

File No. 170898

Committee Item No. _____

Board Item No. 20

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: _____

Date: _____

Board of Supervisors Meeting

Date: October 3, 2017

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence - Link hosted on the sfbos.org
Legislative Research Center

OTHER (Click text of checked items for a direct link to the document)

- Appeal Letter - July 27, 2017
- Planning Commission Motion No. 19961 - July 13, 2017
- Appellant Response - September 28, 2017
- Appellant Brief - August 24, 2017
- Project Sponsor Letter - August 17, 2017
- Hearing Notice and Clerical Documents
- _____

Prepared by: Lisa Lew

Date: September 28, 2017

Prepared by: _____

Date: _____

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

**NOTICE TO BOARD OF SUPERVISORS OF APPEAL
FROM ACTION OF THE CITY PLANNING COMMISSION**

2017 JUL 27 PM 12:38

BY ll

Notice is hereby given of an appeal to the Board of Supervisors from the following action of the City Planning Commission.

The property is located at 2905 Noriega Street.

July 13, 2017

Date of City Planning Commission Action
(Attach a Copy of Planning Commission's Decision)

July 27, 2017

(Appeal Filing Date)

The Planning Commission disapproved in whole or in part an application for reclassification of property, Case No. _____.

The Planning Commission disapproved in whole or in part an application for establishment, abolition or modification of a set-back line, Case No. _____.

The Planning Commission approved in whole or in part an application for conditional use authorization, Case No. 2014-003193CUA.

The Planning Commission disapproved in whole or in part an application for conditional use authorization, Case No. _____.

Statement of Appeal:

a) Set forth the part(s) of the decision the appeal is taken from:

See attached.

b) Set forth the reasons in support of your appeal:

See attached.

Person to Whom
Notices Shall Be Mailed

Name and Address of Person Filing Appeal:

Ray D. Hacke
Name

Ark of Hope Preschool
Name

Pacific Justice Institute
1250 Aviation Ave., Suite 260
San Jose, CA 95110
Address

2701 Noriega St.
San Francisco, CA 94122
Address

(916) 857-6900
Telephone Number

(415) 242-1036
Telephone Number


Signature of Appellant or
Authorized Agent

2017 JUL 27 PM 12:38

BY

STATEMENT OF APPEAL

(a) Set forth the parts of the decision that the appeal is taken from.

Section 6, subsection A.1

(b) Set forth the reasons in support of your appeal.

The existence of Planning Code § 790.141(a) indicates an implicit recognition on the Planning Department's part that the children of San Francisco need to be protected from the evils attendant to commercial marijuana activity to the greatest extent possible. However, § 790.141(a) appears to leave certain children unprotected. Such children include those who attend Ark of Hope Preschool (the "Preschool") – which serves 42 preschoolers between the ages of 2½ and 6 – as well as those who worship or participate in other religious activities, such as youth groups or Bible studies, at Lutheran Church of the Holy Spirit (the "Church"). Both the Preschool and the Church are both located on Noriega Street less than 600 feet from the medical marijuana dispensary's ("MMD") proposed location at 2505 Noriega. The proximity of the proposed location to the Church and the School would not only violate the recently passed Prop. 64, but California public policy as codified in the Juvenile Drug Trafficking and Schoolyard Act of 1988. Furthermore, the fact that § 790.141(a) protects some children and not others creates distinct classifications of children for which there is no rational basis and therefore violates the U.S. Constitution's Equal Protection Clause. Thirdly, the proposed location would violate the federal Racketeering Influenced and Corrupt Organizations Act (RICO), which lets people sue "racketeering" enterprises that injure plaintiffs' business or property. The sale and/or distribution of drugs that are illegal under federal law qualifies as racketeering activity; such illegal activity would injure the Preschool's business and the Church's use of its property from the standpoint that both organizations serve children whose parents do not want their children exposed to the evils of drug trafficking. Finally, the MMD's proposed location would be "detrimental to the health, safety, convenience, or general welfare of persons working in the vicinity" of the MMD, and would therefore violate Planning Code § 303(c)(2).


2505 Noriega St. MCD
Signatures collected for appeal

RECEIVED
BOARD OF SUPERVISORS
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JUL 27 PM 12:38
BY ll

As of 7/20/2017 

Numbers of Property Owners Signed: 27
Total Properties within 300' radius: 90
Percentage of Signature Collected: 30%

Encl:
Property owners' signatures (2 pages)
Property owners (2 pages)
300' radius map (1 page)

As of 7/26/17 
Total: 44/90
= 48.8%

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

City Planning Commission
Case No. 17 JUL 27 PM 12:38

The undersigned declare that they are hereby subscribers to this Notice of Appeal and are owners of property affected by the proposed amendment or conditional use (that is, owners of property within the area that is the subject of the application for amendment or conditional use, or within a radius of 300 feet of the exterior boundaries of the property.

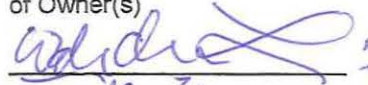
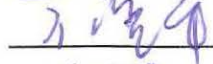



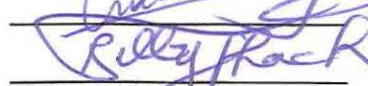
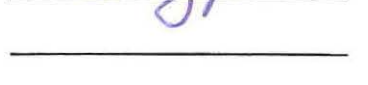
If ownership has changed and assessment roll has not been amended, we attach proof of ownership change. If signing for a firm or corporation, proof of authorization to sign on behalf of the organization is attached.

	Street Address, property owned	Assessor's Block & Lot	Printed Name of Owner(s)	Original Signature of Owner(s)
1.	1815 31st Ave	2068-002	Alla Velger	<i>[Signature]</i>
2.	187 31st Ave		Shariotta Velger	<i>[Signature]</i>
3.	1827-31 Ave	2068-003	Hui zheh Lin	<i>[Signature]</i>
4.	1843 31st Ave	2068-009	Becky Kuang	<i>[Signature]</i>
5.	1830 32ND AVE	2068-042	YANSON LEUNG	<i>[Signature]</i>
6.	1858 32ND AVE	2068-035	TIE YUAN TAN	<i>[Signature]</i>
7.	1859 32ND AV	2069-001K	Danny M Dea	<i>[Signature]</i>
8.	1835 - 32nd Ave	2069-001E	Grace S. Ligh	<i>[Signature]</i>
9.	1778 - 32ND AVE	2018-004B	Lan Fong Lam	<i>[Signature]</i>
10.	1774-32ND Ave	2018-004C	VERA DIEHL	<i>[Signature]</i>
11.	1771-32nd Ave.	2017-018	Suleman A. MIRZA	<i>[Signature]</i>
12.	1767 32nd Ave		Christopher M Lee	<i>[Signature]</i>
13.	1767 32nd Ave	2017-017	Christopher M Lee	<i>[Signature]</i>
14.	1770 33rd Ave.	2017-024	HENRY CHEUNG	<i>[Signature]</i>
15.	1778 33rd Ave	2017-022	Marcel Luu	<i>[Signature]</i>
16.	1766 33rd Ave	2017-025	Soo Linn Wong	<i>[Signature]</i>
17.	1787 33rd Ave.	2016-022	Vincent Lee	<i>[Signature]</i>
18.	2601 Noriega St.	2070-001	Yvonne Wimmleitner	<i>[Signature]</i>
19.	1815 33RD AVE.	2070-004	JANSEN LEE	<i>[Signature]</i>
20.	1826-33rd Ave	2069-004A	WENDY LIN	<i>[Signature]</i>
21.	1830 33rd Ave	2069-004	Surveen Singh	<i>[Signature]</i>
22.	1830 33rd Ave	2069-004	Kashif Magsood	<i>[Signature]</i>

City Planning Commission
Case No. 2017 JUL 27 PM 12:38

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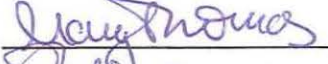

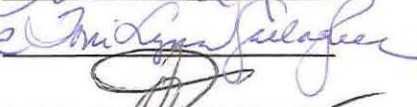
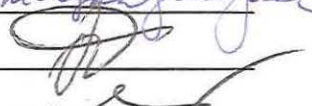
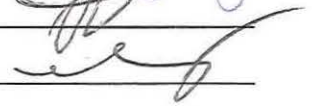
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	Street Address, property owned	Assessor's Block & Lot	Printed Name of Owner(s)	Original Signature of Owner(s)
1.	1846 33 rd AVE	2069-003	WAH CHUNG LAM	
2.	1850 33 rd AVE	2069-002M	YIPING WAN	
3.	1854 33 rd AVE	2069-002L	MEI YING KWOK	
4.	1822 32 nd AVE	2068-044	Joselyn Momo	
5.	1831-32 nd AVE	2069-001D	SHALLY MENG	
6.	1819 32 nd AVE	2069-001A	LINH TUYEN LY	
7.	1827 3 rd AVE	2069-001C	BILLY THACH	
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City Planning Commission
Case No. _____
2011 JUL 27 PM 12:38

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	Street Address, property owned	Assessor's Block & Lot	Printed Name of Owner(s)	Original Signature of Owner(s)
1.	1863 32 ND AVE	2069-001L	MARY THOMAS	
2.	1851 31 ST AVE	2068-011	SUE WONG	
3.	1858 - 33 RD AVE	2069-002K	TONI LYNN GALLAGHER	
4.	1774 33 RD AVE	2017-023	PHILIP GO	
5.	1822 33 RD AVE	2069-004B	HONG ZHENG	
6.	_____	_____	_____	_____
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	Street Address, property owned	Assessor's Block & Lot	Printed Name of Owner(s)	Original Signature of Owner(s)
1.	<u>1834-32nd</u>	<u>2068-041</u>	<u>Yvonne Gabbay</u>	<u>Y Gabbay</u>
2.	<u>1839-32nd Ave</u>	<u>2069-001F</u>	<u>ANTHONY CHAN</u>	<u>Anthony Chan</u>
3.	<u>1839 32nd Ave.</u>	<u>2069-001F</u>	<u>Rose CHAN</u>	<u>Rose Chan</u>
4.	XXXXXXXXXXXX	<u>Not owner</u>	XXXXXXXXXXXX	XXXXXXXXXXXX
5.	<u>1823 31st AVE</u>	<u>2068-004</u>	<u>Lily Fu Wu</u>	<u>Lily Fu Wu</u>
6.	<u>1855-32nd Ave</u>	<u>2069-001J</u>	<u>HOU. KWANG TIEN</u>	<u>Kittell</u>
7.	1855-1	<u>2069-001J</u>		
8.	<u>1818-32nd Ave</u>	<u>2068-045</u>	<u>HOU. KWANG TIEN</u>	<u>Kittell</u>
9.	<u>1819, 22nd Ave</u>	<u>2070-005</u>	<u>Stewart Cheung</u>	<u>Stewart Cheung</u>
10.	<u>1831-31 AVE</u>	<u>2068-006</u>	<u>BEN NG</u>	<u>Ben Ng</u>
11.	<u>1839-31st AVE</u>	<u>2068-008</u>	<u>ROY GETT</u>	<u>Roy Gett</u>
12.	<u>2415-MORAGA ST.</u>	<u>2068-010</u>	<u>ANITA CHEUNG</u>	<u>Anita Cheung</u>
13.	<u>1763-32nd Ave</u>	<u>2017-016</u>	<u>PATRICIA B. ALLEN</u>	<u>Patricia B Allen</u>
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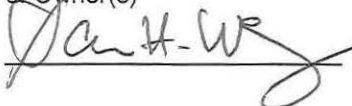
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BOARD OF SUPERVISORS
SAN FRANCISCO

City Planning Commission

Case No. 2017 JUL 27 PM 12:39

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	Street Address, property owned	Assessor's Block & Lot	Printed Name of Owner(s)	Original Signature of Owner(s)
1.	2526 NORIEGA ST	2017-021A	SAM H-WONG	
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RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2017 JUL 27 PM 12:46

City Planning Commission
Case No. _____

BY _____

ll

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	Street Address, property owned	Assessor's Block & Lot	Printed Name of Owner(s)	Original Signature of Owner(s)
1.	<u>1766 32nd Ave</u>	<u>2018-004A</u>	<u>Julian Chan</u>	<u><i>Julian Chan</i></u>
2.	_____	_____	_____	_____
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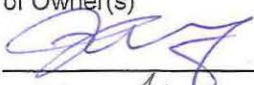

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2017 JUL 27 PM 12:46

City Planning Commission
Case No.

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1.	2400 NORIEGA ST, SF, CA 94122	2018-003	LUTHERAN CHURCH OF THE HOLY SPIRIT ROBERT LEUNG		Church President
2.	2400 NORIEG ST SF CA 94122		MARY KWONG		Recording Secretary
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Sunday
11/30 9:00am – English Service 9:00am – Cantonese Sunday School 9:00am – Children Sunday School 10:30am – Cantonese Service 10:30am – Spirit Kidz Worship 10:30am – English Sunday School

1. 11/23/2014 Voters Assembly Results:
 Total Voting Members: 114
Voting Items:
 1. The 2015 Proposed Church Budget – **Approved**
 2. The 2015 Proposed HUL After School Tutorial/Summer Day Camp Combined Budget – **Approved**
 3. Election of 1/1/2015-12/31/2017 Church Officers – **Approved:**
 President: Robert Leung
 Vice President: Charles Chau
 Recording Secretary: Mary Kwong
 Treasurer: Mary Wong
 Financial Secretary: Janis Yu
 Financial Analyst: Joseph Chan
 4. Re-appointment of Jerry Ma as Elder - **Approved**
2. Final number of Christmas Shoeboxes collected: 185! Thank you, everyone, for your generosity and participation in the *Samaritan's Purse's* 'Christmas in a Shoebox Project' by which extends God's love to a child in need.
3. We will be putting up decorations for Christmas from 1 – 4pm, 11/29, Saturday. Everyone is invited to join in.
4. Brochures for our 2015 Mission trips are ready for pick up. The registration deadline for the Summer Mission trips is January 25, 2015 and the Fall Mission trips' deadline is March 29, 2015. Please keep our

Mission trips in your prayers. Feel free to contact Mrs. Janice Lau, Bat and Debbie Louie for further questions.

5. LWML/Love-In-Action and Yun Deen Societies invite all mothers, daughters, grand-daughters and their spouse to join us for the "Jesus is the TRUE gift" Christmas Celebration on December 7 (Sunday) from 12 to 3:30pm. Program includes Christmas Hymns, reading scriptures, reveal who is your secret angel and doing craft work together. Lunch is \$4 per person, please sign up with Janis Yu.
6. 2014 Congregational Christmas Celebration and Dinner will begin at 4:00pm at our Church, 12/20/2014, Saturday. Tickets are on sale after worship services every week. \$10 per person; \$5 for children 6 years old and younger. Tickets are limited, first come first served. Ticket sale ends 12/7/2014, Sunday, or when sold out. A special Allan & Friends Concert will follow the dinner.

 We will need 25 volunteers to help serve the food. Please sign up with Cindy Jeong.
7. Anyone who currently does not have a set of personal offering envelopes but would like to use them beginning in 2015, please give a completed "Request Form" to Cindy Jeong. Request Forms are available on the wooden table in the Narthex.
8. 2015 Altar Flower Offering – We have started accepting offerings for the weekly altar flower arrangements, \$25 each Sunday. Offer your thanks to God with a beautiful floral arrangement to commemorate a birthday, wedding anniversary, or a special occasion! Please sign up with Janis Yu or Mrs. Janice Lau.
9. **Important:** Deadline to submit receipts for reimbursements, for those who have made purchases for the church with prior approval, please submit your purchase receipts by Sunday, 12/28/2014 for reimbursement.
10. Sign up for Luncheon in 2015 before the Prayer Meetings: For those who would like to sign up for the entire year in 2015, the cost for lunch is \$40. For children 12 years old or younger, the cost is \$25 for the entire year. Special envelopes designated for '2015 Prayer Meeting Lunch' are available on the wooden table in the Narthex. Please return to Cindy Jeong.
11. As a small token of our thanks and appreciation to your love and service for our church, we have prepared a beautiful colorful bilingual calendar for you to usher in 2015! There are Bible Readings for each month of the year to help you in your spiritual walk with our Lord! One calendar for each family!

THE BYLAWS OF THE LUTHERAN CHURCH
OF THE HOLY SPIRIT OF SAN FRANCISCO

ARTICLE I

APPLICATION FOR MEMBERSHIP - PROCEDURE

Applicants for confirmed membership in this congregation shall complete a course in doctrine and confessions of The Lutheran Church-Missouri Synod, taught by the Pastor(s), other Called Staff, Elders or lay leaders designated by Pastor(s) and the Board of Elders. The Senior Pastor shall determine if such applicants are eligible for membership in accordance with Article IV of the Constitution. Such applicants shall make a profession of their faith before the congregation before being received as members.

Applicants from other Evangelical Lutheran Churches shall submit a letter of transfer or peaceful release from their former congregation to establish their eligibility for membership. In the case of applicants whose previous membership in a Lutheran congregation has lapsed, the Pastor(s) may arrange a period of instruction prior to reaffirmation of faith for such applicants.

After applicants have given satisfactory evidence of their eligibility in accordance with the two preceding paragraphs, their admission as confirmed members shall be recommended by the Pastor(s) and Board of Elders, who shall then present their applications to the Voters Assembly for its affirmation. The newly confirmed members shall be registered in the church records and publicized in the various news media of the congregation.

ARTICLE II

PRIVILEGES AND DUTIES OF CONFIRMED MEMBERS

It shall be the privilege and duty of members of this congregation to:

- A. grow in the Christian faith and life through faithful use of the means of grace, study of the Scriptures at home, regularly attend church worship, fellowship groups, Sunday School and serve in ministries of the church.
- B. live a morally decent life before God and men, abstaining from works of the flesh (Galatians 5:19-21), and so conducting themselves at all times as to bring honor and glory upon the Church of Jesus Christ.
- C. provide for the proper Christian training of their children by instruction at home, through Sunday School and church fellowship groups.
- D. be faithful in their offerings to the church to further the Kingdom of God at home and abroad, as God has prospered them.
- E. be faithful stewards in offering their God-given talents and abilities and spiritual gifts to the church so that the purpose and goals of the congregation may be effectively implemented.

Upon becoming confirmed members they shall sign the Constitution and receive a copy of the Constitution and Bylaws of The Lutheran Church of the Holy Spirit of San Francisco. Confirmed members who have attained the age of 18 shall enjoy the privilege of voting in the congregational Voters Assembly.

ARTICLE IV

LINE OF AUTHORITY

- A. The Voters Assembly (as defined in Article X of the Constitution) makes all the major decisions of the congregation. I Peter 2:9 "You are a chosen race, a royal priesthood, a holy nation. God's own people, that you may declare the wonderful deeds of Him who called you out of darkness into His marvelous light".

The major decisions include (but are not limited to):

1. Call, Selection and termination of Called workers as defined in Article IX of the Constitution
 2. Election of Officers
 3. Approval of Elders appointed by the Pastor
 4. Approval of annual budget
 5. Amendments to the Constitution and Bylaws
 6. Issues deemed critical by the Church Council and Board of Elders
- B. The Policies and Procedures Manual shall be the guiding document for operational matters of the congregation.
- C. The Pastor(s) are both the overseers and servants to the congregation. The Senior Pastor is the head of the pastoral team.
- D. The President is the manager and servant to the congregation, who bears much of the Pastor(s)' administrative responsibilities so that the Pastor(s) and Elders can concentrate more on the Word and Sacrament ministry.
- E. The Board of Elders shall assist the Pastor(s) in all matters pertaining to the spiritual welfare of the congregation. This Board shall consist of a minimum of six (6) male confirmed members, at least 35 years of age, who have been confirmed members of The Lutheran Church of the Holy Spirit for a minimum of 5 years. They should be men of good reputation, filled with the Spirit, mature and faithful in their Christian family life and responsibilities. (I Tim. 3:8-13 and Acts 6:3)
- F. The Church Council is responsible for the administrative operations of the congregation. This Council makes decisions on matters that do not require the approval of the Voters Assembly or the Church Planning Assembly (see H below). The Council shall approve the proposed annual budget prior to its presentation to the Voters Assembly. The Council shall have the authority to hire and terminate non-called workers in accordance with the Policies & Procedures Manual. It considers the suggestions of the individual committees and screens these suggestions before they go to the Church Planning Assembly or Voters Assembly. Members of the congregation who are not church officers may put their suggestions in writing to the Pastor(s) or church officers.
- G. The Committees carry out the responsibilities assigned to them and implement the decisions of the Voters Assembly and Church Council. They also make suggestions of how things can be promoted and improved. The Pastor(s) and the President are ex-officio members of all committees, but need not attend all meetings and do not have voting powers.
- H. The Church Planning Assembly consists of the Pastor(s), the Elders, the Church Officers, Director of Christian Outreach/Evangelism, the Director of Christian Education, the chairpersons of all committees and one officer or representative of each fellowship group, provided such person is a member of the congregation. Any member of the congregation may attend the Church Planning Assembly meetings and may participate in the discussion, but only Church Planning Assembly members may vote.

The purpose of this Assembly is to have broad representation from the various entities of the congregation to assist in the planning and decision-making of congregational activities. The Church Planning Assembly shall meet at least two months prior to the November Voters Assembly or anytime the Pastor(s) or President requests such a meeting. The Pastor(s) or President shall call for the meetings and determine the agenda of the meetings.

- I. The Pastor(s), the President and the Vice President shall be informed of all the Committee meetings and given a simplified agenda of the meetings.

ARTICLE VI.

THE CHURCH OFFICERS:

A. The President shall:

1. preside at all general meetings of the Voters Assembly, Church Council and Church Planning Assembly, and in consultation with the Pastor(s) prepare the agenda for all meetings;
2. supervise all committees together with the Pastor(s) and the Board of Elders and ensure that approved resolutions of the Voters Assembly are carried out;
3. work with the Pastor(s) to ensure that the congregation is following the Constitution and Bylaws of the church and initiate corrective measures if necessary;
4. sign all legal documents along with the Recording Secretary;
5. initiate a calling process for a pastor or a church worker by establishing a Calling Committee

B. The Vice President shall:

1. assist the President in all areas of responsibilities;
2. assume the responsibilities of the President when he is absent or when he is unable to carry out his duties;
3. assist the President and the Pastor(s) in supervising all committees.

C. The Recording Secretary shall:

1. keep an accurate and permanent record of all meetings of the congregation, Voters Assembly, Church Council, Church Planning Assembly, Board of Elders and any other official meetings of the congregation;
2. maintain a current list of all voting members and of all official committees;
3. ensure that Voters Assembly meetings are announced in the bulletins or at the services at least two (2) Sundays prior to all Voters Assembly meetings;
4. conduct all official correspondence as directed;
5. make available a copy of the minutes of all Voters Assembly meetings;
6. sign all legal documents along with the President.

D. The Treasurer shall:

1. make disbursements authorized by the Voters Assembly and Church Council;
2. carry out the provisions of the congregation's Investment Policy.

E. The Financial Secretary shall:

1. maintain a set of permanent and accurate financial records;
2. be responsible for receiving all monies and making deposits;
3. supervise and maintain a system for counting church funds.

F. The Financial Analyst shall:

1. analyze the financial condition of the congregation each quarter of the year and report these findings to the Church Council;
2. prepare and present financial reports to the Voters Assembly;
3. prepare and present an annual budget for Church Council initial approval prior to seeking Voters Assembly for final approval;
4. prepare and present an annual budget to the Voters Assembly for approval;
5. maintain a current status of the financial condition and budget of the congregation.

ARTICLE X

CALLING OF THE PASTOR OR OTHER CALLED WORKERS

A. Authority to Call

The authority to Call a Pastor or other servant of the Word is held by the congregation through its Voting members. The Pastor and/or the Church Council shall notify the congregation in an expedient manner when a vacancy occurs or additional staff is sought. They shall also notify the President of the California-Nevada-Hawaii District in an expedient manner of any vacancy in the congregation. Copy of this notification shall also be sent to the Circuit Counselor.

B. Call Committee

The President with the approval of the Church Council shall appoint the Call Committee when a vacancy has occurred or additional staff is needed. The Call Committee shall consist of the President, two (2) members of the Board of Elders, and two (2) to four (4) confirmed members. The Call Committee shall select a Chairperson from among the members. A current Pastor shall serve as an ex-officio member.

C. Calling Procedure

The Call Committee shall request a list of recommended candidates from the District President. It shall publicly solicit names of possible candidates from members of the congregation. The Call Committee shall evaluate and determine which names of possible candidates shall be forwarded to the District President. Hereafter, only Call Committee members may contact any of the suggested candidates for office. The Call Committee shall follow the guidelines of the LCMS Seminary when calling a seminarian candidate.

The Call Committee shall present the list of candidates to the Church Council. The Call Committee shall then select prospective candidates for further consideration. The Chairperson shall notify the prospective candidates and obtain more specific information if needed. The Call Committee is encouraged to conduct congregational information meetings.

After completing the evaluation process, the Call Committee shall provide its recommendation. The Voters Assembly shall meet to vote on Calling the candidate as its Pastor or Called Worker. The voting shall be by written ballot and a two-thirds (2/3) majority of those eligible voting members present at this Voters Assembly is required.

In the event the Voters Assembly does not approve the Call Committee's recommendation, or should a Call be returned to the congregation, then the Call Committee will repeat the Calling procedure as stated in this Article.

ARTICLE XIII

PARLIMENTARY GUIDE

In general, for purposes of order, the latest edition of Robert's Rules of Order Newly Revised shall prevail. However, the Biblical Principle of Christian Love shall always pertain.

ARTICLE XIV

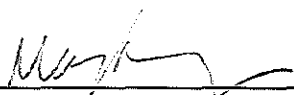
AMENDMENT OF THE BYLAWS

When special needs arise, the Church Council may appoint members to propose amendments to these Bylaws. The Bylaws may be amended by a two-thirds (2/3) majority vote of those voting members in good standing present at a special meeting of the Voters Assembly, provided that the Voters Assembly has been advised at least 30 days in advance of the proposed changes and of the date of the meeting at which the proposed amendment(s) is to be acted upon. Any amendment to the Bylaws must not be in conflict with Article II of the Constitution, the meaning of which is unalterable.

All amendments to these Bylaws or to the Constitution shall be recorded in the official copy of the Constitution and Bylaws in the possession of the current Recording Secretary of the congregation.

CERTIFICATION

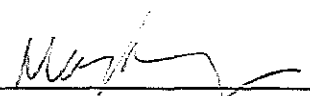
I, Mary Kwong, Recording Secretary of the Congregation, hereby certify that the above revised Bylaws was duly proposed at a meeting of the Voters Assembly on October 9, 2011 and was duly adopted by a two-thirds (2/3) vote of the voting members in good standing at a meeting of the Voters Assembly on October 9, 2011.



Recording Secretary

CERTIFICATION

I, **Mary Kwong**, Recording Secretary of the Congregation, hereby certify that the above revised Bylaws was duly proposed at a meeting of the Voters Assembly on **October 9, 2011** and was duly adopted by a two-thirds (2/3rds) vote of the voting members in good standing at a meeting of the Voters Assembly on **October 9, 2011**. Approved by the California-Nevada-Hawaii District Board of Directors on **March 9, 2013**.



Recording Secretary



SAN FRANCISCO PLANNING DEPARTMENT

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BOARD OF SUPERVISORS
SAN FRANCISCO

2017 JUL 27 PM 12:38

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Draft Motion

HEARING DATE: JULY 13, 2017

CONTINUED FROM JUNE 8, 2017

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
andrew.perry@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 303 AND 739.84, AND FORMERLY PURSUANT TO PLANNING CODE SECTION 306.7 AND INTERIM ZONING CONTROLS ESTABLISHED UNDER RESOLUTIONS 179-15 AND 544-16, TO ESTABLISH A MEDICAL CANNABIS DISPENSARY (MCD) (D.B.A. "THE APOTHECARIUM") WITHIN THE NORIEGA STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On December 10, 2014, Vincent Gonzaga, on behalf of Ryan Hudson (hereinafter "Project Sponsor"), filed Building Permit Application Number 2014.12.10.3440 with the Department of Building Inspection to authorize a change of use and establish a Medical Cannabis Dispensary (MCD) within an existing, vacant ground floor retail space at 2505 Noriega Street, located within the Noriega Street Neighborhood Commercial District and a 40-X Height and Bulk District. On January 21, 2015, Application No. 2014-003153DRM to operate an MCD (d.b.a. "The Apothecarium") was then filed with the Planning Department (hereinafter "Department") by the Project Sponsor.

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

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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.

On May 21, 2015, the Project Sponsor filed Application No. 2014-003153CUA (hereinafter "Application") with the Department seeking Conditional Use Authorization pursuant to Planning Code Sections 303, 306.7, and interim zoning controls established under No. Resolution 179-15, to establish an MCD in the previously referenced location. Planning staff then analyzed whether a Conditional Use Authorization should be granted for this project pursuant to those interim controls.

The project was duly noticed and scheduled to be heard by the Planning Commission at the June 8, 2017 hearing. However, the interim zoning controls established under Resolutions Nos. 179-15 and 544-16 expired on May 5, 2017. Since the interim controls had expired by the hearing date, the Planning Commission could not hear the request for Conditional Use Authorization at that hearing, as there was no corresponding Conditional Use Authorization requirement in place under the Code. 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. 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. These permanent controls, enacted through Ordinance No. 100-17, were signed by the Mayor on May 19, 2017 and thus took effect on June 19, 2017.

On June 8, 2017, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2014-003153CUA, and voted to continue the hearing on the project to July 13, 2017, at which point the permanent controls required Conditional Use Authorization would be in effect.

The project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption under CEQA.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2014-003153CUA, pursuant to Planning Code Sections 303 and 739.84, and formerly pursuant to Planning Code Section 306.7 and interim controls established under Resolution Nos. 179-15 and 544-16, to establish a Medical Cannabis Dispensary (MCD) (d.b.a. "The Apothecarium"), subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.

2. **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.
3. **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.

4. **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.

5. **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.

6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

A. **Medical Cannabis Dispensary Use Criteria.** Planning Code Section 790.141 sets forth six criteria that must be met by all MCDs and considered by the Planning Commission in evaluating the proposed use.

1. That the proposed site is located not less than 1,000 feet from a parcel containing the grounds of an elementary or secondary school, public or private, nor less than 1,000 feet from a community facility and/or recreation center that primarily serves persons under 18 years of age.

Project Meets Criteria

The parcel containing the proposed MCD is not located within 1,000 feet of a primary or secondary school, public or private, nor a community facility and/or recreation center that primarily serves persons under 18 years of age.

2. That the parcel containing the MCD cannot be located on the same parcel as a facility providing substance abuse services that is licensed or certified by the State of California or funded by the Department of Public Health.

Project Meets Criteria

The subject parcel does not contain a facility providing substance abuse services that is licensed or certified by the State of California or funded by the Department of Public Health.

3. No alcohol is sold or distributed on the premises for on or off site consumption.

Project Meets Criteria

No alcohol is sold or distributed on the premises for on- or off-site consumption.

4. If Medical Cannabis is smoked on the premises the dispensary shall provide adequate ventilation within the structure such that doors and/or windows are not left open for such purposes resulting in odor emission from the premises.

Criteria not Applicable

The Project Sponsor does not propose to allow any on-site smoking or consumption of medical cannabis on the premises.

5. The Medical Cannabis Dispensary has applied for a permit from the Department of Public Health pursuant to Section 3304 of the San Francisco Health Code.

Project Meets Criteria

The applicant has applied for a permit from the Department of Public Health.

6. A notice shall be sent out to all properties within 300-feet of the subject lot and individuals or groups that have made a written request for notice or regarding specific properties, areas or Medical Cannabis Dispensaries. Such notice shall be held for 30 days.

Project Meets Criteria

A 30-day notice was sent to owners and occupants within 300-feet of the subject parcel identifying that an MCD is proposed at the subject property and that the proposed use is subject to Conditional Use Authorization at a Planning Commission hearing.

- B. **Use Size.** Planning Code Section 739.21 states that a Conditional Use Authorization is required for uses that are 4,000 square feet in size or larger.

The proposed MCD would be located in an existing retail space with approximately 2,780 square feet and does not propose any expansion; therefore, the proposed use size is principally permitted within the District.

- C. **Hours of Operation.** Planning Code Section 739.27 states that a Conditional Use Authorization is required for maintaining hours of operation between 2 a.m. and 6 a.m.

The proposed MCD would operate between the hours of 9 a.m. and 9 p.m., and therefore the proposed hours are principally permitted within the District. The proposed hours of operation also comply with Section 3308 of the San Francisco Health Code, which states that it is unlawful for a dispensary to remain open between the hours of 10 p.m. and 8 a.m. the next day.

- D. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that within NC Districts space for active uses shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. In addition, the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Frontages with active uses that must be fenestrated with transparent windows and doorways for no less than 60 percent of

the street frontage at the ground level and allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or grillwork, other than wire mesh, which is placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular view. Rolling or sliding security gates shall consist of open grillwork rather than solid material, so as to provide visual interest to pedestrians when the gates are closed, and to permit light to pass through mostly unobstructed. Gates, when both open and folded or rolled as well as the gate mechanism, shall be recessed within, or laid flush with, the building facade.

The proposed MCD would provide for active uses on the ground floor within the first 25 feet of building depth and does not propose any parking. The existing subject storefront space has approximately 30.5 feet of linear frontage along Noriega Street and 73 feet of linear frontage along 32nd Avenue, of which, only approximately 47.5 feet of frontage is devoted to active uses. The existing building contains approximately 29.5 feet of fenestration along Noriega Street and 28 feet of fenestration along 32nd Avenue within the active use portion of the building. In total then, approximately 73.7% of the existing building's frontages with active uses are fenestrated with transparent windows and doorways. The existing building's floor-to-ceiling height of approximately 11'-10" also complies with the minimum height of 10' as required in this District. No changes are proposed to the existing fenestration, nor alteration to the physical nature of the structure.

- E. **Required Ground Floor Commercial Use.** Planning Code Section 739.13 states that within the Noriega Street NCD, active uses (as defined under Section 145.4(c)) are required at the ground floor, unless exempted by Conditional Use Authorization.

Planning Code Section 145.4(c) lists uses which shall be included within the definition of "active commercial uses", and specifically includes Medical Cannabis Dispensary within this list. Therefore, the proposed MCD complies with the requirement for ground floor active commercial uses under this Section.

- F. **Off-Street Parking.** Planning Code Section 151 requires off-street parking for retail uses at the rate of 1 space for each 500 square feet of occupied floor area, where it exceeds 5,000 square feet.

The proposed MCD would be located in an existing retail space with approximately 2,780 square feet and does not propose any expansion; therefore, the proposed MCD would not require any off-street parking.

- G. **Off-Street Loading.** Planning Code Section 152 requires off-street loading spaces for retail uses where the gross floor area of the use exceeds 10,000 square feet.

The proposed MCD would be located in an existing retail space with approximately 2,780 square feet and does not propose any expansion; therefore, the proposed MCD would not require any off-street loading.

- H. **Bicycle Parking.** Planning Code Section 155.2 requires bicycle parking where a change of occupancy or increase in intensity of use would increase the number of total required bicycle parking spaces (inclusive of Class 1 and 2 spaces in aggregate) by 15 percent.

The proposed change of use to an MCD would not increase the number of total required bicycle parking spaces by 15 percent or more; therefore no bicycle parking is required. As a voluntary measure, the project sponsor has proposed to provide one (1) Class 1 bicycle parking space available for use by employees, and six (6) Class 2 bicycle parking spaces along the sidewalk, as part of the project sponsor's efforts to encourage travel to the site by alternative means of transportation.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The size of the proposed use is in keeping with other storefronts on the block face, and is a principally permitted use size within the District. No expansion of the existing storefront is proposed, nor merger with the adjacent storefront on the same lot. The proposed Medical Cannabis Dispensary (MCD) will add a unique business type and would provide goods and services that are not otherwise available within the District, nor beyond the immediate District and within the surrounding, broader Sunset neighborhood. The nearest MCDs to the project site are more than 2 miles away (or 3 miles when considering travel over the actual City street network), located along Geary Street in the Inner Richmond neighborhood and along Ocean Avenue near the Ingleside neighborhood. The proposed MCD also intends to operate as the region's first bilingual (Cantonese) and bicultural dispensary, and provide support to programs that focus on senior access to health care, both of which reflect the demographics of the District with higher percentages of both Asians and individuals over the age of 60¹.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The proposed MCD will be located within an existing building that was once a pharmacy, and which has been vacant for several years. No new construction, additions, or expansion of the building envelope or storefront are proposed.

¹ "Invest in Neighborhoods: Noriega Street Neighborhood Profile." p. 7. [<http://investsf.org/wordpress/wp-content/uploads/2014/03/Neighborhood-Profile-NORIEGA-STREET-SUNSET.pdf>]

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Planning Code does not require parking or loading for a 2,780 square-foot MCD. In terms of trip generation, traffic and parking, the proposed MCD use would be similar to that of the previous pharmacy use, as well as another retail or restaurant use, which are common throughout the District, and would likely locate within the space if the request for Conditional Use Authorization is denied. The proposed dispensary will comply with current accessibility requirements. The project sponsor hired the consultant Fehr & Peers to conduct a transportation and parking study for the proposed project, as part of the findings under the interim zoning controls. The conclusions of this study found that there is adequate parking in the vicinity of the proposed project to meet the anticipated demand and trip generation for the MCD, that this trip generation and demand for parking would be similar to, if not less than, the demand generated by retail or restaurant uses, and that since delivery of medical cannabis is currently prohibited by commercial vehicles, the project does not therefore generate any demand for a commercial loading space. Deliveries must be made by private automobile or another alternate means of transportation, which was included and analyzed with the project's overall trip generation and parking demand calculations.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The proposed MCD would not permit any cultivation or processing of medical cannabis on site, nor would the proposed MCD permit any smoking, vaporization, or other means of consumption of medical cannabis on site. The MCD will employ a security guard on site to monitor the storefront entrance, and who can help to ensure that patients are not medicating once immediately exiting the premises. The proposed MCD will have a mechanical system designed to keep any potential odors from passing into pedestrian space, and as such, should not generate any noxious or offensive emissions such as noise, glare, dust and odor.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The proposed MCD does not require any treatment with regard to landscaping, screening, open spaces, parking and loading areas, or service areas. The Department shall review all lighting and signs proposed for the new business in accordance with Article 6 and Section 790.141(e) of the Planning Code. The existing storefront will be replaced and upgraded with high-quality materials, and should serve to enhance the District.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed project is consistent with the stated purposes of the Noriega Neighborhood Commercial District in that the intended use is located at the ground floor, will provide compatible convenience goods and services for the residents of the Outer Sunset District during daytime hours, and will encourage the street's active retail frontage. The District controls acknowledge that there are a high concentration of restaurants in the District, drawing customers from throughout the City and region. The proposed MCD, while primarily intended to serve those residents of the Outer Sunset neighborhood, does have some potential to draw patients from around the City and region; however, these trips are likely to be limited due to the availability of MCDs in other neighborhoods throughout the City and due to the proposed location's site away from highways.

8. **Additional Findings Associated With Interim Zoning Controls.** The interim zoning controls enacted through Resolution Nos. 179-15 and 544-16 required the Planning Commission to find that a proposed MCD satisfies the additional Conditional Use criteria set forth below. However, the interim controls have now expired, and the permanent controls enacted through Ordinance No. 100-17 do not contain any such requirement for additional findings. Thus, the additional criteria set forth below need not be satisfied in order to grant the Conditional Use Authorization. However, the project does meet those criteria, as described below.

- A. The MCD will bring measurable community benefits and enhancements to the NCD;

The proposed MCD will bring measurable benefits to those patients that reside within the Sunset neighborhood, and more broadly within the western side of the City. The proposed MCD currently operates another location within the City on Market Street, and notes that more than 3,900 of their registered patients reside within the Sunset neighborhood; in addition, there are likely many other patients within the Sunset that are not registered with the Apothecarium, but who would stand to benefit from having access to medical cannabis closer to their place of residence.

The proposed operator of the MCD has earned a positive reputation within the City over the last six years, while operating at the Market Street location. The Apothecarium has been recognized for their fine service to patients, for the approximately \$335,000 in monetary contributions that have been made by the Apothecarium to community groups since 2011, and for helping to clean up the Market Street corner where they are located. The proposed MCD anticipates being an active member within the Sunset community, and expects to similarly direct monetary contributions to Sunset community organizations, non-profits, and events for the betterment of the neighborhood and NCD.

In addition to offering medical cannabis to patients in a location closer to their place of residence, the MCD will also host free weekly programs available to the neighborhood, which may include yoga, meditation, anxiety and depression programs, and veteran support groups. In response to the unique demographic characteristics of the Noriega Street NCD neighborhood, the MCD will operate as a bilingual (Cantonese) establishment, and will serve the neighborhood patient community in a manner that collaborates with traditional Asian medical practices. Dr. Floyd Huen, one of the co-owners of the MCD, has been at the forefront of prescribing medical cannabis to patients, and will help to ensure

that the MCD will be staffed with educated professionals that provide in-depth consultations and product information to patients.

- B. The MCD has prepared a parking and transportation management plan sufficient to address the anticipated impact of patients visiting the MCD;

The project sponsor commissioned Fehr & Peers to perform a parking and traffic study for the proposed MCD. The submitted analysis calculates an estimated trip generation rate for the proposed MCD, documents existing traffic, parking and loading conditions in proximity to the subject property, and compares the anticipated impacts of the MCD on the parking and transportation network with those impacts that may be expected from other likely land uses, should the MCD application be denied. The analysis looked at weekdays both during the midday and evening periods, and weekends during the midday period.

The results of this study indicate that parking occupancy within 1,000 feet of the proposed project is at its highest during the weekend midday period, however, is generally similar to parking occupancy rates in other parts of the City. Most importantly, the study demonstrates that the anticipated trip generation from the MCD would be less than the average number of parking spaces available within 1,000 feet of the proposed project. In this regard, the surrounding neighborhood should already have the capacity to absorb the anticipated parking and traffic impacts from the proposed project. Furthermore, should a different retail business or restaurant be located in the subject vacant storefront instead, the study finds that the proposed MCD would have a similar impact, if not lesser, than these other likely replacement uses.

The study also considers potential loading impacts from the MCD. In short, medical cannabis is not currently permitted to be delivered by commercial vehicles; therefore, the proposed project would not generate any demand for commercial loading spaces. All deliveries must instead be made by private vehicle, and has been factored into the trip generation and parking analysis above. Deliveries to the MCD are anticipated to occur twice per day on weekdays, when parking availability in the vicinity is greater; no deliveries to the MCD would occur on weekends. The MCD also proposes to provide delivery services to patients. For these deliveries, the proposed MCD anticipates making one single vehicle trip per day, delivering to multiple locations during the course of the trip. For deliveries within a 10-block radius of the project site, these would be made by bicycle or walking.

- C. 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.

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 prescribing medical cannabis to patients for more than 20 years. 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 operators of the proposed MCD are committed to making themselves available to answer all questions from neighbors, and making themselves a known entity and good neighbor in the community. The operators have years of valuable experience running an MCD, have been commended for their business and security practices, and will employ similar security operations in the proposed location.

9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The proposed MCD project will provide desirable goods and services to the neighborhood and will provide employment opportunities to those in the community. The proposed MCD would meet all the performance standards and requirements identified in Planning Code Section 790.141. The project site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan. There are no other MCDs in the vicinity, nor within 2 miles of the project site, which should minimize any potential negative impacts associated with the clustering of MCDs. The MCD will utilize a mechanical system designed to keep any potential odors from passing into pedestrian space, and will employ a security guard to monitor the front entrance and help mitigate any undesirable activities.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

The Project will allow a locally-owned and established business to expand to a new location within the City, thus providing new job opportunities for local residents. The proposed MCD will also help to diversify the business activity of the immediate Noriega Street NCD and the broader west side of the City, as there are currently no MCDs in the vicinity.

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

Policy 6.2:

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

Policy 6.9:

Regulate uses so that traffic impacts and parking problems are minimized.

The proposed MCD would be located within an existing, vacant storefront, and would thus help to activate this portion of the NCD. The last use within the space was a small, locally-owned pharmacy, and thus a proposed MCD is an appropriate replacement use to serve the changing medical needs of patients in the City. As there are no other MCDs within 2 miles of the proposed location, the proposed MCD would function primarily as a neighborhood-serving use for those patients within the broader Sunset neighborhood. A parking, traffic and transportation study has been prepared for the proposed use and does not find that it would have any detrimental impact on parking and traffic in the vicinity. The proposed MCD is a locally-owned and developed business that has several years of direct experience working within the medical cannabis industry within San Francisco. The MCD would operate between the hours of 9 a.m. and 9 p.m. and would thus not have detrimental impacts on residents due to late-night activity.

TRANSPORTATION

Objectives and Policies

OBJECTIVE 1:

MEET THE NEEDS OF ALL RESIDENTS AND VISITORS FOR SAFE, CONVENIENT AND INEXPENSIVE TRAVEL WITHIN SAN FRANCISCO AND BETWEEN THE CITY AND OTHER PARTS OF THE REGION WHILE MAINTAINING THE HIGH QUALITY LIVING ENVIRONMENT OF THE BAY AREA.

Policy 1.3:

Give priority to public transit and other alternatives to the private automobile as the means of meeting San Francisco's transportation needs, particularly those of commuters.

The project sponsor has indicated that they will voluntarily provide a host of measures designed to encourage travel to the site by alternative means of transportation, other than by private automobile. These include provision of bicycle parking spaces, on-site bicycle repair and maintenance tools, 100% subsidized transit passes for employees, information on their website to assist those in traveling to the project site by bicycle, foot, or transit, and delivery of medical cannabis by bicycle or foot within a 10-block radius.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposal would enhance the district by providing a unique use in an area that does not have another MCD within 2 miles. The business would be locally owned and it creates 12-17 more employment opportunities for the community. The MCD would be located within an existing, vacant storefront, thus helping to activate this portion of the NCD.

B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The existing units in the surrounding neighborhood would not be adversely affected. The proposed MCD would operate between the hours of 9 a.m. and 9 p.m., and would thus have minimal detrimental effects due to late-night activity on nearby residences. The project will comply with all signage, lighting, and transparency requirements, in order to help maintain neighborhood character and activate the commercial district.

C. That the City's supply of affordable housing be preserved and enhanced,

The proposed project would have no effect on the City's supply of affordable housing.

D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The project site is located along Noriega Street and 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. A parking and traffic study conducted by Fehr & Peers found that there is adequate parking in the vicinity to accommodate the activity generated by the MCD, and that it would not have detrimental effects on street traffic or neighborhood parking.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The subject tenant space is vacant and will not displace any industrial or service sector establishments.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The MCD will follow standard earthquake preparedness procedures and all construction will comply with current building and seismic safety codes.

- G. That landmarks and historic buildings be preserved.

A landmark or historic building does not occupy the Project site, and the proposed rehabilitation work to the storefront is in keeping with the Secretary of the Interior's Standards.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The project will have no negative effect on existing parks and open spaces, as it is a change of use with no proposed expansion of the building envelope.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2014-003153CUA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated May 8, 2017, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. XXXXX. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on July 13, 2017.

Jonas P. Ionin
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: July 13, 2017

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to establish a Medical Cannabis Dispensary (MCD) (d.b.a. "The Apothecarium") located at 2505 Noriega Street, Lot 012 in Assessor's Block 2069, pursuant to Planning Code Section(s) 303 and 739.84, and formerly pursuant to Planning Code Section 306.7 and interim zoning controls established under Resolutions 179-15 and 544-16, within the Noriega Street Neighborhood Commercial District and a 40-X Height and Bulk District; in general conformance with plans, dated May 8, 2017, and stamped "EXHIBIT B" included in the docket for Case No. 2014-003153CUA and subject to conditions of approval reviewed and approved by the Commission on July 13, 2017 under Motion No XXXXXX. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on July 13, 2017 under Motion No XXXXXX.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. XXXXXX shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
3. **Diligent Pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

DESIGN – COMPLIANCE AT PLAN STAGE

6. **Garbage, Composting and Recycling Storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
7. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
8. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the project is operational, the building permit application to implement the project shall include air clearing or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

MONITORING

9. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
10. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

11. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
12. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.
For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>
13. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.
For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>
14. **Odor Control.** While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.
For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

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Operator I.D.: u531347

July 27, 2017

PAY TO THE ORDER OF ***SAN FRANCISCO PLANNING DEPARTMENT***

Five hundred seventy-eight dollars and no cents

***\$578.00**

Payee Address:
Memo:

WELLS FARGO BANK, N.A.
1266 MARKET ST
SAN FRANCISCO, CA 94102
FOR INQUIRIES CALL (480) 394-3122

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Richard Levy
CONTROLLER

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SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion No. 19961

HEARING DATE: JULY 13, 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
andrew.perry@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 303 AND 739.84, AND FORMERLY PURSUANT TO PLANNING CODE SECTION 306.7 AND INTERIM ZONING CONTROLS ESTABLISHED UNDER RESOLUTIONS 179-15 AND 544-16, TO ESTABLISH A MEDICAL CANNABIS DISPENSARY (MCD) (D.B.A. "THE APOTHECARIUM") WITHIN THE NORIEGA STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On December 10, 2014, Vincent Gonzaga, on behalf of Ryan Hudson (hereinafter "Project Sponsor"), filed Building Permit Application Number 2014.12.10.3440 with the Department of Building Inspection to authorize a change of use and establish a Medical Cannabis Dispensary (MCD) within an existing, vacant ground floor retail space at 2505 Noriega Street, located within the Noriega Street Neighborhood Commercial District and a 40-X Height and Bulk District. On January 21, 2015, Application No. 2014-003153DRM to operate an MCD (d.b.a. "The Apothecarium") was then filed with the Planning Department (hereinafter "Department") by the Project Sponsor.

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.

On May 21, 2015, the Project Sponsor filed Application No. 2014-003153CUA (hereinafter "Application") with the Department seeking Conditional Use Authorization pursuant to Planning Code Sections 303, 306.7, and interim zoning controls established under No. Resolution 179-15, to establish an MCD in the previously referenced location. Planning staff then analyzed whether a Conditional Use Authorization should be granted for this project pursuant to those interim controls.

The project was duly noticed and scheduled to be heard by the Planning Commission at the June 8, 2017 hearing. However, the interim zoning controls established under Resolutions Nos. 179-15 and 544-16 expired on May 5, 2017. Since the interim controls had expired by the hearing date, the Planning Commission could not hear the request for Conditional Use Authorization at that hearing, as there was no corresponding Conditional Use Authorization requirement in place under the Code. 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. 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. These permanent controls, enacted through Ordinance No. 100-17, were signed by the Mayor on May 19, 2017 and thus took effect on June 19, 2017.

On June 8, 2017, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2014-003153CUA, and voted to continue the hearing on the project to July 13, 2017, at which point the permanent controls required Conditional Use Authorization would be in effect.

The project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption under CEQA.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2014-003153CUA, pursuant to Planning Code Sections 303 and 739.84, and formerly pursuant to Planning Code Section 306.7 and interim controls established under Resolution Nos. 179-15 and 544-16, to establish a Medical Cannabis Dispensary (MCD) (d.b.a. "The Apothecarium"), subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.

2. **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.
3. **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.

4. **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.

5. **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.

6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

A. **Medical Cannabis Dispensary Use Criteria.** Planning Code Section 790.141 sets forth six criteria that must be met by all MCDs and considered by the Planning Commission in evaluating the proposed use.

1. That the proposed site is located not less than 1,000 feet from a parcel containing the grounds of an elementary or secondary school, public or private, nor less than 1,000 feet from a community facility and/or recreation center that primarily serves persons under 18 years of age.

Project Meets Criteria

The parcel containing the proposed MCD is not located within 1,000 feet of a primary or secondary school, public or private, nor a community facility and/or recreation center that primarily serves persons under 18 years of age.

2. That the parcel containing the MCD cannot be located on the same parcel as a facility providing substance abuse services that is licensed or certified by the State of California or funded by the Department of Public Health.

Project Meets Criteria

The subject parcel does not contain a facility providing substance abuse services that is licensed or certified by the State of California or funded by the Department of Public Health.

3. No alcohol is sold or distributed on the premises for on or off site consumption.

Project Meets Criteria

No alcohol is sold or distributed on the premises for on- or off-site consumption.

4. If Medical Cannabis is smoked on the premises the dispensary shall provide adequate ventilation within the structure such that doors and/or windows are not left open for such purposes resulting in odor emission from the premises.

Criteria not Applicable

The Project Sponsor does not propose to allow any on-site smoking or consumption of medical cannabis on the premises.

5. The Medical Cannabis Dispensary has applied for a permit from the Department of Public Health pursuant to Section 3304 of the San Francisco Health Code.

Project Meets Criteria

The applicant has applied for a permit from the Department of Public Health.

6. A notice shall be sent out to all properties within 300-feet of the subject lot and individuals or groups that have made a written request for notice or regarding specific properties, areas or Medical Cannabis Dispensaries. Such notice shall be held for 30 days.

Project Meets Criteria

A 30-day notice was sent to owners and occupants within 300-feet of the subject parcel identifying that an MCD is proposed at the subject property and that the proposed use is subject to Conditional Use Authorization at a Planning Commission hearing.

- B. **Use Size.** Planning Code Section 739.21 states that a Conditional Use Authorization is required for uses that are 4,000 square feet in size or larger.

The proposed MCD would be located in an existing retail space with approximately 2,780 square feet and does not propose any expansion; therefore, the proposed use size is principally permitted within the District.

- C. **Hours of Operation.** Planning Code Section 739.27 states that a Conditional Use Authorization is required for maintaining hours of operation between 2 a.m. and 6 a.m.

The proposed MCD would operate between the hours of 9 a.m. and 9 p.m., and therefore the proposed hours are principally permitted within the District. The proposed hours of operation also comply with Section 3308 of the San Francisco Health Code, which states that it is unlawful for a dispensary to remain open between the hours of 10 p.m. and 8 a.m. the next day.

- D. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that within NC Districts space for active uses shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. In addition, the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Frontages with active uses that must be fenestrated with transparent windows and doorways for no less than 60 percent of

the street frontage at the ground level and allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or grillwork, other than wire mesh, which is placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular view. Rolling or sliding security gates shall consist of open grillwork rather than solid material, so as to provide visual interest to pedestrians when the gates are closed, and to permit light to pass through mostly unobstructed. Gates, when both open and folded or rolled as well as the gate mechanism, shall be recessed within, or laid flush with, the building facade.

The proposed MCD would provide for active uses on the ground floor within the first 25 feet of building depth and does not propose any parking. The existing subject storefront space has approximately 30.5 feet of linear frontage along Noriega Street and 73 feet of linear frontage along 32nd Avenue, of which, only approximately 47.5 feet of frontage is devoted to active uses. The existing building contains approximately 29.5 feet of fenestration along Noriega Street and 28 feet of fenestration along 32nd Avenue within the active use portion of the building. In total then, approximately 73.7% of the existing building's frontages with active uses are fenestrated with transparent windows and doorways. The existing building's floor-to-ceiling height of approximately 11'-10" also complies with the minimum height of 10' as required in this District. No changes are proposed to the existing fenestration, nor alteration to the physical nature of the structure.

- E. **Required Ground Floor Commercial Use.** Planning Code Section 739.13 states that within the Noriega Street NCD, active uses (as defined under Section 145.4(c)) are required at the ground floor, unless exempted by Conditional Use Authorization.

Planning Code Section 145.4(c) lists uses which shall be included within the definition of "active commercial uses", and specifically includes Medical Cannabis Dispensary within this list. Therefore, the proposed MCD complies with the requirement for ground floor active commercial uses under this Section.

- F. **Off-Street Parking.** Planning Code Section 151 requires off-street parking for retail uses at the rate of 1 space for each 500 square feet of occupied floor area, where it exceeds 5,000 square feet.

The proposed MCD would be located in an existing retail space with approximately 2,780 square feet and does not propose any expansion; therefore, the proposed MCD would not require any off-street parking.

- G. **Off-Street Loading.** Planning Code Section 152 requires off-street loading spaces for retail uses where the gross floor area of the use exceeds 10,000 square feet.

The proposed MCD would be located in an existing retail space with approximately 2,780 square feet and does not propose any expansion; therefore, the proposed MCD would not require any off-street loading.

- H. **Bicycle Parking.** Planning Code Section 155.2 requires bicycle parking where a change of occupancy or increase in intensity of use would increase the number of total required bicycle parking spaces (inclusive of Class 1 and 2 spaces in aggregate) by 15 percent.

The proposed change of use to an MCD would not increase the number of total required bicycle parking spaces by 15 percent or more; therefore no bicycle parking is required. As a voluntary measure, the project sponsor has proposed to provide one (1) Class 1 bicycle parking space available for use by employees, and six (6) Class 2 bicycle parking spaces along the sidewalk, as part of the project sponsor's efforts to encourage travel to the site by alternative means of transportation.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The size of the proposed use is in keeping with other storefronts on the block face, and is a principally permitted use size within the District. No expansion of the existing storefront is proposed, nor merger with the adjacent storefront on the same lot. The proposed Medical Cannabis Dispensary (MCD) will add a unique business type and would provide goods and services that are not otherwise available within the District, nor beyond the immediate District and within the surrounding, broader Sunset neighborhood. The nearest MCDs to the project site are more than 2 miles away (or 3 miles when considering travel over the actual City street network), located along Geary Street in the Inner Richmond neighborhood and along Ocean Avenue near the Ingleside neighborhood. The proposed MCD also intends to operate as the region's first bilingual (Cantonese) and bicultural dispensary, and provide support to programs that focus on senior access to health care, both of which reflect the demographics of the District with higher percentages of both Asians and individuals over the age of 60¹.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The proposed MCD will be located within an existing building that was once a pharmacy, and which has been vacant for several years. No new construction, additions, or expansion of the building envelope or storefront are proposed.

¹ "Invest in Neighborhoods: Noriega Street Neighborhood Profile." p. 7. [<http://investsf.org/wordpress/wp-content/uploads/2014/03/Neighborhood-Profile-NORIEGA-STREET-SUNSET.pdf>]

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Planning Code does not require parking or loading for a 2,780 square-foot MCD. In terms of trip generation, traffic and parking, the proposed MCD use would be similar to that of the previous pharmacy use, as well as another retail or restaurant use, which are common throughout the District, and would likely locate within the space if the request for Conditional Use Authorization is denied. The proposed dispensary will comply with current accessibility requirements. The project sponsor hired the consultant Fehr & Peers to conduct a transportation and parking study for the proposed project, as part of the findings under the interim zoning controls. The conclusions of this study found that there is adequate parking in the vicinity of the proposed project to meet the anticipated demand and trip generation for the MCD, that this trip generation and demand for parking would be similar to, if not less than, the demand generated by retail or restaurant uses, and that since delivery of medical cannabis is currently prohibited by commercial vehicles, the project does not therefore generate any demand for a commercial loading space. Deliveries must be made by private automobile or another alternate means of transportation, which was included and analyzed with the project's overall trip generation and parking demand calculations.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The proposed MCD would not permit any cultivation or processing of medical cannabis on site, nor would the proposed MCD permit any smoking, vaporization, or other means of consumption of medical cannabis on site. The MCD will employ a security guard on site to monitor the storefront entrance, and who can help to ensure that patients are not medicating once immediately exiting the premises. The proposed MCD will have a mechanical system designed to keep any potential odors from passing into pedestrian space, and as such, should not generate any noxious or offensive emissions such as noise, glare, dust and odor.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The proposed MCD does not require any treatment with regard to landscaping, screening, open spaces, parking and loading areas, or service areas. The Department shall review all lighting and signs proposed for the new business in accordance with Article 6 and Section 790.141(e) of the Planning Code. The existing storefront will be replaced and upgraded with high-quality materials, and should serve to enhance the District.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed project is consistent with the stated purposes of the Noriega Neighborhood Commercial District in that the intended use is located at the ground floor, will provide compatible convenience goods and services for the residents of the Outer Sunset District during daytime hours, and will encourage the street's active retail frontage. The District controls acknowledge that there are a high concentration of restaurants in the District, drawing customers from throughout the City and region. The proposed MCD, while primarily intended to serve those residents of the Outer Sunset neighborhood, does have some potential to draw patients from around the City and region; however, these trips are likely to be limited due to the availability of MCDs in other neighborhoods throughout the City and due to the proposed location's site away from highways.

8. **Additional Findings Associated With Interim Zoning Controls.** The interim zoning controls enacted through Resolution Nos. 179-15 and 544-16 required the Planning Commission to find that a proposed MCD satisfies the additional Conditional Use criteria set forth below. However, the interim controls have now expired, and the permanent controls enacted through Ordinance No. 100-17 do not contain any such requirement for additional findings. Thus, the additional criteria set forth below need not be satisfied in order to grant the Conditional Use Authorization. However, the project does meet those criteria, as described below.

- A. The MCD will bring measurable community benefits and enhancements to the NCD;

The proposed MCD will bring measurable benefits to those patients that reside within the Sunset neighborhood, and more broadly within the western side of the City. The proposed MCD currently operates another location within the City on Market Street, and notes that more than 3,900 of their registered patients reside within the Sunset neighborhood; in addition, there are likely many other patients within the Sunset that are not registered with the Apothecarium, but who would stand to benefit from having access to medical cannabis closer to their place of residence.

The proposed operator of the MCD has earned a positive reputation within the City over the last six years, while operating at the Market Street location. The Apothecarium has been recognized for their fine service to patients, for the approximately \$335,000 in monetary contributions that have been made by the Apothecarium to community groups since 2011, and for helping to clean up the Market Street corner where they are located. The proposed MCD anticipates being an active member within the Sunset community, and expects to similarly direct monetary contributions to Sunset community organizations, non-profits, and events for the betterment of the neighborhood and NCD.

In addition to offering medical cannabis to patients in a location closer to their place of residence, the MCD will also host free weekly programs available to the neighborhood, which may include yoga, meditation, anxiety and depression programs, and veteran support groups. In response to the unique demographic characteristics of the Noriega Street NCD neighborhood, the MCD will operate as a bilingual (Cantonese) establishment, and will serve the neighborhood patient community in a manner that collaborates with traditional Asian medical practices. Dr. Floyd Huen, one of the co-owners of the MCD, has been at the forefront of prescribing medical cannabis to patients, and will help to ensure

that the MCD will be staffed with educated professionals that provide in-depth consultations and product information to patients.

- B. The MCD has prepared a parking and transportation management plan sufficient to address the anticipated impact of patients visiting the MCD;

The project sponsor commissioned Fehr & Peers to perform a parking and traffic study for the proposed MCD. The submitted analysis calculates an estimated trip generation rate for the proposed MCD, documents existing traffic, parking and loading conditions in proximity to the subject property, and compares the anticipated impacts of the MCD on the parking and transportation network with those impacts that may be expected from other likely land uses, should the MCD application be denied. The analysis looked at weekdays both during the midday and evening periods, and weekends during the midday period.

The results of this study indicate that parking occupancy within 1,000 feet of the proposed project is at its highest during the weekend midday period, however, is generally similar to parking occupancy rates in other parts of the City. Most importantly, the study demonstrates that the anticipated trip generation from the MCD would be less than the average number of parking spaces available within 1,000 feet of the proposed project. In this regard, the surrounding neighborhood should already have the capacity to absorb the anticipated parking and traffic impacts from the proposed project. Furthermore, should a different retail business or restaurant be located in the subject vacant storefront instead, the study finds that the proposed MCD would have a similar impact, if not lesser, than these other likely replacement uses.

The study also considers potential loading impacts from the MCD. In short, medical cannabis is not currently permitted to be delivered by commercial vehicles; therefore, the proposed project would not generate any demand for commercial loading spaces. All deliveries must instead be made by private vehicle, and has been factored into the trip generation and parking analysis above. Deliveries to the MCD are anticipated to occur twice per day on weekdays, when parking availability in the vicinity is greater; no deliveries to the MCD would occur on weekends. The MCD also proposes to provide delivery services to patients. For these deliveries, the proposed MCD anticipates making one single vehicle trip per day, delivering to multiple locations during the course of the trip. For deliveries within a 10-block radius of the project site, these would be made by bicycle or walking.

- C. 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.

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 prescribing medical cannabis to patients for more than 20 years. 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 operators of the proposed MCD are committed to making themselves available to answer all questions from neighbors, and making themselves a known entity and good neighbor in the community. The operators have years of valuable experience running an MCD, have been commended for their business and security practices, and will employ similar security operations in the proposed location.

9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The proposed MCD project will provide desirable goods and services to the neighborhood and will provide employment opportunities to those in the community. The proposed MCD would meet all the performance standards and requirements identified in Planning Code Section 790.141. The project site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan. There are no other MCDs in the vicinity, nor within 2 miles of the project site, which should minimize any potential negative impacts associated with the clustering of MCDs. The MCD will utilize a mechanical system designed to keep any potential odors from passing into pedestrian space, and will employ a security guard to monitor the front entrance and help mitigate any undesirable activities.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

The Project will allow a locally-owned and established business to expand to a new location within the City, thus providing new job opportunities for local residents. The proposed MCD will also help to diversify the business activity of the immediate Noriega Street NCD and the broader west side of the City, as there are currently no MCDs in the vicinity.

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

Policy 6.2:

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

Policy 6.9:

Regulate uses so that traffic impacts and parking problems are minimized.

The proposed MCD would be located within an existing, vacant storefront, and would thus help to activate this portion of the NCD. The last use within the space was a small, locally-owned pharmacy, and thus a proposed MCD is an appropriate replacement use to serve the changing medical needs of patients in the City. As there are no other MCDs within 2 miles of the proposed location, the proposed MCD would function primarily as a neighborhood-serving use for those patients within the broader Sunset neighborhood. A parking, traffic and transportation study has been prepared for the proposed use and does not find that it would have any detrimental impact on parking and traffic in the vicinity. The proposed MCD is a locally-owned and developed business that has several years of direct experience working within the medical cannabis industry within San Francisco. The MCD would operate between the hours of 9 a.m. and 9 p.m. and would thus not have detrimental impacts on residents due to late-night activity.

TRANSPORTATION

Objectives and Policies

OBJECTIVE 1:

MEET THE NEEDS OF ALL RESIDENTS AND VISITORS FOR SAFE, CONVENIENT AND INEXPENSIVE TRAVEL WITHIN SAN FRANCISCO AND BETWEEN THE CITY AND OTHER PARTS OF THE REGION WHILE MAINTAINING THE HIGH QUALITY LIVING ENVIRONMENT OF THE BAY AREA.

Policy 1.3:

Give priority to public transit and other alternatives to the private automobile as the means of meeting San Francisco's transportation needs, particularly those of commuters.

The project sponsor has indicated that they will voluntarily provide a host of measures designed to encourage travel to the site by alternative means of transportation, other than by private automobile. These include provision of bicycle parking spaces, on-site bicycle repair and maintenance tools, 100% subsidized transit passes for employees, information on their website to assist those in traveling to the project site by bicycle, foot, or transit, and delivery of medical cannabis by bicycle or foot within a 10-block radius.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposal would enhance the district by providing a unique use in an area that does not have another MCD within 2 miles. The business would be locally owned and it creates 12-17 more employment opportunities for the community. The MCD would be located within an existing, vacant storefront, thus helping to activate this portion of the NCD.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The existing units in the surrounding neighborhood would not be adversely affected. The proposed MCD would operate between the hours of 9 a.m. and 9 p.m., and would thus have minimal detrimental effects due to late-night activity on nearby residences. The project will comply with all signage, lighting, and transparency requirements, in order to help maintain neighborhood character and activate the commercial district.

- C. That the City's supply of affordable housing be preserved and enhanced,

The proposed project would have no effect on the City's supply of affordable housing.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The project site is located along Noriega Street and 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. A parking and traffic study conducted by Fehr & Peers found that there is adequate parking in the vicinity to accommodate the activity generated by the MCD, and that it would not have detrimental effects on street traffic or neighborhood parking.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The subject tenant space is vacant and will not displace any industrial or service sector establishments.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The MCD will follow standard earthquake preparedness procedures and all construction will comply with current building and seismic safety codes.

- G. That landmarks and historic buildings be preserved.

A landmark or historic building does not occupy the Project site, and the proposed rehabilitation work to the storefront is in keeping with the Secretary of the Interior's Standards.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The project will have no negative effect on existing parks and open spaces, as it is a change of use with no proposed expansion of the building envelope.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

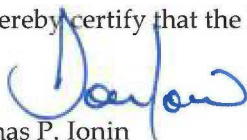
That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2014-003153CUA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated May 8, 2017, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 19961. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on July 13, 2017.



Jonas P. Ionin
Commission Secretary

AYES: Hillis, Johnson, Koppel, Melgar, Moore

NAYS: Richards

ABSENT: Fong

ADOPTED: July 13, 2017

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to establish a Medical Cannabis Dispensary (MCD) (d.b.a. "The Apothecarium") located at 2505 Noriega Street, Lot 012 in Assessor's Block 2069, pursuant to Planning Code Section(s) 303 and 739.84, and formerly pursuant to Planning Code Section 306.7 and interim zoning controls established under Resolutions 179-15 and 544-16, within the Noriega Street Neighborhood Commercial District and a 40-X Height and Bulk District; in general conformance with plans, dated May 8, 2017, and stamped "EXHIBIT B" included in the docket for Case No. 2014-003153CUA and subject to conditions of approval reviewed and approved by the Commission on July 13, 2017 under Motion No 19961. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on July 13, 2017 under Motion No 19961.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 19961 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

3. **Diligent Pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

DESIGN – COMPLIANCE AT PLAN STAGE

6. **Garbage, Composting and Recycling Storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

7. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

8. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the project is operational, the building permit application to implement the project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

MONITORING

9. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

10. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

11. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a bilingual (Mandarin and Cantonese) community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
12. **Cultural and Educational Services.** The Project Sponsor and proposed MCD shall offer bilingual (Mandarin and Cantonese) cultural and educational services as it relates to medical cannabis and its applied usage within health care.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
13. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.
For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>
14. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.
For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>
15. **Odor Control.** While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.
For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

From: [BOS Legislation, \(BOS\)](#)
To: [BOS Legislation, \(BOS\)](#); rhacke@pji.org; ryan@apothecarium.com; eliot@apothecarium.com; BGladstone@hansonbridgett.com
Cc: [Givner, Jon \(CAT\)](#); [Stacy, Kate \(CAT\)](#); [Jensen, Kristen \(CAT\)](#); [Rahaim, John \(CPC\)](#); [Sanchez, Scott \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Starr, Aaron \(CPC\)](#); [Rodgers, AnMarie \(CPC\)](#); [Perry, Andrew \(CPC\)](#); [Ionin, Jonas \(CPC\)](#); [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Subject: APPELLANT RESPONSE BRIEF: Conditional Use Authorization Appeal - Proposed Project at 2505 Noriega Street - Appeal Hearing on October 3, 2017
Date: Thursday, September 28, 2017 12:27:22 PM
Attachments: [image001.png](#)

Good afternoon

Please find linked below the letter received by the Office of the Clerk of the Board from Ray D. Hacke of the Pacific Justice Institute, representing the appellants, concerning the Conditional Use Authorization Appeal for the proposed project at 2505 Noriega Street.

[Appellant Response Brief - September 28, 2017](#)

The appeal hearing for this matter is scheduled for a 4:30 p.m. special order before the Board on October 3, 2017.

I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

[Board of Supervisors File No. 170898](#)

Regards,

Brent Jalipa

Legislative Clerk

Board of Supervisors - Clerk's Office

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

(415) 554-7712 | Fax: (415) 554-5163

brent.jalipa@sfgov.org | www.sfbos.org



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

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Ray D. Hacke (State Bar No. 276318)
PACIFIC JUSTICE INSTITUTE
1250 Aviation Ave., Suite 260
San Jose, CA 95123
Phone: (916) 857-6900
Fax: (916) 857-6902
E-mail: rhacke@pji.org

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 CHURCH OF THE HOLY SPIRIT,	) Appeal No.: 2014-003153CUA
Appellants)
	) APPELLANT'S RESPONSE TO OPPOSITION
	) BRIEFS OF SAN FRANCISCO PLANNING DEPT.
	) AND THE APOTHECARIUM RE: APPROVAL OF
vs.	) CONDITIONAL USE FOR 2505 NORIEGA
	) STREET
)
SAN FRANCISCO PLANNING COMMN.,	) Date: Oct. 3, 2017
Respondent	) Time: 4:30 p.m.
	) Location: City Hall, Room 250
	) 1 Dr. Carlton B. Goodlett Place
	) San Francisco, CA 94102

INTRODUCTION

When considering a demurrer's merits, an appellate court deems the facts alleged in the pleading to be true, even if those facts seem improbable. *Berg & Berg Enterprises, LLC v. Boyle*, 178 Cal. App. 4th 1020, 1034 (Cal App. 6th Dist. 2009) (hereinafter *Berg & Berg*) [quoting *Del E. Webb Corp. v. Structural Materials Co.*, 123 Cal. App. 3d 593, 604 (Cal. App. 2nd Dist. 1981)]. In this case, the opening brief filed by appellants ARK OF HOPE PRESCHOOL (the "Preschool") and LUTHERAN CHURCH OF THE HOLY SPIRIT ("the Church," and collectively with the Preschool "Appellants") is functionally equivalent to a pleading in that it alleges the harm Appellants will suffer if the Board of Supervisors (the "Board") upholds Appellee SAN

FRANCISCO PLANNING DEPARTMENT's (the "Department") decision to grant a conditional use to Appellee THE APOTHECARIUM ("The Apothecarium," and collectively with the Department "Respondents") to operate a proposed medical marijuana dispensary ("MMD") at 2505 Noriega Street (the "Property"). *Myers v. Trendwest Resorts, Inc.*, 178 Cal. App. 4th 735, 736 (Cal. App. 3d Dist. 2009) [citing Cal. Civ. Proc. § 420]. Respondents' opposing briefs are functionally equivalent to demurrers in that they challenge the adequacy of Appellants' claims. *Gaston v. Palmer*, 417 F.3d 1030, 1039 (9th Cir. 2005). Given that these proceedings are following a course similar to that of a typical civil lawsuit, the Board should construe all facts that Appellants have alleged in these proceedings as true even in light of contradictory allegations Respondents raise in their respective opposition briefs. *Berg & Berg*, 178 Cal. App. 4th at 1034.

ARGUMENT

I. Appellants' Responses to the Department's Opposition Brief

A. ISSUE NO. 1: The Proposed MMD's Proximity to the Church and the Preschool

Appellants' Response: "When exercising its review powers, the Board is bound by the relevant law as enunciated by the (City) Charter, ordinances and **controlling court decisions** ..." *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco*, 106 Cal. App. 3d 893, 906 (App. 1 Dist. 1980) (emphasis added). Controlling federal and state court decisions make clear that public policy favors keeping illegal drugs as far away from children as possible. *See People v. Williams*, 10 Cal. App. 4th 1389, 1395 (Cal. App. 3d Dist. 1992) (hereinafter *Williams*) [quoting *U.S. v. Nieves*, 608 F. Supp. 1147, 1149 (S.D.N.Y. 1985) (noting Congress' intent to keep illegal drugs "out of the easy reach of school-age children")] and *People v. Marzet*, 57 Cal. App. 4th 329, 338 (2nd Dist. 1997) (hereinafter *Marzet*) [noting California's intent to protect school-age children "from drug sellers, drug buyers, and the hazards presented in drug trafficking"].

Make no mistake: Under federal law, all MMDs in San Francisco are engaging in illegal drug trafficking. *City of Garden Grove v. Super. Ct.*, 157 Cal. App. 4th 355, 377 (Cal. App. 4th Dist. 2007). Although The Apothecarium is engaging in drug trafficking of the state-approved, regulated, and arguably most benevolent variety, in the eyes of the federal government, The Apothecarium is indistinguishable from a seedy

street-corner crack dealer: Under the federal Racketeering Influenced and Corrupt Organizations Act (“RICO”), MMDs face civil liability for any injury to its neighbors’ business or property resulting from the MMDs’ “felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical ... [which is] punishable under any law of the United States.” See *Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865, 881-82 (10th Cir. 2017) (hereinafter *Safe Streets Alliance*) [quoting *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2096 (2016) and 18 U.S.C. § 1961(1)(D)]. Such substances include marijuana and products containing marijuana. *Id.*; see also 21 U.S.C. § 802(16).

Even if, under the Planning Code, the Preschool is not a “public or private elementary or secondary school” and the Church is not a “community facility or recreation center that primarily serves persons under 18 years of age,” ***it clearly makes sense to restrict*** businesses that exclusively serve adults, including MMDs, from places that are intrinsic draws for children. *Madain v. City of Stanton*, 185 Cal. App. 4th 1277, 1292 (App. 4th Dist. 2010) (Sills, P.J., concurring) (hereinafter *Madain*) (emphasis added). The law – not to mention common sense – recognizes the Preschool and the Church as intrinsic draws for children. *Id.* [noting that churches “may have a Sunday-school class and have regularly organized youth groups other days of the week”]; 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)]. 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***[.]” *People ex rel. Feuer v. Nestdrop, LLC*, 245 Cal. App. 4th 664, 675 (Cal. App. 2nd Dist. 2016) (hereinafter *Nestdrop*) (emphasis added). The Apothecarium’s desired location at the Property is thus far too close to the Preschool and the Church. Appellants’ Appeal of Planning Commn.’s Approval of Conditional Use for 2505 Noriega St. 1, 3, Exs. “A”-“B” (Aug. 24., 2017) (hereinafter “Appellants’ Br.”). Accordingly, the Board should use the broad discretion granted it under Cal. Health & Safety Code § 11362.768(f) to keep The Apothecarium from operating an MMD at the Property.

B. ISSUE NO. 2: Denial of Equal Protection to the Children of the Sunset District

Appellants' Response: The Equal Protection Clause of the U.S. Constitution's Fourteenth Amendment applies whenever a state, or one of its agencies, takes any action that treats distinct classes of similarly situated persons differently. *Ross v. Moffitt*, 417 U.S. 600, 609 (1974) (emphasis added).

In this case, the Department denies that Planning Code § 790.141(a) “unlawfully discriminate[s] against certain groups of children in violation of the Equal Protection Clause.” San Francisco Planning Dept. Br. 1, 19 (Sept. 22, 2017) (hereinafter “Dept. Br.”). The Department bases this assertion on two things: First, “the Planning Code identifies particular land uses that are most likely to include children who might be directly exposed to the activities at an MCD. Those include certain accredited school uses, and uses principally serving children.” *Id.* Even if this is true, the Department is tacitly admitting that the drafters of Planning Code § 790.141(a) either inadvertently or intentionally omitted other land uses where children might be exposed to dangers attendant to MMDs. As stated above, the Preschool and the Church are prime examples of such uses. *Madain*, 185 Cal. App. 4th at 1292 (Sills, P.J., concurring); Cal. Health & Saf. Code § 1527.

Secondly, the Department asserts that “the City could reasonably determine that land uses where children were served on an incidental basis, or serving children who could not travel unsupervised by an [MMD], do not require protection from an [MMD].” Dept. Br. at 19. This assertion is utter hogwash: To begin with, kindergarteners and first graders who attend public or private elementary schools in the City – and who are not much older than preschoolers – are unlikely to travel to those schools unsupervised, especially if their schools are located near MMDs. In that regard, kindergarteners and first graders are no different than the children who attend the Preschool. Furthermore, churches do not serve children on an “incidental” basis any more than a local YMCA does. See <https://www.ymcasf.org/programs>. Indeed, the YMCA, which would qualify as a “recreation center” under Planning Code § 790.141(a), provides programs for both children and adults, just as the Church does. *Id.* Section 790.141(a) thus treats distinct classes of similarly situated persons differently, and because there is no rational basis for such distinctive treatment, the ordinance would not pass muster under the Equal Protection Clause. *Geiger v. Kitzhaber*, 994 F. Supp. 2d 1128, 1139 (9th Cir. 2014)

[quoting *Bowers v. Whitman*, 671 F.3d 905, 917 (9th Cir. 2012), which states that laws do not survive rational basis scrutiny where “the relationship of the classification to its goal is ... so attenuated as to render the distinction arbitrary or irrational” (emphasis added)].

Appellants must respectfully disagree with the Department’s assertion that “A Conditional Use Authorization appeal hearing is not the proper forum to challenge the legality of adopted and applied Planning Code sections ...” Dept. Br. at 19. Indeed, the City could face liability due to its failure to extend the protections of Planning Code §790.141(a) to the children who attend the Preschool and the Church as well as the Department’s application of § 790.141(a) in granting a conditional use to The Apothecarium. The Board should thus limit the City’s liability by overturning the Department’s decision to grant the conditional use.

C. ISSUE NO. 3: The Department’s Abuse of its Discretion

Appellants’ Response: Under California law, “an abuse of discretion occurs when, in light of the applicable law and considering all of the relevant circumstances, [a] decision exceeds the bounds of reason and results in a miscarriage of justice.” *Uzyel v. Kadisha*, 116 Cal. Rptr. 3d 244, 267 (Cal. App. 2 Dist. 2010) (emphasis added). “A miscarriage of justice occurs when it is ‘... reasonably probable that a result more favorable to the appealing party would be reached in absence of the error.’” *Lundy v. Ford Motor Co.*, 87 Cal. App. 4th 472, 479 (Cal. App. 2 Dist. 2001) [quoting *In re Marriage of Jones*, 60 Cal. App. 4th 685, 694 (Cal. App. 5 Dist. 1998)].

In this case, the Department’s decision to grant a conditional use allowing The Apothecarium to operate an MMD at the Property exceeds the bounds of reason because the decision either willfully ignores or casually dismisses both the applicable law and the grave dangers and secondary effects to which the children who attend the Preschool and the Church would be exposed. To begin with, the Department was, or at least should have been, aware of laws prohibiting MMDs from operating in close proximity to places where children congregate: On March 30, 2017, Appellants’ attorney sent a letter to the Department informing the Department of such laws. Ltr. from Ray D. Hacke, Atty., Pacific Justice Institute, to Andrew Perry, Planner, Planning Dept., City and County of San Francisco, *Re: 2505 Noriega Street, San Francisco, CA 94122 1-6* (March 30, 2017).

Appellants' attorney also advised the Department of the laws at the Planning Commission's meeting on July 13, 2017. *See* Mtg. Min., Item No. 15 (July 13, 2017) (viewed online on Sept. 27, 2017 at <http://sf-planning.org/meeting/planning-commission-july-13-2017-minutes>). The attorney's words apparently fell on deaf ears, as the Commission voted 5-1 to grant The Apothecarium its conditional use. *Id.*

Furthermore, even if The Apothecarium does make efforts to limit the dangers and adverse secondary effects attendant to MMDs, as the Department asserts that it will [see Dept. Br. at 17-18], it exceeds the bounds of reason for the Department to pretend that the children who go to the Church and the Preschool are not as vulnerable to the hazards of drug trafficking as children who attend local schools or community or recreational facilities. *Marzet*, 57 Cal. App. 4th at 338 [stating that the California Legislature enacted the Juvenile Drug Trafficking and Schoolyard Act of 1988 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"]; *see also* Cal. Health & Saf. Code § 11353.6 [providing for enhanced criminal penalties for persons 18 years of age or older who are convicted of trafficking illegal drugs near schools]. In fact, in discussing how The Apothecarium intends to deal with such hazards, the Department has acknowledged the need to protect the children of the Sunset District from such hazards. Dept. Br. at 17. Given the Department's awareness of the hazards attendant to MMDs, it exceeds the bounds of reason for the Department to needlessly expose the children who attend the Church and the Preschool to those hazards.

Because a result more favorable to Appellants would have occurred but for the Department's failure to apply applicable law and consider relevant circumstances in granting the conditional use to The Apothecarium, a miscarriage of justice has occurred. The Board can correct that miscarriage by overturning the Department's decision to grant the conditional use.

II. Appellants' Responses to The Apothecarium's Opposition Brief

A. ISSUE NO. 1: The Apothecarium's Accusations of Fear-Mongering

Appellants' Response: The people of the Sunset District – especially those whose children attend the Church and the Preschool – are rightfully concerned about the impact that The Apothecarium's proposed MMD

will have on their neighborhood, especially given the Property's proximity to the Church and the Preschool. Courts in California and elsewhere have recognized that (1) MMDs have, at minimum, the potential to cause harmful effects on the neighborhoods they purport to serve, and (2) cities have a compelling government interest in limiting those harmful effects:

These impacts and secondary effects included "the extraordinary and unsustainable demands that have been placed upon scarce City policing, legal, policy, and administrative resources; 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 recommendations; and murders, robberies, burglaries, assaults, drug trafficking and other violent crimes."

People v. Trinity Holistic Caregivers, 239 Cal. App. 4th Supp. 9, 21 (Los Angeles Co. Super. Ct. Appellate Div. 2015) [quoting Los Angeles Municipal Code §45.19.6]; see also *Nestdrop*, 245 Cal. App. 4th at 675, and *Safe Streets Alliance*, 859 F.3d at 885-89 [acknowledging that plaintiffs can recover for the nuisance created by noxious marijuana odors in their neighborhood and the accompanying decline in property values].

The Apothecarium's assertion that its opponents are "incit[ing] false fears that a dispensary will cause harm to children" is thus a bald-faced lie. Ltr. from Brett Gladstone, Atty. for The Apothecarium, to London Breed, President, San Francisco Bd. of Supervisors, *Re: The Apothecarium Sunset at 2505 Noriega Street MCD* 1, 6 (Sept. 25, 2017) (hereinafter "Apothecarium Ltr."). Also untrue is the Apothecarium's assertion that "[l]iquor stores are frequently associated with quality-of-life issues and crime. Dispensaries are not." *Id.* Even Burger King would not sell those whoppers, and the Board should not buy them. The Board should therefore overturn the Department's decision to grant The Apothecarium a conditional use for the Property.

B. ISSUE NO. 2: The "Hate Group" Label Slapped on the Pacific Justice Institute

Appellants' Response: The Latin term *ad hominem* refers to "attacking an opponent's character rather than answering his argument." <http://www.dictionary.com/browse/ad-hominem>. An *ad hominem* attack is also known as "poisoning the well," a logical fallacy in which one party attempts to present its opponent in a bad light with the intent of undermining the opponent's credibility before its target audience and making the party's own claims more palatable. <https://www.logicallyfallacious.com/tools/lp/Bo/LogicalFallacies/140/Poisoning-the-Well>.

In this case, The Apothecarium has slammed the Pacific Justice Institute (“PJI”), the non-profit law firm that is representing the Church and the Preschool, as “a Sacramento-based organization that has been labeled an anti-LGBT hate group by the Southern Poverty Law Center.” Apothecarium Ltr. at 7. While it is unfortunately true that the SPLC has slapped PJI with this label, it is also true that the SPLC launches smear campaigns against any organization that dares to disagree with the SPLC. Stella Morabito, *12 Ways the Southern Poverty Law Center is a Scam to Profit From Hate-Mongering*, The Federalist (May 17, 2017) (viewed online on Sept. 28, 2017 at <http://thefederalist.com/2017/05/17/12-ways-southern-poverty-law-center-scam-profit-hate-mongering/>) (hereinafter Morabito, *12 Ways*). In fact, the SPLC itself can be considered a hate group: “The SPLC’s agitation and propaganda have been proven to incite violence,” including a 2012 SPLC-inspired shooting at the Washington, D.C. office of the Christian-based Family Research Council. *Id.*

Furthermore, the Federal Bureau of Investigation no longer treats the SPLC as a legitimate resource on hate crimes, “a promising sign of growing clarity that the SPLC’s designations for hate groups lack legitimacy.” Morabito, *12 Ways*. Even so, many media outlets that cover and serve San Francisco treat the SPLC’s hate-group designations as gospel. *See, e.g.,* David DeBolt, *Former Oakland Mayor Jean Quan Wants to Ease Your Pain – With Medical Pot*, East Bay Times (March 6, 2017) (viewed online on Sept. 28, 2017 at <http://www.eastbaytimes.com/2017/03/06/oakland-jean-quant-plans-to-open-pot-shop-in-san-francisco/>); Sari Staver, *Anti-LGBT Hate Group Opposes Medical Cannabis Dispensary*, Bay Area Reporter (March 16, 2017) (viewed online on Sept. 28, 2017 at <http://www.ebar.com/news/article.php?sec=news&article=72428>); Tyler Walicek, *A War of Weed Rages in Outer Sunset*, Bay City Beacon (July 24, 2017) (viewed online on Sept. 28, 2017 at https://www.thebaycitybeacon.com/politics/a-war-of-weed-rages-in-outer-sunset/article_f4f9bb36-7278-11e7-b9f6-378ab3b4e9b1.html). For such media outlets to perpetuate the SPLC’s defamation of groups like PJI is “journalistic malpractice.” Fr. Mark Hodges, *ABC News Calls Religious Liberty Organization a ‘Hate Group’ for Christian View of Marriage*, LifeSiteNews.com (July 17, 2017) (viewed online on Sept. 28, 2017 at https://www.lifesitenews.com/opinion/abc-news-calls-religious-liberty-organization-a-hate-group-for-christian-vi?utm_content=buffered4d).

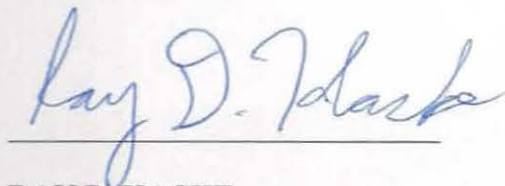
The Apothecarium cites not one shred of law in support of its position. Apothecarium Ltr. at 1-9. This is because, as indicated above, both federal and state law recognize the danger of placing MMDs so close to places where children congregate. Even assuming *arguendo* that The Apothecarium's track record of limiting the dangers attendant to MMDs in the neighborhoods it serves is exemplary – a point that neither the Preschool nor the Church concedes by any means – the law clearly disfavors placing MMDs close to places where children are most likely to congregate, including the Church and the Preschool. Furthermore, PJI has had success opposing the Department's grants of conditional uses to MMDs in the Sunset District. Joe Garofoli and Joaquin Palomino, *The One S.F. Neighborhood Where Pot Dispensaries Aren't Welcome*, SFGate.com (August 17, 2015) (viewed online on Sept. 28, 2017 at <http://www.sfgate.com/business/article/The-one-S-F-neighborhood-where-pot-dispensaries-6447789.php>) [noting that San Francisco's Zoning Board of Appeals overturned a grant of a conditional use to Bay Area Compassionate Health to open an MMD on Taraval Street in 2010; PJI was a key player in that case]. The Apothecarium thus has every incentive to take the Board's focus off the concerns that PJI has raised on behalf of Appellants by perpetuating the SPLC's bogus labeling of PJI as a hate group.

The Board should not reward The Apothecarium for its dirty-pool tactics. The Board should thus overturn the Department's decision granting The Apothecarium its conditional use for the Property.

CONCLUSION

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

PACIFIC JUSTICE INSTITUTE



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

From: [BOS Legislation. \(BOS\)](#)
To: rhacke@pji.org; ryan@apothecarium.com; eliot@apothecarium.com; BGladstone@hansonbridgett.com
Cc: [Givner, Jon \(CAT\)](#); [Stacy, Kate \(CAT\)](#); [Byrne, Marlena \(CAT\)](#); [Rahaim, John \(CPC\)](#); [Sanchez, Scott \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Starr, Aaron \(CPC\)](#); [Rodgers, AnMarie \(CPC\)](#); [Perry, Andrew \(CPC\)](#); [Ionin, Jonas \(CPC\)](#); [Range, Jessica \(CPC\)](#); [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#); [BOS Legislation. \(BOS\)](#)
Subject: APPELLANT BRIEF: Conditional Use Authorization Appeal - Proposed Project at 2505 Noriega Street - Appeal Hearing on September 5, 2017
Date: Friday, August 25, 2017 11:09:18 AM
Attachments: [image001.png](#)

Greetings,

Please find linked below the letter received by the Office of the Clerk of the Board from Ray D. Hacke, representing the appellant, concerning the Conditional Use Authorization Appeal for the proposed project at 2505 Noriega Street. Also submitted with the brief are letters in support of the appeal linked below.

[Appellant Brief - August 24, 2017](#)

[Public Correspondence - August 24, 2017](#)

The appeal hearing for this matter is scheduled for a 3:00 p.m. special order before the Board on September 5, 2017. NOTE: A motion may be entertained to continue this Hearing to the Board of Supervisors' meeting of October 3, 2017.

I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

[Board of Supervisors File No. 170898](#)

Regards,

Lisa Lew
Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
P 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org



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from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.

Ray D. Hacke (State Bar No. 276318)
 PACIFIC JUSTICE INSTITUTE
 1250 Aviation Ave., Suite 260
 San Jose, CA 95123
 Phone: (916) 857-6900
 Fax: (916) 857-6902
 E-mail: rhacke@pji.org

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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 CHURCH OF THE HOLY SPIRIT,	)	Appeal No.: _____
Appellants)	
vs.	)	APPEAL OF PLANNING COMM.'S
	)	APPROVAL OF CONDITIONAL USE
	)	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.

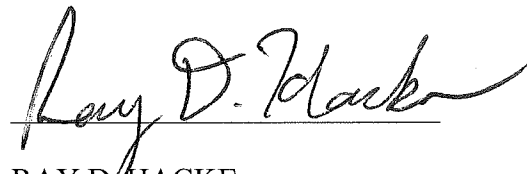
In this case, a proposed MMD would be very detrimental to the health, safety, and general welfare of the teachers, administrators, and other employees who work at Ark of Hope and the Church: Ark of Hope’s employees frequently take the Preschool’s children for field trips around the neighborhood to explore 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.

PACIFIC JUSTICE INSTITUTE

A handwritten signature in black ink, reading "Ray D. Hacke", written over a horizontal line.

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

EXHIBIT “A”



Map data ©2017 Google United States 200 ft

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”



Map data ©2017 Google United States 200 ft

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 right onto Noriega St

223 ft

EXHIBIT “C”



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Wednesday August 23, 2017

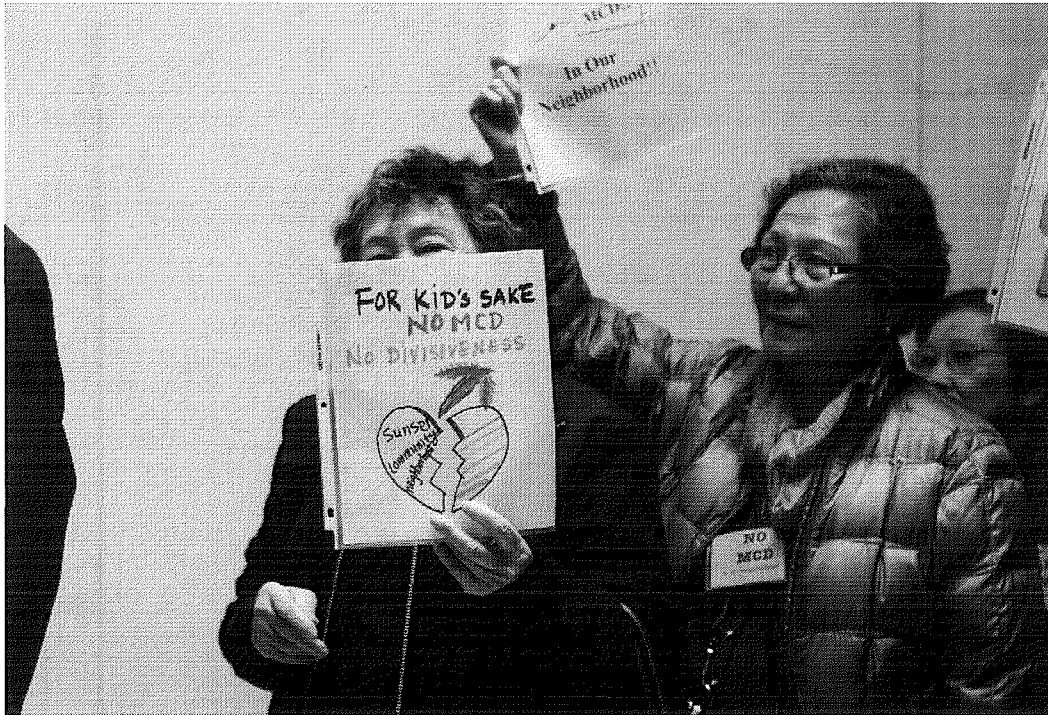
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Outer Sunset pot shop clears Planning Commission despite uncertainty over recreational weed sales

Trending Articles



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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."

Oath Keepers confirm militia will attend controversial Crissy Field rally

Tiger Woods battles nude photo leaks

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Presidio businesses fear violence from 'Free Speech' rally at Crissy Field

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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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22K

- Yes
- No
- I would need more information

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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

19 //
20 //
21 //
22 //
23 //
24 //
25

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 By: 
8 VICTORIA WONG
9 Deputy City Attorney

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

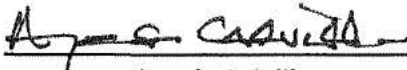
May 05, 2015 Board of Supervisors - ADOPTED

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

Jalipa, Brent (BOS)

From: BOS Legislation, (BOS)
Sent: Monday, August 21, 2017 5:00 PM
To: rhacke@pji.org; wilsonchu98@yahoo.com; ryan@apothecarium.com; eliot@apothecarium.com; BGladstone@hansonbridgett.com
Cc: Givner, Jon (CAT); Stacy, Kate (CAT); Byrne, Marlena (CAT); Rahaim, John (CPC); Sanchez, Scott (CPC); Gibson, Lisa (CPC); Starr, Aaron (CPC); Rodgers, AnMarie (CPC); Perry, Andrew (CPC); Ionin, Jonas (CPC); Range, Jessica (CPC); Calvillo, Angela (BOS); Somera, Alisa (BOS); BOS-Supervisors; BOS-Legislative Aides; BOS Legislation, (BOS)
Subject: PROJECT SPONSOR LETTER: Categorical Exemption Determination Appeal and Conditional Use Authorization Appeal - Proposed Project at 2505 Noriega Street - Appeal Hearing on September 5, 2017
Categories: 170917, 170898

Good afternoon,

Please find linked below the letter received by the Office of the Clerk of the Board from Brett Gladstone of Hanson Bridgett, representing the Project Sponsor, concerning the continuance of the Categorical Exemption Determination Appeal and the Conditional Use Authorization Appeal for the proposed project at 2505 Noriega Street.

[Hanson Bridgett Letter - August 17, 2017](#)

The appeal hearing for this matter is scheduled for a 3:00 p.m. special order before the Board on September 5, 2017. NOTE: A motion may be entertained to continue this Hearing to the Board of Supervisors' meeting of October 3, 2017.


I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

[Board of Supervisors File No. 170898](#)

[Board of Supervisors File No. 170917](#)

Regards,

Lisa Lew
Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
P 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org

 Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

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Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.

BRETT GLADSTONE
PARTNER
DIRECT DIAL (415) 995-5065
DIRECT FAX (415) 995-3517
E-MAIL BGladstone@hansonbridgett.com

August 17, 2017

VIA MESSENGER AND ELECTRONIC MAIL: katy.tang@sfgov.org

Supervisor Katy Tang
District 4 County Supervisor
City Hall
One Dr. Carlton B. Goodlett Place, Room 244
San Francisco CA 94102-4689

Re: Our File No. 33465.1

Dear Supervisor Tang:

As you may know, I represent PNB Noreiga, the permit holder for the conditional use permit issued for the Apothecarium's new Sunset location. We recently learned that you had made a request to continue the appeal for 2505 Noriega, which was originally scheduled to be heard on September 5th. We would appreciate direct communication from you on a matter as important as a continuance request.

We think that it is important to avoid inconveniencing the public who may be supporting the permit holder, as well as those who do not. They may attend the noticed hearing of September 5, not knowing whether there is a continuance or not. My client requests that there be mutual agreement on a date for the continuance, and also on the approximate time for the hearing to begin. It turns out that my client will be able to be present on October 3, 2017 as long as it is not before 4:30 pm. Given that these appeals hearings usually occur after 3 pm, we think that speakers from the public on both sides would appreciate a hearing that does not require them to take time off work. As a result, we request that your office agree to the date of October 3 no earlier than 4:30 pm, and that your office communicate this in writing to the Clerk of the Board with a copy to me. Please let me know if this will be done and then I will notify the Clerk of my client's agreement.

Your letter to the Commission the night before the hearing raised several concerns and my clients wish they could have provided you information before by being contacted. My client would like to reiterate that they are always available to engage in any discussions about your concerns.


In your letter to the Commission, you recommended that the community liaison be bilingual and focus on education and outreach regarding the medicinal use of cannabis, to help dispel the stereotypes and factual inaccuracies you indicate you have witnessed throughout the process leading up to this hearing. My client has witnessed the same, and since the hearing Dr. Floyd Huen (who is bilingual) has already held several meetings with health providers and residents in the Sunset regarding the benefit of medicinal use and will continue that educational activity on an ongoing basis into the future.

Supervisor Katy Tang
August 17, 2017
Page 2

Dr. Huen has also been interviewed extensively on Chinese language radio and television, as well as in the Chinese language press, where he has spoken about the project and his work on reducing opiate addiction in the community.

In your letter to the Commission you ask the Commission to instruct MTA to install stop signs at the intersection. The Commission did not act on that. Please let me know how my client can help your office make that happen.

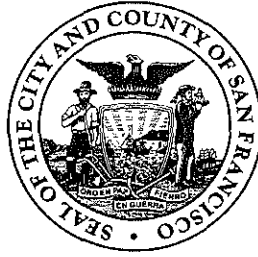
Very truly yours,



Brett Gladstone

Enclosure

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco will hold a public hearing to consider the following appeal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: Tuesday, September 5, 2017
Time: 3:00 p.m.
Location: Legislative Chamber, City Hall, Room 250
1 Dr. Carlton B. Goodlett, Place, San Francisco, CA

NOTE: A motion may be entertained to continue this Hearing to the Board of Supervisors' meeting of October 3, 2017.

Subject: **File No. 170917.** Hearing of persons interested in or objecting to the determination of exemption from environmental review under the California Environmental Quality Act issued as a Categorical Exemption by the Planning Department on July 2, 2017, for the proposed project at 2505 Noriega Street, to change the use from retail pharmacy to a Medical Cannabis Dispensary, interior tenant improvements, and repair/in-kind replacement of storefront material finishes. (District 4) (Appellant: Wilson Chu, on behalf of Zhiming Bi) (Filed August 14, 2017)

File No. 170898. Hearing of persons interested in or objecting to the certification of a Conditional Use Authorization pursuant to Planning Code, Sections 303, 739.84, and formerly pursuant to Planning Code, Section 306.7 and interim zoning controls established under Resolution Nos. 179-15 and 544-16, for a proposed project located at 2505 Noriega Street, Assessor's Parcel Block No. 2069, Lot No. 012, identified in Case No. 2014-003153CUA, issued by the Planning Commission by Motion No. 19961, dated July 13, 2017, to establish a medical cannabis dispensary (MCD) (dba "The Apothecarium") within the Noriega Street Neighborhood Commercial District and a 40-X height and bulk district; and adopting findings under the California Environmental Quality Act. (District 4) (Appellant: Ray Hacke of Pacific Justice Institute, on behalf of Ark of Hope Preschool) (Filed July 27, 2017)

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments prior to the time the hearing begins. These comments will be made as part of the official public record in this matter and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA, 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information relating to this matter will be available for public review on Friday, September 1, 2017.


Angela Calvillo
Clerk of the Board

Jalipa, Brent (BOS)

From: BOS Legislation, (BOS)
Sent: Tuesday, August 22, 2017 1:56 PM
To: rhacke@pji.org; wilsonchu98@yahoo.com; ryan@apothecarium.com; eliot@apothecarium.com; BGLadstone@hansonbridgett.com
Cc: Givner, Jon (CAT); Stacy, Kate (CAT); Byrne, Marlena (CAT); Rahaim, John (CPC); Sanchez, Scott (CPC); Gibson, Lisa (CPC); Starr, Aaron (CPC); Rodgers, AnMarie (CPC); Perry, Andrew (CPC); Ionin, Jonas (CPC); Range, Jessica (CPC); Calvillo, Angela (BOS); Somera, Alisa (BOS); BOS-Supervisors; BOS-Legislative Aides; BOS Legislation, (BOS)
Subject: HEARING NOTICE: Categorical Exemption Determination Appeal and Conditional Use Authorization Appeal - Proposed Project at 2505 Noriega Street - Appeal Hearing on September 5, 2017
Categories: 170898, 170917

Greetings,

The Office of the Clerk of the Board has scheduled an appeal hearing for Special Order before the Board of Supervisors on **September 5, 2017, at 3:00 p.m.**, to hear an appeal regarding the categorical exemption determination and conditional use authorization for the proposed project at 2505 Noriega Street.

Please find the following link to the hearing notice for the matter:

[Notice of Public Hearing Notice - September 5, 2017](#)

I invite you to review the entire matter on our [Legislative Research Center](#) by following the links below:

[Board of Supervisors File No. 170917](#)

[Board of Supervisors File No. 170898](#)

NOTE: A motion may be entertained to continue this Hearing to the Board of Supervisors' meeting of October 3, 2017.

Thank you,

Lisa Lew
Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
P 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org

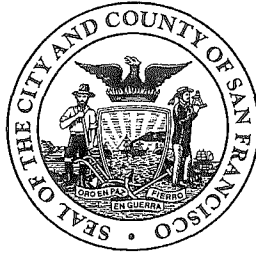


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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

PROOF OF MAILING

Legislative File Nos. 170917 and 170898

Description of Items: Public Hearing Notices - Hearing - Appeal of Determination of Exemption From Environmental Review and Appeal of Conditional Use Authorization - 2505 Noriega Street - 448 Notices Mailed


I, Lisa Lew, an employee of the City and County of San Francisco, mailed the above described document(s) by depositing the sealed items with the United States Postal Service (USPS) with the postage fully prepaid as follows:

Date: August 22, 2017

Time: 12:11 p.m.

USPS Location: Repro Pick-up Box in the Clerk of the Board's Office (Rm 244)

Mailbox/Mailslot Pick-Up Times (if applicable): N/A

Signature: 

Instructions: Upon completion, original must be filed in the above referenced file.

BOARD of SUPERVISORS



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1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

August 2, 2017

File Nos. 170898-170901
Planning Case No. 2014-003153CUA

Received from the Board of Supervisors Clerk's Office one check, in the amount of Five Hundred Seventy Eight Dollars (\$578) representing the filing fee paid by Ray Hacke of Pacific Justice Institute, on behalf of Ark of Hope Preschool, for the appeal of a Conditional Use Authorization for the proposed project at 2505 Noriega Street.

Planning Department
By:

Tony

Print Name

A handwritten signature in black ink, appearing to be "Tony".

8/3/17

Signature and Date

Jalipa, Brent (BOS)

From: BOS Legislation, (BOS)
Sent: Wednesday, August 02, 2017 9:26 AM
To: rhacke@pji.org; ryan@apothecarium.com
Cc: eliot@apothecarium.com; bgladstone@hansonbridgett.com; Givner, Jon (CAT); Stacy, Kate (CAT); Byrne, Marlena (CAT); Rahaim, John (CPC); Gibson, Lisa (CPC); Sanchez, Scott (CPC); Rodgers, AnMarie (CPC); Starr, Aaron (CPC); Perry, Andrew (CPC); Ionin, Jonas (CPC); BOS-Supervisors; BOS-Legislative Aides; Calvillo, Angela (BOS); Somera, Alisa (BOS); BOS Legislation, (BOS)
Subject: Conditional Use Authorization Appeal - Proposed 2505 Noriega Street Project - Appeal Hearing on September 5, 2017
Categories: 170898

Good morning,

The Office of the Clerk of the Board has scheduled a hearing for Special Order before the Board of Supervisors on **September 5, 2017, at 3:00 p.m.** Please find linked below letters of appeal filed against the proposed project at 2505 Noriega Street, and an informational letter from the Clerk of the Board.

[Conditional Use Authorization Appeal Letter - July 27, 2017](#)

[Public Works Letter - July 31, 2017](#)

[Clerk of the Board Letter - July 31, 2017](#)

I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

[Board of Supervisors File No. 170898](#)

Regards,

Lisa Lew
Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
P 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org



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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

July 31, 2017

Ray Hacke
Pacific Justice Institute
1250 Aviation Avenue, Suite 260
San Jose, CA 95110

Subject: Appeal of Conditional Use Authorization - 2505 Noriega Street

Dear Mr. Hacke:

The City and County Surveyor has informed the Board of Supervisors in a letter received July 31, 2017, (copy attached) that the signatures represented with your appeal filing on July 27, 2017, have been checked pursuant to the Planning Code, and represent owners of more than 20% of the property involved and would be sufficient for an appeal.

Pursuant to Planning Code, Section 308.1, a hearing date has been scheduled for **Tuesday, September 5, 2017, at 3:00 p.m.**, at the Board of Supervisors meeting to be held in City Hall, 1 Dr. Carlton B. Goodlett Place, Legislative Chamber, Room 250, San Francisco, CA 94102.

Please provide to the Clerk's Office by noon:

- 20 days prior to the hearing:** names and addresses of interested parties to be notified of the hearing, in spreadsheet format; and
- 11 days prior to the hearing:** any documentation which you may want available to the Board members prior to the hearing.

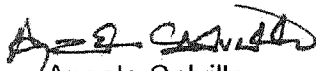
For the above, the Clerk's office requests one electronic file (sent to bos.legislation@sfgov.org) and two copies of the documentation for distribution.

Continues on next page

NOTE: If electronic versions of the documentation are not available, please submit 18 hard copies of the materials to the Clerk's Office for distribution. If you are unable to make the deadlines prescribed above, it is your responsibility to ensure that all parties receive copies of the materials.

If you have any questions, please feel free to contact Legislative Clerks Brent Jalipa at (415) 554-7712, or Lisa Lew at (415) 554-7718.

Very truly yours,


Angela Calvillo
Clerk of the Board

- c: Ryan Hudson, Project Sponsor
- Jon Givner, Deputy City Attorney
- Kate Stacy, Deputy City Attorney
- Marlena Byrne, Deputy City Attorney
- John Rahaim, Planning Director
- Scott Sanchez, Zoning Administrator, Planning Department
- Lisa Gibson, Environmental Review Officer, Planning Department
- Aaron Starr, Manager of Legislative Affairs, Planning Department
- AnMarie Rodgers, Senior Policy Advisor, Planning Department
- Andrew Perry, Staff Contact, Planning Department
- Jonas Ionin, Planning Commission Secretary



July 31, 2017

Ms. Angela Calvillo
Clerk of the Board
1 Dr. Carlton B. Goodlet Place
City Hall – Room 244
San Francisco, CA 94102

Edwin M. Lee
Mayor

Mohammed Nuru
Director

Bruce R. Storrs P.L.S.
City and County Surveyor

Bureau of Street Use & Mapping
1155 Market St., 3rd floor
San Francisco, CA 94103
tel (415) 554-5827
Subdivision.Mapping@sfdpw.org

sfpublicworks.org
facebook.com/sfpublicworks
twitter.com/sfpublicworks

RE: 2505 Noriega St., Lot 12 of Assessor's Block 2069
Appealing Planning Commissions Approval of Conditional Use
Application No. 2014-003153 CUA

Dear Ms. Calvillo:

This letter is in response to your July 27, 2017 request for our Department to check the sufficiency of the signatures with respect to the above referenced appeal. Please be advised that per our calculations the appellants' signatures represent 29.99% of area, which is greater than 20% of the area involved and is therefore sufficient for appeal.

Sincerely,

Bruce R. Storrs, P.L.S.
City & County Surveyor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2017 AUG -1 AM 9:20
BY [Signature]

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

July 27, 2017

Bruce R. Storrs
City and County Surveyor, Public Works
1155 Market Street, 3rd Floor
San Francisco, CA 94103

**Planning Case No. 2014-003153CUA
2505 Noriega Street - Conditional Use Authorization Appeal**

Dear Mr. Storrs:

The Office of the Clerk of the Board is in receipt of an appeal filed by Ray Hacke of Pacific Justice Institute, on behalf of Ark of Hope Preschool, from the decision of the Planning Commission on July 13, 2017, relating to the approval of a Conditional Use Authorization (Case No. 2014-003153 CUA) 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, for a proposed project located at:

2505 Noriega Street, Assessor's Parcel Block No. 2069, Lot No. 012

By copy of this letter, the City and County Surveyor is requested to determine the sufficiency of the signatures in regard to the percentage of the area represented by the appellant. Please submit a report not later than 5:00 p.m. on Wednesday, August 2, 2017.

Sincerely,

A handwritten signature in cursive script, appearing to read "Angela Calvillo".

fr Angela Calvillo
Clerk of the Board

- c: Jerry Sanguinetti, Public Works-Bureau of Street Use and Mapping
Javier Rivera, Public Works
Steve Bergin, Public Works
Jon Givner, Deputy City Attorney
Kate Stacy, Deputy City Attorney
Marlena Byrne, Deputy City Attorney
Lisa Gibson, Planning Department
Joy Navarette, Planning Department
Scott Sanchez, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Andrew Perry, Planning Department

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Clerk of the Board

Subject:

Hearing - Appeal of Conditional Use Authorization - Proposed Project at 2505 Noriega Street

The text is listed:

Hearing of persons interested in or objecting to the certification of a Conditional Use Authorization pursuant to Planning Code, Sections 303, 739.84, and formerly pursuant to Planning Code, Section 306.7 and interim zoning controls established under Resolution Nos. 179-15 and 544-16, for a proposed project located at 2505 Noriega Street, Assessor's Parcel Block No. 2069, Lot No. 012, identified in Case No. 2014-003153CUA, issued by the Planning Commission by Motion No. 19961, dated July 13, 2017, to establish a medical cannabis dispensary (MCD) (dba "The Apothecarium") within the Noriega Street Neighborhood Commercial District and a 40-X height and bulk district; and adopting findings under the California Environmental Quality Act. (District 4) (Appellant: Ray Hacke of Pacific Justice Institute, on behalf of Ark of Hope Preschool) (Filed July 27, 2017)

Signature of Sponsoring Supervisor: *Alisa Bernal*

For Clerk's Use Only