



# SAN FRANCISCO PLANNING DEPARTMENT

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## Conditional Use Authorization Appeal 2505 Noriega Street

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**DATE:** September 22, 2017  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** John Rahaim, Planning Director – Planning Department (415) 558-6411  
Andrew Perry, Case Planner – Planning Department (415) 575-9017  
**RE:** File No. 170898, Planning Case No. 2014-003153CUA - Appeal of the approval of  
Conditional Use Authorization for 2505 Noriega Street,  
**HEARING DATE:** September 5, 2017  
**ATTACHMENTS:**  
A. Planning Commission Motion No. 19961

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**PROJECT SPONSOR:** Ryan Hudson, 2029 Market Street, San Francisco, CA 94114  
**APPELLANTS:** Ray D. Hacke, of Pacific Justice Institute, 1250 Aviation Ave., Suite 260, San Jose,  
CA 95110, on behalf of Ark of Hope Preschool and Lutheran Church of the Holy  
Spirit, 2701 Noriega St., San Francisco, CA 94122  
Wilson Chu and Calvin Louie, CPA, 950 Grant Ave., 2<sup>nd</sup> Floor, San Francisco, CA  
95108, on behalf of Michael Chan, 1808 17<sup>th</sup> Ave., San Francisco, CA 94122

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### INTRODUCTION

This memorandum and the attached documents are a response to the letters of appeal to the Board of Supervisors (the “Board”) regarding the Planning Commission’s (“Commission”) approval of the application for Conditional Use Authorization pursuant to Planning Code Sections 303 (Conditional Use Authorization) and 739.84 (Medical Cannabis Dispensaries), and pursuant to Planning Code Section 306.7 and the previously applicable interim zoning controls established under Resolutions 179-15 and 544-16, to establish a Medical Cannabis Dispensary (“MCD”) (d.b.a. “Apothecarium”) within an existing one-story commercial building in the Noriega Street Neighborhood Commercial District (“NCD”) and a 40-X Height and Bulk District (“the project”).

This response addresses the appeal (“Appeal Letter”) to the Board filed on July 27, 2017 by Ray D. Hacke, of Pacific Justice Institute, on behalf of Ark of Hope Preschool located at 2701 Noriega Street, and Lutheran Church of the Holy Spirit, located at 2400 Noriega Street. The Appeal Letter referenced the proposed project in Case No. 2014-003153CUA.

The decision before the Board is whether to uphold or overturn the Planning Commission’s approval of Conditional Use Authorization to allow the establishment of a Medical Cannabis Dispensary located at 2505 Noriega Street.

## **SITE DESCRIPTION & PRESENT USE**

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

## **SURROUNDING PROPERTIES AND NEIGHBORHOOD**

The subject property is located within the Noriega Street 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 19<sup>th</sup> to 27<sup>th</sup> Avenues, and resumes again between 30<sup>th</sup> and 33<sup>rd</sup> 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 34<sup>th</sup> 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 32<sup>nd</sup> Avenue and at 33<sup>rd</sup> 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.

## **PROJECT DESCRIPTION**

The project sponsor proposes to establish 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 32<sup>nd</sup> 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/English) and bicultural dispensary, serving the neighborhood community in a manner that compliments 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.

## **BACKGROUND**

On December 10, 2014, Vincent Gonzaga, on behalf of Ryan Hudson ("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 an 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 the Apothecarium was then filed with the Planning Department ("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 ("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 before 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 took effect on June 19, 2017.

On June 8, 2017, the San Francisco Planning 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 requiring Conditional Use Authorization would be in effect. On July 13, 2017, at a regularly scheduled and duly noticed public hearing, the Commission heard the request for Conditional Use Authorization as part of Application 2014-003153CUA, and voted 5-1 (Richards against, Fong absent) to approve the request to establish an MCD at 2505 Noriega Street. A large amount of public testimony was heard on this item, both in support and in opposition to the proposed project.

Opponents of the proposed MCD stated concerns that the business would result in an increase in the amount of traffic and crime in the area, and that these negative aspects would be detrimental to other businesses in the area, the quality of life in the neighborhood, and the safety of children and other residents. Many opponents noted the presence of a church and a preschool in the vicinity, as the appeal letter does, believing that this should disqualify an MCD from locating at the project site. Supporters of the proposed MCD attempted to quell those fears by discussing the Apothecarium's existing business practices for their location on Market Street, which is also located near a church, the business' commitment to the community especially through charitable giving, and patients' needs for a well-run MCD located in their Sunset neighborhood, where there are currently no MCDs.

On July 27, 2017, Ray D. Hacke, of Pacific Justice Institute, on behalf of Ark of Hope Preschool located at 2701 Noriega Street and the Lutheran Church of the Holy Spirit, located at 2400 Noriega Street, filed the Appeal Letter challenging the Conditional Use Authorization decision by the Planning Commission.

On September 12, 2017, the Board of Supervisors approved a moratorium on new MCDs [Board File Number 170865, v5]. The moratorium prohibits the Planning Commission from approving any new MCD, except for those MCDs whose application was scheduled to be heard by the Commission as of September 11, 2017. This moratorium does not impact the proposed MCD at 2505 Noriega Street. Therefore, the Board maintains their full authority and discretion to approve, disapprove or modify this Conditional Use Authorization when the appeal is heard by the Board, tentatively scheduled for October 3, 2017.

#### **CONDITIONAL USE AUTHORIZATION REQUIREMENTS**

Planning Code Section 303 establishes criteria for the Commission to consider when reviewing all applications for Conditional Use approval. To approve the project, the Commission must find that these criteria have been met:

1. That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community; and
2. That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

- a. The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;
  - b. 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;
  - c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;
  - d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs; and
3. That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan.
  4. That such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Use District.

In addition, the Interim Controls established by Board of Supervisor's Resolution Nos. 179-15 and 544-16 required the Planning Commission to find that the proposed MCD satisfies three additional criteria:

1. The MCD will bring measureable community benefits and enhancements to the NCD.
2. The MCD has prepared a parking and transportation management plan sufficient to address the anticipated impact of patients visiting the MCD.
3. 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 permanent controls enacted through Ordinance 100-17 do not contain any such requirement for additional findings as described above. Therefore, although the project does meet those additional criteria, they are not required to be satisfied in order to grant Conditional Use Authorization; only the standard criteria of Section 303, described above, must be met.

#### APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

The concerns raised in the Appeal Letter are cited in a summary below and are followed by the Department's response:

**ISSUE 1:** The Appellant contends that the proposed MCD may not be permitted in the proposed location based on the requirements of Planning Code Section 790.141(a), which is intended to protect children from the potential harms associated with MCD facilities. The Appellant contends that the presence of Ark of Hope Preschool and the Lutheran Church of the Holy Spirit, both located within 1000 feet of the proposed MCD, should prohibit the establishment of this business at the project site.

**RESPONSE 1:** The project complies with all provisions of the Planning Code, including the locational requirements of Section 790.141(a). Planning Code Section 790.141(a) sets forth five criteria that must be met by all MCDs and considered by the Planning Commission in evaluating the proposed use. The specific criteria will be listed below in *italics*, followed by the Commission's findings and additional Department analysis:

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.

**Planning Commission Findings:** 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.

**Additional Department Response:** Although the Commission acknowledged the presence of Ark of Hope Preschool and the Lutheran Church of the Holy Spirit located in proximity to the project site, neither of these uses meet the definition of an elementary or secondary school, public or private, nor are they community facilities and/or recreation centers that primarily serve persons under 18 years of age.

The above Code Section does not include preschools as a protected use. Further, when looking at the Planning Code definition of a "School", the Code again clarifies this as an educational use "certified by the Western Association of Schools and Colleges (WASC) that provides educational instruction to students in *kindergarten through twelfth grade*" (*emphasis added*). The Ark of Hope Preschool is intended to serve those children that have not yet matriculated into kindergarten, between ages 2.5 and 6; therefore, Ark of Hope Preschool is not considered a School, either elementary or secondary, under the Planning Code. The Lutheran Church of the Holy Spirit also offers preschool care for young children, as well as Sunday School, after-school tutoring programs, and youth ministry programs for children that are of elementary or secondary school age; however, as none of these programs are certified educational institutions under WASC, they also do not meet the definition of a School under the Planning Code.

Secondly, the Planning Commission found that neither the Ark of Hope Preschool nor the Lutheran Church of the Holy Spirit constitutes a community facility or recreation center that primarily serves persons under 18 years of age. The Planning Code defines this use as an institutional community use "that includes community clubhouses, neighborhood centers, community cultural centers, or other community facilities not publicly owned but open for public use in which the chief activity is not carried on as a gainful business and whose chief function is the gathering of persons from the immediate neighborhood in a structure for the purposes of recreation, culture, social interaction, health care, or education *other than Institutional Uses as defined in this Section*" (*emphasis added*). Religious Institutions are one of the other specifically defined Institutional Uses in the Planning Code, and are therefore excluded from being considered a Community Facility. The Ark of Hope Preschool is not considered a Community Facility, as it is carried on as a gainful business. Similarly, the record is unclear as to whether the various after school programs at the Church are fee-based programs. Moreover, the Lutheran Church of the Holy Spirit is not considered a Community Facility, but rather a Religious Institution. The Lutheran Church also provides services and programs intended for persons of all ages, and not only or primarily to those under 18 years of age.

Lastly, during Commission deliberations, the Commission noted that preschools were likely not included alongside elementary and secondary schools because preschoolers will not be walking or otherwise transporting themselves, unsupervised, to and from their preschool site. For this reason, elementary and secondary school students warrant more protection than preschool-age children.

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.*

**Planning Commission Findings:** 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. Aside from the vacant storefront in which the proposed MCD will be located, the only other use on the subject parcel is a Limited Restaurant.

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

**Planning Commission Findings:** No alcohol is, or will be, 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.*

**Planning Commission Findings:** This criteria is not applicable, as the proposed MCD will not allow for any on-site smoking or any other form of 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.*

**Planning Commission Findings:** The applicant has applied for a permit from the Department of Public Health.

**ISSUE 2:** The Appellant contends that the proposed Medical Cannabis Dispensary (MCD) use and proposed location do not meet the Conditional Use criteria of Planning Code Section 303(c), in that it would be “detrimental to the health, safety, convenience, or general welfare of persons working in the vicinity”, would negatively impact the neighborhood with regard to traffic and overall livability, and is not necessary or desirable as evidenced by the many public comments voiced in opposition to the proposal.

In the supplemental appeal letter that was submitted on August 24, 2017 (“Supplement”), the Appellant further articulated concerns to the health, safety, convenience, or general welfare of persons working in the vicinity. Submitted with the Supplement, the Appellant also filed more than 2800 letters in support of the appeal and in opposition to the proposed MCD. This memo responds to both the Appeal Letter and the Supplement.

**RESPONSE 2:** The project complies with all provisions of the Planning Code, including the Conditional Use criteria of Section 303(c). The proposed MCD has been found, on balance, to be necessary and desirable for the proposed location, and that it will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity.

1. *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.*

**Planning Commission Findings:** 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 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/English) and bicultural dispensary. Lastly, it will 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 60<sup>1</sup>.

2. *The use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements, or potential development in the vicinity, with respect to aspects including, but not limited to the following:*
  - a. *Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;*

**Planning Commission Findings:** 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.

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

- b. *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;*

**Planning Commission Findings:** In order to address the additional criteria that were previously required under the interim zoning controls, the project sponsor hired the consultant Fehr & Peers to conduct a transportation and parking study for the proposed project. 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.

Additionally, the Planning Code does not require parking or loading for the change of use to a 2,780 square-foot MCD within the subject District. In terms of trip generation, traffic and parking, the proposed MCD use, as analyzed under CEQA, 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 all current accessibility requirements.

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

**Planning Commission Findings:** 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.

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

**Planning Commission Findings:** 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.

3. *That the use or feature as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.*

**Planning Commission Findings:** The Project complies with all applicable requirements and standards of the Planning Code, and is consistent on balance with the Objectives and Policies of the General Plan as detailed below:

## COMMERCE AND INDUSTRY ELEMENT

**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.

**Planning Commission Findings:** *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.

**Planning Commission Findings:** *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.

**Planning Commission Findings:** *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 prepared for the proposed use found that it would not 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 in 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 ELEMENT**

**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.

**Planning Commission Findings:** *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.*

## AIR QUALITY ELEMENT

**OBJECTIVE 4:** IMPROVE AIR QUALITY BY INCREASING PUBLIC AWARENESS REGARDING THE NEGATIVE HEALTH EFFECTS OF POLLUTANTS GENERATED BY STATIONARY AND MOBILE SOURCES.

- **Policy 4.3:** Minimize exposure of San Francisco's population, especially children and the elderly, to air pollutants.

**Planning Commission Findings:** *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.*

## HOUSING ELEMENT

**OBJECTIVE 11:** SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

- **Policy 11.8:** Consider a neighborhood's character when integrating new uses, and minimize disruption caused by expansion of institutions into residential areas.

**Planning Commission Findings:** *The proposed MCD would be the first MCD to operate in the Sunset neighborhood, and therefore does represent the addition of a new land use type within the neighborhood, a predominantly residential area. Although the proposed use is commercial in nature, it is similar in that regard to the prior pharmacy use at the site, and conforms generally to the City's land use plan, in that it is located within a Neighborhood Commercial District that allows for the proposed use through Conditional Use Authorization. Potential disruptions to the surrounding neighborhood caused by the proposed MCD were specifically considered in the context of impacts to neighborhood parking and traffic conditions; the consultant-prepared study affirmed that there is adequate parking in the vicinity to accommodate the anticipated trip generation.*

**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 complies with said policies:

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

**Planning Commission Findings:** 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.

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

**Planning Commission Findings:** 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. The proposed MCD will be located in an existing commercial building, and therefore not result in the loss or conversion of any residential use. Lastly, the property is located within a Neighborhood Commercial District and is zoned for such commercial activity as proposed, with the use anticipated to primarily serve the needs of residents in the broader Sunset neighborhood.

- iii. *That the City's supply of affordable housing be preserved and enhanced.*

**Planning Commission Findings:** The proposed project would have no effect on the City's supply of affordable housing.

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

**Planning Commission Findings:** 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 34<sup>th</sup> 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.

- v. *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.*

**Planning Commission Findings:** The subject tenant space is vacant and will not displace any industrial or service sector establishments.

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

**Planning Commission Findings:** The MCD will follow standard earthquake preparedness procedures and all construction will comply with current building and seismic safety codes.

vii. *That landmarks and historic buildings be preserved.*

**Planning Commission Findings:** 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.

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

**Planning Commission Findings:** 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.

4. *That the use or feature as proposed would provide development that is in conformity with the stated purpose of the applicable Neighborhood Commercial District.*

**Planning Commission Findings:** The proposed project is consistent with the stated purpose 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.

5. **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. Nonetheless, the project does meet those criteria, and the Commission did make findings as described below.

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

**Planning Commission Findings:** 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;*

**Planning Commission Findings:** 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.*

**Planning Commission Findings:** 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.

To address the additional concerns raised by the Appellant in the August 24, 2017 supplemental letter, the Department submits the following responses:

- a. *Concern: School-age children, employees of Ark of Hope preschool, other merchants along Noriega Street, the congregation and pastor of the Lutheran church, and others residing in the vicinity will be unwillingly subjected and exposed to medical marijuana and second-hand marijuana smoke.*

As discussed elsewhere in the staff report and in this appeal response, the proposed MCD would not be authorized for any on-site consumption or cultivation of medical cannabis products, therefore the Project should not result in the emission of any noxious odors or fumes. Regardless, within the conditions of approval of Motion 19961, the Project is required to install appropriate odor control equipment in order to prevent any offensive odors from escaping the premises. The MCD will also employ security personnel that will help ensure that patients are not consuming once immediately outside the building. Consumption of medical cannabis in public remains illegal in San Francisco and would be an enforcement matter for the Department of Public Health and the San Francisco Police Department. It is not reasonable to assume that anyone consuming cannabis in the vicinity must have obtained the product from the proposed MCD, nor would it then be reasonable to assign blame to this particular MCD. Rather, Appellant concedes that this condition is already somewhat present in the surrounding neighborhood, prior to the operation of any MCD, and is similarly present throughout all San Francisco neighborhoods.

- b. *Concern: These same groups would also be exposed to the dangers of drug trafficking, particularly as an MCD can attract secondary black market dealers and armed criminals.*

The Project Sponsor's extensive experience with operating best practices for MCDs within San Francisco have been described in detail earlier in this memo. With regard to secondary dealing, the MCD risks losing their operating license if they provide medical cannabis to secondary dealers that resell the product, and patients similarly would risk losing their access to the medicine if they engaged in such activity. Therefore, it is highly unlikely that the MCD would directly encourage the presence and operation of secondary dealers. Appellants' speculation concerning a possible increase in drug trafficking in the area of the MCD is not supported by the record.

- c. *Concern: The presence of an MCD increases the likelihood for fraudulent drug sales, and sales to minors.*

For reasons also stated above, the presence of an MCD in a neighborhood would have no effect on, or may even decrease, the likelihood of secondary and/or fraudulent drug sales, as the availability of an MCD in the neighborhood provides patients with legal and safe access to medical cannabis such that they do not need to obtain such goods from illegal black market sources. Minors are not permitted into any MCD, and any operator or patient that chooses to distribute medical cannabis to minors risks the loss of their operating or patient license, a risk that is simply not worth taking for a professional MCD business. Trained security personnel for

the MCD will be vigilant in verifying that patients have valid identification and recommendation for medical cannabis.

- d. *Concern: The presence of an MCD will result in litter, noise, loitering and other visual blight, similar to that of other adult businesses.*

Security personnel for the MCD will ensure that patients and others are not loitering or causing noise or other disruptions outside of the MCD. Additionally, the conditions of approval of Motion 19961 contains requirements for proper trash, recycling, and compost storage and disposal, as well as conditions requiring that all sidewalks abutting the subject property are maintained in a clean and sanitary condition. These conditions should prevent any accumulation of litter or similar visual blight, and generally help to ensure that the Project is not detrimental to the health, safety, convenience, or general welfare of persons working in the vicinity.

### **Additional Letters Submitted in Support of Appeal, Opposition to Project**

Similar to the letters that were received prior to the Planning Commission hearing, many of these letters contained similar language, format and overall concerns. The issues raised in these letters have been adequately addressed elsewhere in the staff report or in this appeal response. Opponents argue that the volume of letters received in opposition to the MCD is a clear sign that the use is not necessary or desirable for, or compatible with this neighborhood, and that the Commission has erred by granting Conditional Use Authorization. The Department and Commission have considered the volume of these letters and the concerns stated therein; however, the Department also received a substantial number of letters in support of the MCD, with many individuals speaking during public comment at the Planning Commission hearing. The Commission's decision to grant Conditional Use Authorization was informed by both the quality and quantity of public comment received on both sides; however, this is but one factor influencing the Commission's decision, as they must also consider whether the project complies with all Planning Code requirements, and on balance, whether the project complies with the General Plan.

For the above reasons, the Commission found the proposed Medical Cannabis Dispensary at 2505 Noriega Street to be necessary and desirable, and in compliance with Planning Code Section 303 and all other applicable requirements of the Planning Code, and in compliance, on balance, with the policies and objectives of the General Plan.

**ISSUE 3:** The Appellant contends that the proposed MCD use and location, as well as the language of Planning Code Section 790.141(a) itself, in that it protects some children and not others, would violate Prop. 64, the California Juvenile Drug Trafficking and Schoolyard Act of 1988, the U.S. Constitution's Equal Protection Clause, and the federal Racketeering Influenced and Corrupt Organizations (RICO) Act. In the supplemental letter submitted, the Appellant also emphasizes that "the possession, sale, and/or distribution of marijuana or marijuana products is illegal under federal law."

**RESPONSE 3:** A Conditional Use Authorization appeal hearing is not the proper forum to challenge the legality of adopted and applied Planning Code sections, nor the legality of the State of California's position to allow the operation of Medical Cannabis Dispensaries and for recreational adult use in the future. The relevant sections of the Planning Code were approved by the Board of Supervisors after approval as to form by the City Attorney's Office. The proposed MCD does comply with the requirements of the Planning Code, specifically Section 790.141(a) as previously described in this appeal response.

Planning Code Section 790.141(a) does not unlawfully discriminate against certain groups of children in violation of the Equal Protection Clause. Rather, 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. 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 MCD, do not require protection from exposure to an MCD.

Based on the provisions of the Planning Code currently in force, the Board of Supervisors has discretion to determine whether the project is necessary or desirable, as required for a Conditional Use Authorization.

**ISSUE 4:** The Appellant argues that the Project Sponsor has misled the Department, Commission, and public in portraying their business as a Medical Cannabis Dispensary. At the Conditional Use Authorization hearing, the Project Sponsor made a comment that they support the legalization of adult-use cannabis in California, and that they hope that their business will be able to sell cannabis, not only for medicinal purposes, but for adult-use purposes in the future. The Appellant believes that adult-use sales of cannabis at the subject property would have serious negative impacts on the community.

**RESPONSE 4:** At this time, San Francisco has not yet adopted regulations to address the production, processing, and sale of adult-use cannabis. As a result, it is not clear whether, or through what discretionary review process, an existing MCD operator might be permitted to sell cannabis for adult recreational use in the future. In this case, the application that was approved by the Commission for the subject MCD is strictly limited to the dispensing of cannabis for medicinal purposes. Although the Project Sponsor stated a desire during the hearing to eventually dispense adult recreational use cannabis, the current authorization in no way confers this right to the project sponsor or property. The Board of Supervisors retains its authority to develop a regulatory process that properly restricts future changes of use of existing MCDs.

## **CONCLUSION**

For the reasons stated above, the Planning Department recommends that the Board uphold the Planning Commission's decision in approving the Conditional Use authorization to establish an MCD within an existing one-story commercial building in the Noriega Street NCD and a 40-X Height and Bulk District, and deny the Appellant's request for appeal.



# 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

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## 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](mailto: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 32<sup>nd</sup> 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 19<sup>th</sup> to 27<sup>th</sup> Avenues, and resumes again between 30<sup>th</sup> and 33<sup>rd</sup> 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 34<sup>th</sup> 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 32<sup>nd</sup> Avenue and at 33<sup>rd</sup> 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 32<sup>nd</sup> 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 34<sup>th</sup> Avenue (and represented by the Pacific Justice Institute), and the Lutheran Church of the Holy Spirit located one block away at Noriega and 31<sup>st</sup> 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 32<sup>nd</sup> 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 32<sup>nd</sup> 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 60<sup>1</sup>.*

- 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.*

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<sup>1</sup> "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 34<sup>th</sup> 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

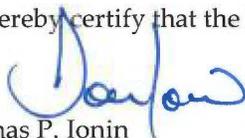
That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application 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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://www.baaqmd.gov) and Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*