use that the SAN FRANCISCO PLANNING COMMISSION (the “Commission”) granted to The Apothecarium to operate a medical marijuana dispensary (“MMD”) at 2505 Noriega Street, San Francisco, California (“2505 Noriega” or “the Property”) because the MMD’s proposed location is within 600 feet of the Preschool and the Church, two places where children typically congregate. The primary public safety concern at issue, discussed in greater detail below, is the threat The Apothecarium’s presence at the Property poses to the children and employees of both the Preschool and the Church.

ARGUMENT

I. The Board Should Deny The Apothecarium’s Conditional Use to Uphold California’s Public Policy of Shielding Children From the Dangers of Drug Trafficking.

Section 11362.768(f) of the California Health & Safety Code gives the Board broad discretion to “adopt[] ordinances or policies that ... restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider” to places far away from locations where children frequently congregate. “It clearly makes sense to restrict” businesses that can only serve adults, including MMDs, “from areas which are an intrinsic draw for children.” *Madain v. City of Stanton*, 185 Cal. App. 4th 1277, 1292 (App. 4th Dist. 2010) (Sills, P.J., concurring) (hereinafter *Madain*). Preschools, it should go without saying, are intrinsic draws for children. *See* Cal. Health & Saf. Code § 1527 [defining “day care facilities for children” to include “those facilities which provide nonmedical care to infants and preschool and school-age children under 18 years of age during a portion of the day and includes infant centers, *preschools*, family day care homes, and day care centers” (emphasis added)]. Churches are also intrinsic draws for children because they “may have a Sunday-school class and have regularly organized youth groups other days of the week.” *Madain*, 185 Cal. App. 4th at 1292 (Sills, P.J., concurring).

Contrary to The Apothecarium’s oft-repeated assertion that opposition to its desire to operate at the Property is based on “fear-mongering,” recent court cases recognize that there are indeed dangers attendant to marijuana-dispensing businesses: Such dangers include “neighborhood disruption, increased transient visitors, and intimidation; *the exposure of school-age children* and other sensitive residents to medical marijuana; *drug sales to both minors* and adults; fraud in issuing, obtaining or using medical marijuana,” including the use of fake IDs to obtain marijuana; “and murders, robberies, burglaries, assaults, drug trafficking and other violent crimes.” *People ex rel. Feuer v. Nestdrop, LLC*, 245 Cal. App. 4th 664, 675 (Cal. App. 2nd Dist. 2016) (hereinafter *Nestdrop*) (emphasis added). The dangers associated with drug trafficking make it necessary “to minimize the ‘negative impacts and secondary effects’ of [MMDs] by tightly regulating their locations and *avoiding close proximity to sensitive areas like schools, churches, [and] residential neighborhoods[.]*” *Id.* (emphasis added); *see also In re Alexis E.*, 171 Cal. App. 4th 438, 452 (Cal. App. 2nd Dist. 2009) (hereinafter

Alexis E.) [quoting Cal. Health & Safety Code § 11362.79, which prohibits the use of medical marijuana “within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence,” and stating that “a reasonable inference to be drawn from this prohibition is that use of marijuana near others” – children in particular – “*can have a negative effect on them*” (emphasis added)].

In this case, Ark of Hope is located at 2701 Noriega Street, approximately one-tenth of a mile – i.e., 528 feet – from the Property. *See* Attached **Exhibit “A”** [a Google Maps printout showing the Preschool’s location relative to the Property]. Ark of Hope serves more than 40 children ranging in age from 2½ to 6. The Church is located even closer to the Property, a mere 312 feet away. *See* Attached **Exhibit “B”** [a Google Maps printout showing the Church’s location relative to the Property]. On any given day, the Church serves up to 150 children, including approximately 83 every Monday through Friday: Roughly 63 attend Holy Spirit’s afternoon tutorial program for kids in grades 1-8, and an average of 20 high schoolers come for job readiness training, academic support, and personal development as part of the Mayor’s Youth Employment and Education Program (MYEEP). The number nearly doubles during the summer when the Church hosts its annual day camp.

A. By Dispensing Marijuana at the Property, The Apothecarium Would Violate the San Francisco Planning Code.

Section 790.141(a)(1) of the San Francisco Planning Code prohibits MMDs, such as The Apothecarium, from locating within 1,000 feet of “a parcel [of land] containing (A) a public or private elementary or secondary school, or (B) *a community facility and/or a recreation center that primarily serves persons under 18 years of age*” (emphasis added). The Planning Code does not define what qualifies as a community facility or recreation center. However, courts recognize that churches, such as Holy Spirit, are hubs of recreational or social activity. *Peninsula Covenant Church v. County of San Mateo*, 94 Cal. App. 3d 382, 393 (Cal. App. 1st Dist. 1979). Furthermore, the Church primarily serves persons under 18 years of age on an almost daily basis as part of its after-school tutorial program and MYEEP.

As for Ark of Hope, § 303(c)(2) of the Planning Code requires that any proposed conditional use “not be detrimental to the health, safety, convenience, or general welfare of persons ... working in the vicinity” of the

proposed conditional use. In this case, a proposed MMD would be very detrimental to the health, safety, and general welfare of the teachers, administrators, and other employees who work at Ark of Hope:

- Employees of the Preschool have already been exposed to the noxious fumes of marijuana smoke while shepherding children on field trips through the neighborhood. Having an MMD in the neighborhood will only make the problem worse. Furthermore, at the Planning Commission meeting at which the Commission granted The Apothecarium its conditional use for the Property, The Apothecarium said that it hopes to sell marijuana not just for medical purposes, but recreational purposes as well. *See Attached Exhibit “C”* [a copy of an article from the July 14, 2017 edition of The San Francisco Examiner in which The Apothecarium expressed interest “in selling weed for recreational use” in 2018]. The Apothecarium denies that selling marijuana for recreational use will negatively impact the community – see Ex. “C” – but at least one court has found to the contrary: “[C]ommon sense suggests that a strong local regulatory regime governing medical marijuana related conduct would tend to prevent the transformation of purported medical marijuana dispensaries into ‘profiteering enterprises’ that contribute to recreational drug abuse and drug trafficking.” *City of Palm Springs v. Luna Crest, Inc.*, 245 Cal. App. 4th 879, 885-86 (Cal. App. 4th Dist. 2016).
- There remains a black market for marijuana, and the money and drugs at The Apothecarium stand to attract secondary dealers as well as armed criminals.
- On a related note, it is easy to see Ark of Hope having to close its doors – and its employees thus put out of work – due to parents withdrawing their children from the Preschool to prevent them from being exposed to the illegal drug activity in which the MMD plans to participate.

Make no mistake: Notwithstanding the recently passed Prop. 64, which will permit recreational marijuana use in California starting in 2018, and the Compassionate Use Act of 1996, which permits the existence of MMDs in California, the possession, sale, and/or distribution of marijuana, for any purpose, remains illegal under federal law. *See City of Garden Grove v. Super. Ct.*, 157 Cal. App. 4th 355, 385 (Cal.

App. 4th Dist. 2007) (hereinafter *Garden Grove*) [quoting *Gonzalez v. Raich*, 545 U.S. 1, 63 (2005), to support its assertion that “California’s statutory framework has no impact on the legality of medical marijuana under federal law”]. Federal law furthermore recognizes that illegal drug activity can be injurious to businesses and, in fact, provides a cause of action for such injuries under the Racketeer Influenced and Corrupt Organizations Act (“RICO”). See *Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865, 881 (10th Cir. 2017) [quoting *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2096 (2016) and 18 U.S.C. § 1964(c)].

The dangers associated with illegal drug activity are presumably why San Francisco sought to keep MMDs away from schools, community facilities, and rec centers in the first place. Planning Code § 790.141(a)(1). Accordingly, the Board should deny The Apothecarium’s conditional use for the Property.

B. Even if The Apothecarium’s Conditional Use Would Not Violate the Letter of State and Local Law, it Would Violate the Spirit of California Law.

Even assuming *arguendo* that The Apothecarium is complying with the letter of Planning Code § 790.141(a) by not locating within 1,000 feet of either 1) a public or private elementary or secondary school, or 2) a community or recreational facility that serves persons under 18 years of age, The Apothecarium would violate the spirit of § 790.141(b), as well as federal and state law, by operating at 2505 Noriega. In addition to the above-cited cases involving medical marijuana, cases and statutes involving adult businesses (e.g., X-rated movie theaters and adult bookstores and novelty shops) and alcohol-dispensing businesses such as taverns and liquor stores – whose adverse secondary effects, like those of MMDs, can be harmful to children passing within their vicinity – should prove instructive:

- In *Madain*, cited above, the presiding justice noted in a concurring opinion that the locations best suited for adult businesses are those “generally removed from places where children are likely to congregate.” *Madain*, 185 Cal. App. 4th at 1292 (Sills, P.J. concurring). Such places include churches. *Id.* The presiding justice in *Madain* also wrote in his concurring opinion that adult businesses should be restricted to where their secondary effects will have the least impact on children. *Id.* The same can be said of MMDs. *Nestdrop*, 245 Cal. App. 4th at 675, and *Alexis E.*, 171 Cal. App. 4th at 452.

- In *City of National City v. Wiener*, 3 Cal. 4th 832, 846 (Cal. 1991), the California Supreme Court wrote: “Segregating adult businesses away from residential areas and schools, and placing them in a location where they do not affect the moral climate of the community as a whole ... [d]ecreases the problems of harassment of neighborhood adults and children, littering of sexually explicit material and paraphernalia, loitering, and visual blight ...” In this case, one can easily substitute “MMDs” for “adult businesses” and the word “drug” for “sexually explicit.” In fact, San Francisco recognized this when it enacted Resolution 179-12, a copy of which is attached hereto as **Exhibit “D,”** in 2015: “The establishment of an MCD in the Irving, Judah, *Noriega*, or Taraval Street [Neighborhood Commercial Districts (“NCDs”)] ... may impact the existing neighborhood character, pedestrian, and vehicular traffic, and open space and other recreational areas in those NCDs, due to possible increases in vehicle and pedestrian traffic, ***litter, noise, crime, and other activities*** related to the MCD[.]” Resolution No. 179-15 1, 2:9-13 (May 5, 2015) (emphasis added) (hereinafter “Res.” when cited).
- Section 23789(a) of California’s Business & Professions Code specifically authorizes California’s Department of Alcoholic Beverage Control to refuse to issue liquor licenses to taverns or stores that seek to operate near churches. Because a liquor store or tavern “is a business attended with danger to the community, it may be ***entirely prohibited or permitted under such circumstances as will limit to the utmost its evils.***” *Schaub’s, Inc. v Dept. of Alcoholic Beverage Control*, 153 Cal. App. 2d 858, 866 (App. 2nd Dist. 1957) (hereinafter *Schaub’s*) (emphasis added) [quoting *Crowley v. Christiansen*, 137 U.S. 86, 91 (1890)]. In fact, the *Schaub’s* court held that “because of the problems presented by traffic in liquor ... regulations by way of exceptions with respect to churches and schools ***should be liberally construed in favor of such regulations and against applicants for license*** to sell liquor within prescribed areas.” *Id.* at 867 (emphasis added). The word “marijuana,” with or without the word “medical” in front of it, could easily replace the word “liquor” in this case.

Letting an MMD operate across the street from the Church and roughly a block away from the Preschool thus sends a confusing and potentially harmful message to the children who attend both institutions. First and foremost, the possession, sale, and/or distribution of marijuana or marijuana products is illegal under federal law. *See Garden Grove*, 157 Cal. App. 4th at 385. The State of California simply does not prosecute individuals who possess, distribute, and/or use marijuana under the guise of doing so for medical reasons. *Id.* By allowing an MMD to operate in knowing and willful violation of federal law in an area where children congregate, the Commission is not only failing to shield children from the dangers of the drug trade, it is undermining the federal government's efforts to do so as well:

(W)here children congregate in large numbers before, during, and after school sessions, they are readily subject to the illicit activities of those who ply narcotics to the victims of drug abuse and addiction. The sale and distribution of drugs to youngsters for their use may subject them to the evils of addiction, a hazard to them not only physically and psychologically but financially, with the prospect that their need for drugs, once they are addicted, will lead them into a life of crime to obtain funds to support their habit. They may be drawn into drug rings as participants themselves, aiding the sale and distribution of narcotics to others, including their schoolmates. Indeed, judicial notice may be taken of the destructive results of drug addiction, the source of which Congress clearly intended to keep out of the easy reach of school-age children.

People v. Williams, 10 Cal. App. 4th 1389, 1395 (App. 3rd Dist. 1992) [quoting *U.S. v. Nieves*, 608 F. Supp. 1147, 1149 (S.D.N.Y. 1985)]; *see also Garden Grove*, 157 Cal. App. 4th at 383 [noting that Congress passed the Controlled Substances Act “to combat recreational drug abuse and curb drug trafficking”].

The California Legislature likewise intended to keep narcotics away from children when it passed the Juvenile Drug Trafficking and Schoolyard Act of 1988. Cal. Health & Saf. Code § 11353.6. The law's purpose was not only to prevent “the sale of drugs to students on their way to and from school, but, of equal importance, the protection of school-age children from drug sellers, drug buyers, and the hazards presented in drug trafficking.” *People v. Marzet*, 57 Cal. App. 4th 329, 338 (Cal. App. 2nd Dist. 1997). Even if The Apothecarium's MMD would comply with the Planning Code by not locating within 1,000 feet of a school, community facility, or rec center, the Commission is undermining the Legislature's intent: The children who go to the Church and the Preschool are every bit as vulnerable to the hazards of drug trafficking as children who attend schools or community or recreational facilities, state-licensed or otherwise.

In *Schaub*'s, the court held that a business's proximity to a church could be a sufficient ground to deny the business a liquor license because "a reasonable person could conclude that the sale of any liquor on such premises would adversely affect the public welfare and morals." *Schaub*'s, 153 Cal. App. 2d at 867 [quoting *Weiss v. State Bd. of Equalization*, 40 Cal. 2d 772, 776 (Cal. 1953)]. Because the Property is located near the Church and the Preschool, the Board should deny The Apothecarium's conditional use on the same grounds.

II. The Board Should Deny The Apothecarium's Conditional Use Because the Children Who Attend the Preschool and the Church Are Entitled to Equal Protection of the Laws.

The Planning Code provides protections to children and youth in kindergarten through high school but does not explicitly safeguard preschool children. Whether due to oversight or other reasons, the distinction does not meet the constitutional standard of rational basis.

Section 1 of the U.S. Constitution's Fourteenth Amendment, aka the Equal Protection Clause (the "EPC"), prohibits state and municipal governments from denying to anyone within their jurisdiction equal protection of the law. U.S. Const. amend. XIV, § 1. The EPC applies whenever a state or municipal government agency takes any action that treats distinct classes of similarly situated persons differently. *Ross v. Moffitt*, 417 U.S. 600, 609 (1974). Most classifications are subject to rational basis review. *Geiger v. Kitzhaber*, 994 F. Supp. 2d 1128, 1139 (9th Cir. 2014). "Under rational basis review, the Equal Protection Clause is satisfied if: (1) there is a plausible policy reason for the classification, (2) the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and (3) the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational." *Id.* [quoting *Bowers v. Whitman*, 671 F.3d 905, 917 (9th Cir. 2012)].

In this case, by excluding the children who attend the Church and the Preschool from the protections available under Planning Code § 790.141(a), San Francisco has created distinct classes of similarly situated persons who are treated differently under the law. For one thing, § 790.141(a)(1) protects children who attend "public and private elementary or secondary schools"; the language of § 790.141(a) thus implies that the children who attend religious activities at the Church or preschool at Ark of Hope are not protected. Furthermore, § 790.141(a)(2) protects "community facilities and/or recreation centers that primarily serve youth

under 18.” At best, the language of § 790.141(a)(2) is vague, as the Planning Code provides no clear definition of what constitutes a “community facility” or a “recreation center.” At worst, § 790.141(a) reflects San Francisco’s belief that preschoolers are less deserving of protection than school-aged children and that children engaged in activities at religious institutions are less worthy of protection than children engaged in activities at secular community facilities or recreation centers. The classifications created under § 790.141(a) would thus fail the rational basis test for the following reasons:

- **No plausible policy reason:** The preschoolers who attend Ark of Hope and the children who attend worship services and other activities at the Church are every bit as vulnerable to the evils of drug trafficking as children at schools, community facilities, or recreation centers. The children who attend Ark of Hope are especially vulnerable given that they frequently leave the Preschool’s facility to take field trips.
- **No rational basis for the classification:** It is difficult to conceive of what facts led the governmental decision-maker – in this case, San Francisco – to decide that children attending schools, community facilities, or recreation centers are worthier of protection than children attending churches or preschools. Multiple California cases have recognized that there are sound public policy reasons for keeping adult-oriented businesses, such as liquor stores, taverns, and adult movie theaters or novelty shops, away from churches. *See Schaub’s*, 153 Cal. App. 2d at 867 [quoting *Weiss v. State Bd. of Equalization*, 40 Cal. 2d 772, 776 (Cal. 1953), which states that a business’ proximity to a church could be a sufficient ground to deny the business a liquor license because “a reasonable person could conclude that the sale of any liquor on such premises would adversely affect the public welfare and morals”]; *see also Madain*, 185 Cal. App. 4th at 1292 (Sills, P.J., concurring) [noting that (1) the locations best suited for adult-oriented businesses are those “generally removed from places where children are likely to congregate, (2) such places include churches, and (3) adult-oriented businesses should be restricted to where their secondary effects will have the least impact on children”].

- **The distinctions are arbitrary or irrational:** The goal of Planning Code § 790.141(a) is presumably to protect the children of San Francisco. This is a worthy goal, but § 790.141(a) is written in such a way that the statute protects some children, but not others. The relationship between the goal of protecting San Francisco’s children from the evils of drug trafficking is thus too attenuated from the classifications set up by § 790.141(a).

III. Any MMD in the Noriega Street Neighborhood Commercial District Must Meet Strict Conditional Use Requirements.

Pursuant to Resolution No. 179-15, which passed by a 9-2 vote on May 5, 2015, any proposed MMD in the Noriega Street Neighborhood Commercial District (the “District”) must obtain conditional use authorization from the Planning Commission. Res. at 3:18-21 [see Ex. “D”]. Resolution No. 179-15 is to remain in effect until the adoption of permanent legislation regulating MMDs in the District. *Id.* at 4:8-10. As of this writing, no such legislation has been adopted.

Furthermore, Resolution No. 179-15 requires that any MMD that proposes to set up shop in the District must comply with the requirements of Planning Code § 303 as well as other criteria. Res. at 3:22-4:7. As stated above, Planning Code § 303(c)(2) requires that any proposed conditional use “not be detrimental to the health, safety, convenience, or general welfare of persons working in the vicinity” of the property where the MMD intends to operate.

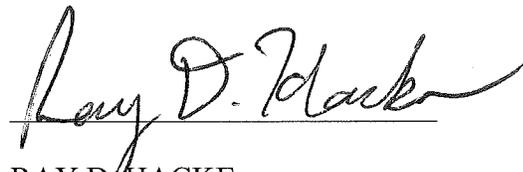
In this case, a proposed MMD would be very detrimental to the health, safety, and general welfare of the teachers, administrators, and other employees who work at Ark of Hope and the Church: Ark of Hope’s employees frequently take the Preschool’s children for field trips around the neighborhood to explore its unique environment or play at nearby parks or playgrounds. To continue doing so, Ark of Hope’s employees would have to put themselves in harm’s way to protect the children from the dangers of drug trafficking outlined above. *See Nestdrop*, 245 Cal. App. 4th at 675. The same can be said for the Church’s employees: Imagine a youth pastor having to fend off drug dealers – who may or may not be carrying firearms or other weapons – attempting to sell marijuana to the youth who attend Holy Spirit. Imagine the youth pastor being good enough at protecting the youth he’s watching out for that a dealer decides he’s “bad for business” and retaliating

accordingly. Imagine the youth pastor dealing with the fallout of teens falling victim to temptation and becoming addicted to marijuana. Some of the youth that a youth pastor encounters in his job are wayward to begin with; a youth pastor does not need the additional stress of combating drug dealers who may send youngsters further down a destructive path.

CONCLUSION

Based on the foregoing, the Board should deny the conditional use that would allow The Apothecarium to operate an MMD at 2505 Noriega.

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A handwritten signature in cursive script that reads "Ray D. Hacke". The signature is written in black ink and is positioned above a horizontal line.

RAY D. HACKE
Attorney for Appellants
ARK OF HOPE PRESCHOOL &
LUTHERAN CHURCH OF THE HOLY SPIRIT

EXHIBIT “A”



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2505 Noriega St

San Francisco, CA 94122

Use caution - may involve errors or sections not suited for walking

↑ 1. Head north on 32nd Ave toward Noriega St

89 ft

← 2. Turn left onto Noriega St

0.1 mi

EXHIBIT “B”



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2505 Noriega St

San Francisco, CA 94122

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↑ 1. Head north on 32nd Ave toward Noriega St

89 ft

➤ 2. Turn right onto Noriega St

223 ft

EXHIBIT “C”



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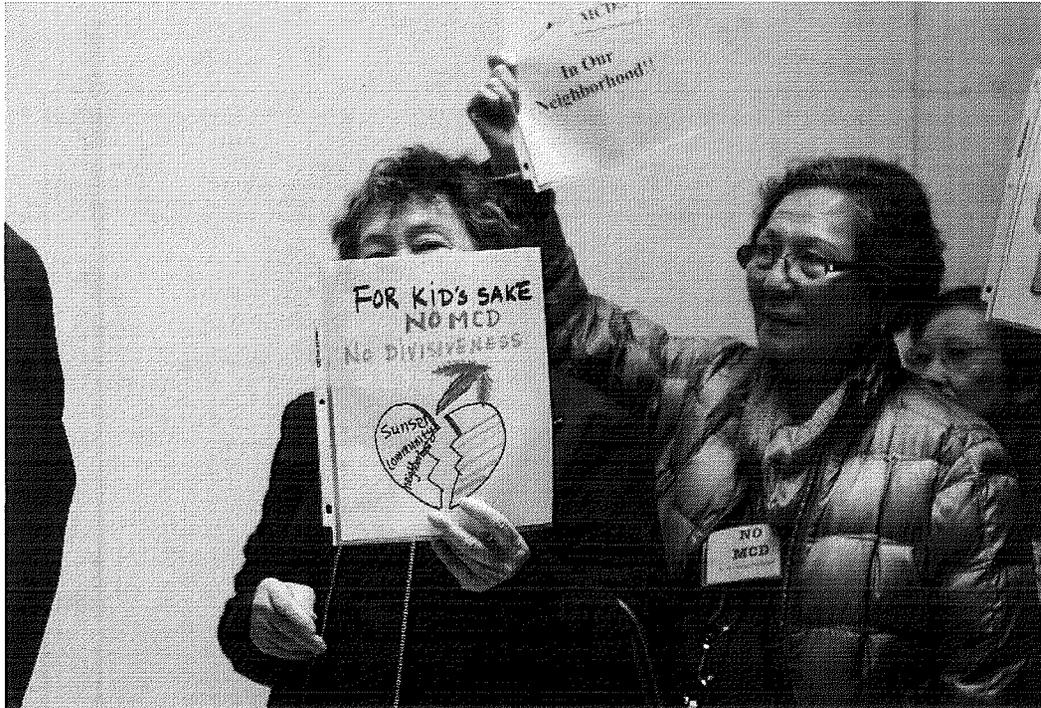
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Outer Sunset pot shop clears Planning Commission despite uncertainty over recreational weed sales

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People wait at City Hall on Thursday to attend a hearing deciding whether a medical cannabis dispensary will be opened in the Outer Sunset. (Mira Laing/Special to S.F. Examiner)

By Michael Barba on July 14, 2017 2:16 am



Decades-old fears of reefer madness invoked on Thursday at the Planning Commission could not stop plans to open a pot shop in the Outer Sunset

from moving forward.

Hundreds of neighbors argued that opening a medical marijuana dispensary on the corner of Noriega Street and 32nd Avenue would endanger children at nearby churches and a preschool.

A sheriff's deputy told the commission that an estimated 700 people were waiting to speak on the opening of the Apothecarium, a high-end medical marijuana chain co-owned by former Oakland Mayor Jean Quan and her husband, Dr. Floyd Huen.

"A lot of people were told lies," Quan told commissioners. "I would never do anything to hurt children."

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pungent stench.

“When the children smell the smoke, they all ask, ‘what is that stinky smell?’” said Bernie Chung, senior pastor of San Francisco Chinese Baptist Church. “So it is affecting our children’s health and outdoor activity.”

But the Planning Commission voted 5-1 in favor of the Apothecarium expanding to the traditional neighborhood, as the clock neared midnight on Thursday. Commissioner Dennis Richards voted against.

Several commissioners expressed uncertainty about voting in favor of the dispensary since city officials are slated to introduce new legislation in September regulating the recreational sale of marijuana come January 2018.

The commissioners worried that medical marijuana dispensaries would automatically be able to sell cannabis for recreational use without review at the commission.

“It’s not known if it will actually come to [the commission] yet,” said Planning Director John Rahaim. “It would be very unlikely that it would just be automatic.”

Apothecarium co-founder Ryan Hudson said the Apothecarium is interested in selling weed for recreational use next year.

“I think personally that the dispensaries that are currently existing should be allowed to convert to recreational,” Hudson said. “I do not see any [negative] impacts on the community.”

Before the vote, Hudson argued for the community benefits of the pot shop, which has a storefront on Dolores and Market streets.

“In the six years on Market street, we have never had a police incident,” Hudson said. “Families with children live in our building above our current site without any problems.”

Quan said the Noriega Street location is right for a dispensary because there are 37 medical institutions in the area. The building itself is a former pharmacy.

“We call it the medical mile,” Quan said. “That’s why it should be located there.”

Hudson said he was dismayed that the main opponents to the dispensary hire an attorney from the Pacific Justice Institute, which the Southern Poverty Law Center considers an anti-LGBT hate group.

On behalf of the Ark of Hope Preschool, PJI attorney Ray Hacke warned planning commissioners of the “harassment and threats and physical endangerments to children that a business with large quantities of cash on hand and illegal drugs will draw to the neighborhood.”

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Longtime child advocate Jill Wynns, who served on the Board of Education for 24 years, made an appearance at the hearing to dispute the concerns about the welfare of children.

“Child advocates are not concerned about medical marijuana,” Wynns said. “Medical cannabis dispensaries in my opinion are one of the most important ways that people who need medical marijuana can have access and that children are protected.”

The decision to approve the conditional-use permit for the Apothecarium could be appealed to the Board of Supervisors.

[Click here or scroll down to comment](#)

EXHIBIT “D”

1 [Interim Zoning Controls - Conditional Use Authorization for Medical Cannabis Dispensaries in
2 Irving, Judah, Noriega and Taraval Neighborhood Commercial Districts]

3 **Resolution imposing interim zoning controls to reinstate conditional use authorization**
4 **requirement for Medical Cannabis Dispensaries in the Irving, Judah, Noriega, and**
5 **Taraval Street Neighborhood Commercial Districts and impose additional conditional**
6 **use authorization criteria; and making environmental findings, including findings of**
7 **consistency with the eight priority policies of Planning Code, Section 101.1.**

8
9 WHEREAS, Planning Code, Section 306.7, provides for the imposition of interim
10 zoning controls to accomplish several objectives, including preservation of residential and
11 mixed residential and commercial areas in order to preserve the existing character of such
12 neighborhoods and areas; development and conservation of the commerce and industry of
13 the City in order to maintain the economic vitality of the City, to provide its citizens with
14 adequate jobs and business opportunities, and to maintain adequate services for its residents,
15 visitors, businesses and institutions; control of uses which have an adverse impact on open
16 space and other recreational areas and facilities; control of uses which generate an adverse
17 impact on pedestrian and vehicular traffic; and control of uses which generate an adverse
18 impact on public transit; and

19 WHEREAS, In 2012, the Board of Supervisors passed and the Mayor approved
20 Ordinance No. 175-12, creating the Irving, Judah, Noriega, and Taraval Street Neighborhood
21 Commercial Districts (NCDs) in the Outer Sunset neighborhood for non-residential properties
22 zoned NC-2, with the intent to enhance the character along those commercial corridors by
23 requiring active ground-floor uses as defined by Planning Code, Section 145.4; and

24 WHEREAS, At the time Ordinance No. 175-12 was approved, a Medical Cannabis
25 Dispensary (MCD) was not defined as an "active use" under Section 145.4 of the Planning

1 Code, and therefore, pursuant to the zoning controls contained in Ordinance No. 175-12, was
2 subject to conditional use authorization in the Irving, Judah, Noriega, and Taraval Street
3 NCDs; and

4 WHEREAS, In approving Ordinance No. 22-15 in February 2015, this Board defined an
5 MCD as an active use pursuant to Section 145.4 of the Planning Code; and

6 WHEREAS, Ordinance No. 22-15 had the inadvertent effect of eliminating the
7 conditional use authorization requirement for MCDs in the Irving, Judah, Noriega, and Taraval
8 Street NCDs; and

9 WHEREAS, The establishment of an MCD in the Irving, Judah, Noriega, or Taraval
10 Street NCD without conditional use authorization may impact the existing neighborhood
11 character, pedestrian and vehicular traffic, and open space and other recreational areas and
12 facilities in those NCDs, due to possible increases in vehicle and pedestrian traffic, litter,
13 noise, crime, and other activities related to the MCD; and

14 WHEREAS, Policy 2 of the eight priority policies of the City's General Plan and
15 Planning Code, Section 101.1 establishes a policy "That existing housing and neighborhood
16 character be conserved and protected in order to preserve the cultural and economic diversity
17 of our neighborhoods"; and

18 WHEREAS, Policy 4 of the eight priority policies of the City's General Plan and
19 Planning Code, Section 101.1 establishes a policy "That commuter traffic not impede Muni
20 transit service or overburden our streets or neighborhood parking"; and

21 WHEREAS, The 2012 conditional use authorization requirement for MCDs allows the
22 Planning Commission to consider proposed MCD projects and impose conditions necessary
23 to conserve and protect the neighborhood character of the Irving, Judah, Noriega, and Taraval
24 Street NCDs; and

1 WHEREAS, These interim controls are intended and designed to address and
2 ameliorate the problems and conditions associated with the inadvertent removal of the
3 conditional use authorization requirement for MCDs in the Irving, Judah, Noriega, and Taraval
4 Street NCDs; and

5 WHEREAS, The passage of these interim controls will allow this Board time to consider
6 how to regulate MCDs in the Irving, Judah, Noriega, and Taraval Street NCDs; and

7 WHEREAS, This Board has considered the impact on the public health, safety, peace,
8 and general welfare if the interim controls proposed herein were not imposed; and

9 WHEREAS, This Board has determined that the public interest will be best served by
10 imposition of these interim controls at this time, in order to ensure that the legislative scheme
11 that may be ultimately adopted is not undermined during the planning and legislative process
12 for permanent controls; and

13 WHEREAS, The Planning Department has determined that the actions contemplated in
14 this Resolution are in compliance with the California Environmental Quality Act (California
15 Public Resources Code, Section 21000 et. seq.). Said determination is on file with the Clerk
16 of the Board of Supervisors in File No. 150412 and is hereby affirmed and incorporated by
17 reference as though fully set forth; now, therefore, be it

18 RESOLVED, Pursuant to Planning Code, Section 306.7, the Board of Supervisors, by
19 this resolution, hereby requires that, as of the effective date of this Resolution, any proposed
20 MCD in the Irving, Judah, Noriega, or Taraval Street NCD must obtain conditional use
21 authorization from the Planning Commission; and, be it

22 FURTHER RESOLVED, That in order to grant a conditional use authorization, the
23 Planning Commission must find that the facts presented establish that the proposed MCD
24 satisfies both the criteria set forth in Planning Code Section 303 and the additional criteria set
25 forth below:

1 (1) the MCD will bring measurable community benefits and enhancements to the NCD;

2 (2) the MCD has prepared a parking and transportation management plan sufficient to
3 address the anticipated impact of patients visiting the MCD; and

4 (3) the MCD has demonstrated a commitment to maintaining public safety by actively
5 engaging with the community prior to applying for the conditional use, including adequate
6 security measures in its operation of the business, and designating a community liaison to
7 deal effectively with current and future neighborhood concerns; and be it

8 FURTHER RESOLVED, That these interim controls shall remain in effect for eighteen
9 months from the effective date of this resolution, or until the adoption of permanent legislation
10 regulating MCDs in the Irving, Judah, Noriega, and Taraval NCDs, whichever first occurs;
11 and, be it

12 FURTHER RESOLVED, That these interim zoning controls advance and are consistent
13 with Policies 2 and 4 of the Priority Policies set forth in Planning Code Section 101.1, in that
14 they require consideration of a proposed MCD's impacts on neighborhood character and
15 pedestrian and vehicular traffic in the Irving, Judah, Noriega, and Taraval Street NCDs, by
16 retaining the conditional use authorization requirement for MCDs that has been in effect since
17 2012 and imposing additional conditional use criteria specific to the potential impacts of
18 MCDs; and, be it

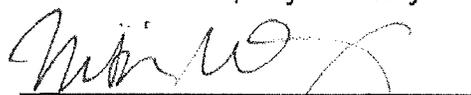
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1 FURTHER RESOLVED, With respect to Priority Policies 1, 3, 5, 6, 7, and 8, the Board
2 finds that these interim zoning controls do not, at this time, have an effect upon these policies,
3 and thus, will not conflict with said policies.

4
5 APPROVED AS TO FORM:

6 DENNIS J. HERRERA, City Attorney

7
8 By:


VICTORIA WONG
Deputy City Attorney

9
10 n:\leganas2015\1500734\01010425.doc



City and County of San Francisco

Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 150412

Date Passed: May 05, 2015

Resolution imposing interim zoning controls to reinstate the conditional use authorization requirement for Medical Cannabis Dispensaries in the Irving, Judah, Noriega, and Taraval Street Neighborhood Commercial Districts, and impose additional conditional use authorization criteria; and making environmental findings, including findings of consistency with the eight priority policies of Planning Code, Section 101.1.

May 04, 2015 Land Use and Transportation Committee - RECOMMENDED AS
COMMITTEE REPORT

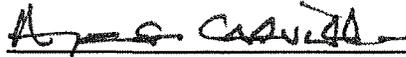
May 05, 2015 Board of Supervisors - ADOPTED

Ayes: 9 - Breed, Campos, Christensen, Cohen, Farrell, Kim, Tang, Wiener and
Yee

Noes: 2 - Avalos and Mar

File No. 150412

I hereby certify that the foregoing
Resolution was ADOPTED on 5/5/2015 by
the Board of Supervisors of the City and
County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor


Date Approved