



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Conditional Use

HEARING DATE: MAY 21, 2015

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Date: May 11, 2014
Case No.: **2013.1223CUA**
Project Address: **2139 Taraval Street**
Zoning: Taraval Street NCD
50-X Height and Bulk District
Taraval Street Restaurant Subdistrict
¼ of Existing Fringe Financial Service
Block/Lot: 2394/042
Project Sponsor: Gordon Atkinson
735A Taraval Street
San Francisco, CA 94116
415.731.9927
Staff Contact: Tina Chang – 415.575.9197
tina.chang@sfgov.org
Recommendation: **Disapproval**

PROJECT DESCRIPTION

The proposal is to establish a new Medical Cannabis Dispensary at 2139 Taraval Street d.b.a. "Bay Area Compassion Health Care Center", to replace a vacant ground floor commercial space previously occupied by a chiropractor's office. The proposed retail space is approximately 800 square feet in size with approximately 17-feet of frontage. No parking is required and no physical expansion is proposed for the structure.

The proposed Medical Cannabis Dispensary (MCD) will not permit on-site smoking or vaporizing. The MCD will not cultivate cannabis on site. Tenant improvements will be made on this property to comply with Mayor's Office of Disability requirements. The proposed hours of operation are 11 a.m. to 8 p.m., Monday – Saturday and 4 p.m. to 8 p.m. Sunday.

The Project Sponsor's goal is to maintain a safe, low-profile, efficient and compassionate retail outlet for legitimate and responsible patients.

The project sponsor will maintain full-time security, which includes indoor and outdoor video cameras. In addition, security guards will be employed inside and outside the subject retail space.

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The proposed Medical Cannabis Dispensary (MCD) will not permit on-site smoking or vaporizing, nor will it cultivate cannabis on site. Tenant improvements will be made on this property to comply with Mayor's Office of Disability requirements. The proposed hours of operation are 11 a.m. to 8 p.m., Monday – Saturday and 4 p.m. to 8 p.m. Sunday.

The Project Sponsor's goal is to maintain a safe, low-profile, efficient and compassionate retail outlet for legitimate and responsible patients.

The project sponsor will maintain full-time security, which includes indoor and outdoor video cameras. In addition, security guards will be employed inside and outside the subject retail space.

SITE DESCRIPTION AND PRESENT USE

The subject property is on the south side of Taraval Street, between 31st and 32nd Avenues and falls within a 50-X height and bulk district, and the Taraval Street Neighborhood Commercial District. The subject one-story commercial building was constructed circa 1924, and is sandwiched between a bird hospital and Chinese gospel church. The proposed MCD site occupies approximately 17' of frontage; the remaining 8' of frontage is devoted to the entrance to the residence at the rear of the property.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The Taraval Street Neighborhood Commercial District is located in the Outer Sunset neighborhood and includes the non-residential currently-zoned NC-2 properties fronting both sides of Taraval Street from 19th through 36th Avenues. The District provides a selection of convenience goods and services for the residents of the Outer Sunset District. There are a high concentration of restaurants, drawing customers from throughout the City and the region. There are also a significant number of professional, realty, and business offices as well as financial institutions.

The Taraval Street Neighborhood Commercial District controls are designed to promote development that is consistent with its existing land use patterns and to maintain a harmony of uses that support the District's vitality. The building standards allow small-scale buildings and uses, protecting rear yards above the ground story and at residential levels. In new development, most commercial uses are permitted at the first two stories, although certain limitations apply to uses at the second story. Special controls are necessary to preserve the equilibrium of neighborhood-serving convenience and comparison shopping businesses and to protect adjacent residential livability. These controls are designed to encourage the street's active retail frontage and local fabrication and production of goods.

The District is fairly well-served by transit, including the Muni L-line, and several busses that run in the surrounding blocks, such as the 48, 28, 29 and 66.

No other Medicinal Cannabis Dispensaries currently exist within 1000' radius of the subject property. Aside from the subject proposed MCD, the Planning Department has received a referral from the Department of Public Health and a Conditional Use Authorization application for a proposed MCD at 2120 Taraval Street (d.b.a Sunset Holistics).

ISSUES AND OTHER CONSIDERATIONS

The project was first heard as a Mandatory Discretionary Review item by the Planning Commission in 2010, which approved the proposed MCD. The approved building permit was appealed to the Board of Appeals who granted the appeal and denied the building permit in 2011. A Writ of Mandate was filed against the Board of Appeals decision. However, Court upheld the Board's decision in 2012. An application for the subject MCD was then filed and duly noticed as a request for Mandatory Discretionary Review to establish a Medical Cannabis Dispensary d.b.a. "Sunset Organics" pursuant to Planning Code Section 790.141 on August 30, 2013, and scheduled to be heard by the Planning Commission on March 12, 2015. The item was continued indefinitely because the project required Conditional Use Authorization, rather than a Mandatory Discretionary Review, and then scheduled for a May 21, 2015 hearing.

Prior to the approval of Ordinance No. 22-15 (Article 2 cleanup of the Planning Code), Medical Cannabis Dispensaries (MCD) were not defined as an "active use" under Section 145.4 of the Planning Code, and required Conditional Use Authorization, a requirement that was initially overlooked by Planning Department Staff. The project sponsor submitted a revised application to attain Conditional Use Authorization on March 30, 2015 and worked with Staff to schedule the item for a May 21, 2015 Planning Commission Hearing.

Subsequent to the approval of Ordinance No. 22-15, MCDs became defined as an "active use" pursuant to Section 145.4, therefore eliminating the conditional use authorization requirement for MCDs in the Irving, Judah, Noriega and Taraval Street NCDS. Pending interim legislation was then introduced and is expected to become effective on May 15, 2015, requiring conditional use authorization for MCDs. Accordingly, the application was revised again on May 6, 2015, responding to findings required by the aforementioned pending interim legislation. At the time of the most recent application change, the Project Sponsor expressed a desire to do business as (d.b.a) "Bay Area Compassion Health Care Center". Since the pending interim legislation affecting the subject project is expected to be effective by the time of the hearing date, the project is scheduled to remain on Planning Commission's hearing agenda for May 21, 2015.

Although the subject property was not found to fall within 1000' feet of any public or private elementary or secondary schools, or community facility or recreation center primarily serving persons younger than 18 years of age, there appears to be a couple child care establishments, and programs catering to children that operate within a 1000' radius on Ulloa Street and 29th Avenue. While not within the 1000' radius, Dianne Feinstein Elementary School and Abraham Lincoln High School are 0.6 miles (3,168 feet) and 0.7 miles (3,696 feet), respectively, from the proposed project site.

According to the Project Sponsor, community outreach to attain support for the establishment has been performed. The project team acquired 1,508 signatures on a petition to support the facility, and 343 letters of support in 2010.

HEARING NOTIFICATION

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Posted CUA Notice	20 days	May 1, 2015	May 1, 2015	20 days
Mailed CUA Notice	20 days	May 1, 2015	May 1, 2015	20 days
Classified News Ad	20 days	May 1, 2015	April 29, 2015	22 days
Posted 312 Notice	30 days	February 9, 2015	February 9, 2015	30 days
Mailed 312 Notice	30 days	February 9, 2015	February 9, 2015	30 days

PUBLIC COMMENT

The Department has received 3 letters and 2 phone calls expressing opposition to the project, two letters and one phone call in support of the project, as well as 4 emails and approximately 5 phone calls of inquiry regarding the project from neighbors and members of the press.

ENVIRONMENTAL REVIEW

The project is categorically exempt from the environmental review process under Section 15301 Class 1(a) of the State CEQA Guidelines, pursuant to Title 14 of the California Administrative Code.

REQUIRED COMMISSION ACTION

In order for the project to proceed, the Commission must grant conditional use authorization to allow the establishment of an 800 square foot Medical Cannabis Dispensary d.b.a "Bay Area Compassion Health Care Center (BACH)" within the Taraval Street Neighborhood Commercial District, pursuant to Planning Code Sections 303, and pending interim legislation regarding Medical Cannabis Dispensaries in the Irving, Judah, Noriega and Taraval Neighborhood Commercial Districts.

BASIS FOR RECOMMENDATION

Planning Department staff recommends disapproval of the Conditional Use Authorization, permitting the establishment of an MCD at the subject location as the project fails to meet all criteria in Planning Code Section 303, as described above, and criteria set forth in pending interim legislation requiring conditional use authorization for MCDs within the Taraval Neighborhood Commercial District, among others. For example:

- It is not clear that the proposed MCD and products provided by the establishment will bring measurable community benefits and enhancements to the Taraval Street NCD.
- It is not clear that the designated community liaison is effectively dealing with current and future neighborhood concerns.
- It is not clear that the proposed project is necessary or desirable for, and compatible with the neighborhood or the community.

RECOMMENDATION

RECOMMENDATION: Disapprove the MCD

Attachments:

Parcel Map
Sanborn Map
Zoning Map
1000' Buffer Map
Area Map of Potential MCD Locations
Aerial Photograph
Site Photograph
MCD CUA Notice
MCD 312 Notice
Reduced Architectural Plans
Applicant's MCD Application
Pending Interim Legislation for MCDs in Irving, Judah, Noriega and Taraval Neighborhood Commercial Districts.
Project Opposition:
 Letter from the Counsel for Chinese Gospel Church
 Letter from Neighbors Lynn and Janet Lockwood
 Letter from nearby property owner
Project Support:
 Letter from resident in West of Twin Peaks neighborhood
Superior Court of California, Statement of Decision – Bay Area Compassion Health Care vs. City & County of San Francisco

Attachment Checklist

- | | |
|---|---|
| <input checked="" type="checkbox"/> Executive Summary | <input checked="" type="checkbox"/> Project sponsor submittal |
| <input checked="" type="checkbox"/> Draft Motion | Drawings: <u>Proposed Project</u> |
| <input type="checkbox"/> Environmental Determination | <input checked="" type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Zoning District Map | <input type="checkbox"/> Health Dept. review of RF levels |
| <input type="checkbox"/> Height & Bulk Map | <input type="checkbox"/> RF Report |
| <input checked="" type="checkbox"/> Parcel Map | <input type="checkbox"/> Community Meeting Notice |
| <input checked="" type="checkbox"/> Sanborn Map | <input type="checkbox"/> Inclusionary Affordable Housing Program:
Affidavit for Compliance |
| <input checked="" type="checkbox"/> Aerial Photo | |
| <input type="checkbox"/> Context Photos | |
| <input checked="" type="checkbox"/> Site Photos | |

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

TC

Planner's Initials

TC G:\Documents\CONDITIONAL USE\2139 Taraval_2013.1223CUA\Reports\2139 Taraval--Exec Summary.docx



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|--|--|
| <input type="checkbox"/> Affordable Housing (Sec. 415) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412) | <input type="checkbox"/> Other (Rincon Hill Impact Fees) |

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Planning Commission Draft Motion

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Recommendation: **Disapproval**

ADOPTING FINDINGS RELATING TO THE DISAPPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 303 AND PENDING INTERIM LEGISLATION REQUIRING CONDITIONAL USE AUTHORIZATION FOR MEDICAL CANNABIS DISPENSARIES IN THE IRVING, JUDAH, NORIEGA AND TARAVAL NEIGHBORHOOD COMMERCIAL DISTRICTS, TO ALLOW A MEDICAL CANNABIS DISPENSARY (D.B.A BAY AREA COMPASSION HEALTH CARE) WITHIN THE TARAVAL STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND A 50-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On March 30th, 2015, Gordon Atkinson on behalf of Greg Schoepp (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Sections 303 of the Planning Code and pending interim legislation requiring conditional use authorization for medical cannabis dispensaries in the Irving, Judah, Noriega and Taraval Neighborhood Commercial Districts to establish a new medical cannabis dispensary at 2139 Taraval Street (d.b.a. "Bay Area Compassion Health Care") within the Taraval Street Neighborhood Commercial District (NCD).

On May 21, 2015, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Case Number 2013.1223CUA.

This is not considered a Project under the California Environmental Quality Act, and does not require environmental review.

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. 2013.1223CUA, 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.** The subject property is on the south side of Taraval Street, between 31st and 32nd Avenues and falls within a 50-X height and bulk district, and the Taraval Street Neighborhood Commercial District. The subject one-story commercial building was constructed circa 1924, and is sandwiched between a bird hospital and Chinese gospel church. The proposed MCD site occupies approximately 17' of frontage; the remaining 8' of frontage is devoted to the entrance to the residence at the rear of the property.
3. **Surrounding Neighborhood.** The Taraval Street Neighborhood Commercial District is located in the Outer Sunset neighborhood and includes the non-residential currently-zoned NC-2 properties fronting both sides of Taraval Street from 19th through 36th Avenues. The District provides a selection of convenience goods and services for the residents of the Outer Sunset District. There are a high concentration of restaurants, drawing customers from throughout the City and the region. There are also a significant number of professional, realty, and business offices as well as financial institutions.

The Taraval Street Neighborhood Commercial District controls are designed to promote development that is consistent with its existing land use patterns and to maintain a harmony of uses that support the District's vitality. The building standards allow small-scale buildings and uses, protecting rear yards above the ground story and at residential levels. In new development, most commercial uses are permitted at the first two stories, although certain limitations apply to uses at the second story. Special controls are necessary to preserve the equilibrium of neighborhood-serving convenience and comparison shopping businesses and to protect adjacent residential livability. These controls are designed to encourage the street's active retail frontage and local fabrication and production of goods.

The District is fairly well-served by transit, including the Muni L-line, and several busses that run in the surrounding blocks, such as the 48, 28, 29 and 66.

No other Medicinal Cannabis Dispensaries currently exist within 1000' radius of the subject property. Aside from the subject proposed MCD, the Planning Department has received a referral from the Department of Public Health and a Conditional Use Authorization application for a proposed MCD at 2120 Taraval Street (d.b.a Sunset Holistics).

4. **Project Description.** The proposal is to establish a new Medical Cannabis Dispensary at 2139 Taraval Street d.b.a. "Bay Area Compassion Health Care", to replace a vacant ground floor commercial space previously occupied by a chiropractor's office. The proposed retail space is approximately 800 square feet in size with approximately 17-feet of frontage. No parking is required and no physical expansion is proposed for the structure.

The proposed Medical Cannabis Dispensary (MCD) will not permit on-site smoking or vaporizing, nor will it cultivate cannabis on site. Tenant improvements will be made on this property to comply with Mayor's Office of Disability requirements. The proposed hours of operation are 11 a.m. to 8 p.m., Monday – Saturday and 4 p.m. to 8 p.m. Sunday.

The Project Sponsor's goal is to maintain a safe, low-profile, efficient and compassionate retail outlet for legitimate and responsible patients.

The project sponsor will maintain full-time security, which includes indoor and outdoor video cameras. In addition, security guards will be employed inside and outside the subject retail space.

5. **Public Comment.** The Department has received 3 letters and 2 phone calls expressing opposition to the project, two letters and one phone call in support of the project, as well as 4 emails and approximately 5 phone calls of inquiry regarding the project from neighbors and members of the press.
6. **Planning Code Compliance:** The Commission finds that the Project, on balance, is not compliant with relevant provisions of the Planning Code in the following manner:

A. **Pending Interim Legislation Medical Cannabis Dispensary Criteria:** Below are the three criteria to be considered by the Planning Commission in evaluating Medical Cannabis Dispensaries, per pending interim legislation, expected to be effected May 15, 2015:

- a. That the MCD will bring measurable community benefits and enhancements to the Taraval Street NCD.

Project Does Not Meets Criteria

The project sponsor believes that measurable benefits and enhancements to the community will be provided. However, it is not clear that the proposed MCD and products provided will bring measurable community benefits and enhancements to the Taraval Street NCD.

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

Project Meets Criteria

The subject site is well serviced by transit and per Planning Code 741.22, parking for commercial uses is not required for floor areas less than 5,000 square feet. The subject project would occupy 800 square feet. Traffic patterns and type of traffic are not anticipated to change significantly from the previous use. The traffic volume may increase as the number of patrons to the MCD is expected to be greater than that of the previous chiropractor's office. However, the duration of the visit is expected to be short, thus offsetting the impacts to parking. The project Sponsor intends to request new, short-term parking spaces adjacent to the proposed facility from the San Francisco Municipal Transportation Agency. No loading space will be provided as the relative volume of medicine to be dispensed is relatively small and can be transported by automobile and hand carried. The MCD will not provide off-street parking at the subject site; though according to the project sponsor, a parking and transportation management plan has been prepared to sufficiently address the anticipated impacts of patients visiting the MCD. To date, this plan has not been submitted to the Planning Department.

- 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.

Project Partially Meets Criteria

According to the Public Sponsor, the MCD has demonstrated a commitment to maintaining public safety by actively engaging with the community prior to applying for the subject Conditional Use Authorization, and plans to include adequate security measures in its business operations. The Project Sponsor has also designated a community liaison to effectively handle current and future neighborhood concerns. The appointed community liaisons have been made available to answer questions and concerns through various outreach programs. According to the Project Sponsor, a weekly open house meeting on Wednesdays from 5-7pm has been held at the proposed project site. In addition to the weekly meetings, the Project Sponsor has presented to People of Parkside Sunset and the monthly meeting for business association members held at the Taraval Police Station. However, the Planning Commission has received a letter expressing opposition from the proposed MCD's adjacent neighbor, expressing concerns communicated 4 years ago when the project sponsor first applied to establish an MCD at the subject location. The letter, included in this case report, indicates that over 3,000 signatures from community members opposing the project were

collected. The Chinese Gospel Church was also the appellant for the appeal filed against the project's 2011 approval. The appeal was granted and upheld. Planning Commission Staff has also been contacted by members of the press. It is not clear that the designated community liaison is effectively dealing with current and future neighborhood concerns.

B. Planning Code Section 303 Criteria: Below are standard criteria to evaluate Conditional Use Authorizations per Planning Code Section 303.

- a. 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.

Project Does Not Meets Criteria

According to the Project Sponsor, the project team has conducted extensive research to find a suitable and permissible location on the west side of the City to provide legal, safe and local access to patients of the Sunset District, far from the Downtown cluster. The Project Sponsor believes that their business model positions the subject MCD to be compatible with and a contributory partner to the community. However, it is not clear that the proposed project is necessary or desirable for, and compatible with the neighborhood or the community.

- b. 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;

Project meets criteria. *The proposed project will not alter the proposed size and shape of the site, or the 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 and of proposed alternatives to off-street parking, including provisions of car-share parking spaces, as defined in Section 166 of the Code.

Project meets criteria. *According to the Project Sponsor, the project has been upgraded, with respect to accessibility, according to the Mayor's Office of Disability requirements. The proposed project should not alter the accessibility or traffic patterns. The volume may increase to a small degree as the frequency of patrons' visits would be greater than that for a chiropractor's office. However, the duration of the visit is expected to be shorter, presumably offsetting the impact on parking. No off-street parking will be provided, however, according to the Project Sponsor, ample*

street parking is available. Additionally the Project Sponsor intends to request new, short-term parking spaces adjacent to the proposed facility from MTA.

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

***Project meets criteria.** Smoking cannabis on site will not be permitted and the medicines will be delivered, stored and dispensed in sealed containers thus preventing odors from being emitted on site.*

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

***Project does not meet criteria.** No landscaping or outdoor lighting will be provided as part of this project*

- e. Such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan; and

***The project does not meet all criteria** set forth in Section 303 of the Planning Code or pending interim legislation expected to be effective May 15, 2015, affecting MCDs in the subject zoning district.*

- f. Such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Use District; and

***Project does not meet criteria.** The Taraval Street Neighborhood Commercial District controls are designed to promote development that is consistent with its existing land use patterns and to maintain a harmony of uses that support the District's vitality. The building standards allow small-scale buildings and uses, protecting rear yards above the ground story and at residential levels. In new development, most commercial uses are permitted at the first two stories, although certain limitations apply to uses at the second story. Special controls are necessary to preserve the equilibrium of neighborhood-serving convenience and comparison shopping businesses and to protect adjacent residential livability. These controls are designed to encourage the street's active retail frontage, and local fabrication and production of goods.*

It is not clear that the proposed project will protect adjacent residential livability.

- g. The use or feature satisfies any criteria specific to the use or feature in Subsections (g), *et seq.* of this Section 303.

Not applicable, as the proposed use is not a hotel or motel.

- 7. **General Plan Compliance:** The Commission finds that on balance, it is not clear that the Project is compliant with the priority General Plan Policies:

PRIORITY GENERAL PLAN FINDINGS:

Planning Code Section 101.1 establishes eight priority policies and requires review of permits for consistency, on balance, with these policies. It is not clear that the Project, on balance, complies with these policies as follows:

1. Existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.
The proposed facility will replace an existing vacant professional office and provide approximately fifteen new jobs for residents in the community.
2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.
It is not clear that neighborhood character will be conserved and protected to preserve the cultural and economic diversity of the Taraval Street Neighborhood Commercial District will be protected as a result of the proposed MCD.
3. That the City's supply of affordable housing be preserved and enhanced.
The project will not affect the City's supply of affordable housing.
4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.
The site is close to multiple public transit lines and the immediate neighborhood provides sufficient short-term parking so the use will not impede transit operations and is not expected to impact parking. However, the Project Sponsor intends to request new, short-term parking spaces adjacent to the proposed facility from MTA.
5. 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 building is vacant and will not displace any industrial or service industry establishments.
6. The City achieves the greatest possible preparedness to protect against injury and loss of life in an earthquake.
According to the Project Sponsor, no structural changes are proposed as a part of this project.
7. Landmarks and historic buildings be preserved.
The proposed project does not involve the alteration of any character-defining features, thus not affecting landmarks or historic buildings
8. Parks and open space and their access to sunlight and vistas be protected from development.
The project will not restrict access to any open space or parks and will not impact any open space or park's access to sunlight or vistas.

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 **DISAPPROVES Conditional Use Application No. 2013.1223CUA** in general conformance with plans on file, dated February 10, 2015, 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 the disapproval of this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. XXXXX. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

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

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

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on May 21, 2015.

Jonas Ionin
Commission Secretary

AYES:

NAYS:

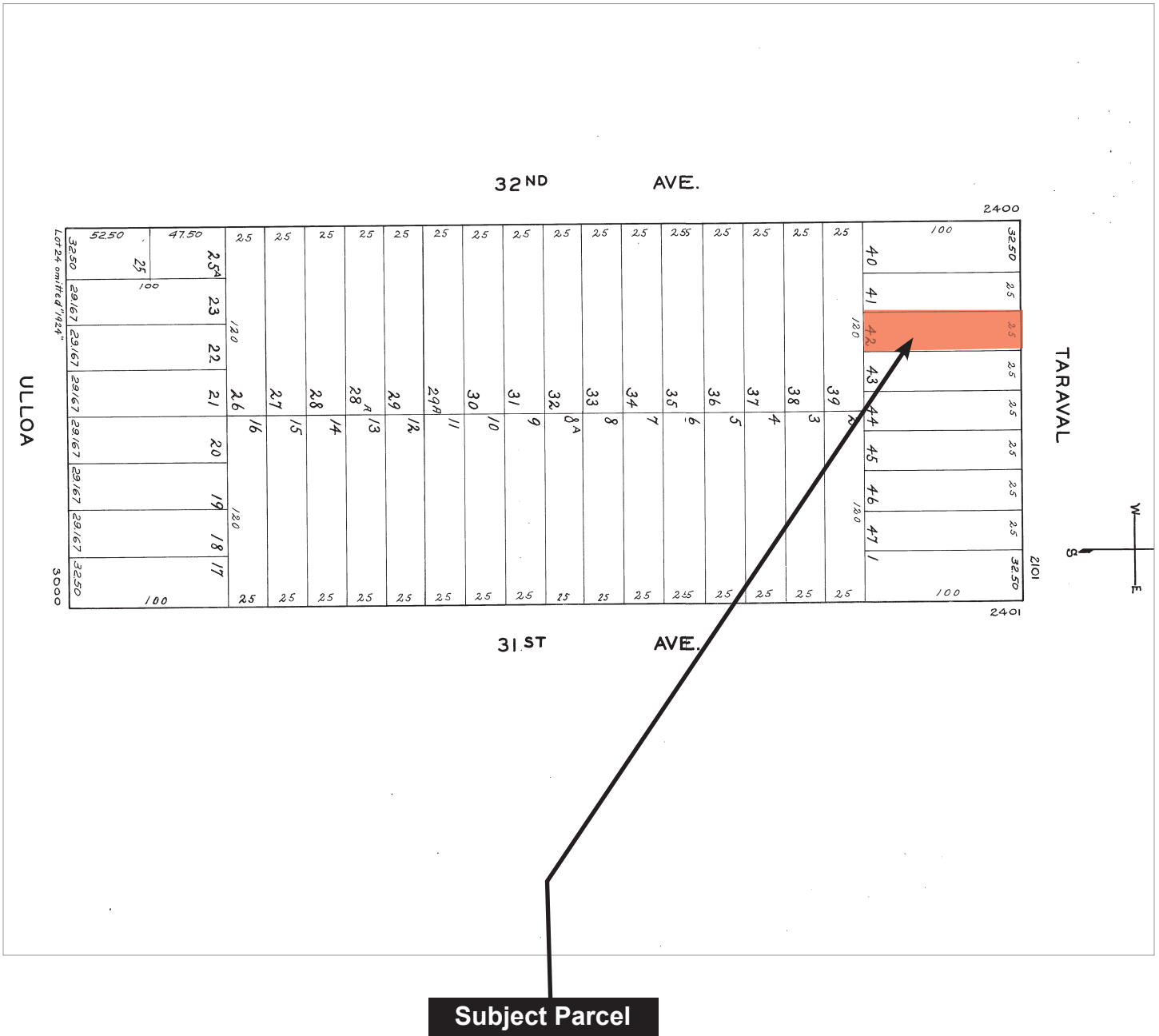
ABSENT:

ADOPTED: May 21, 2015

Exhibits

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Parcel Map



Sanborn Map

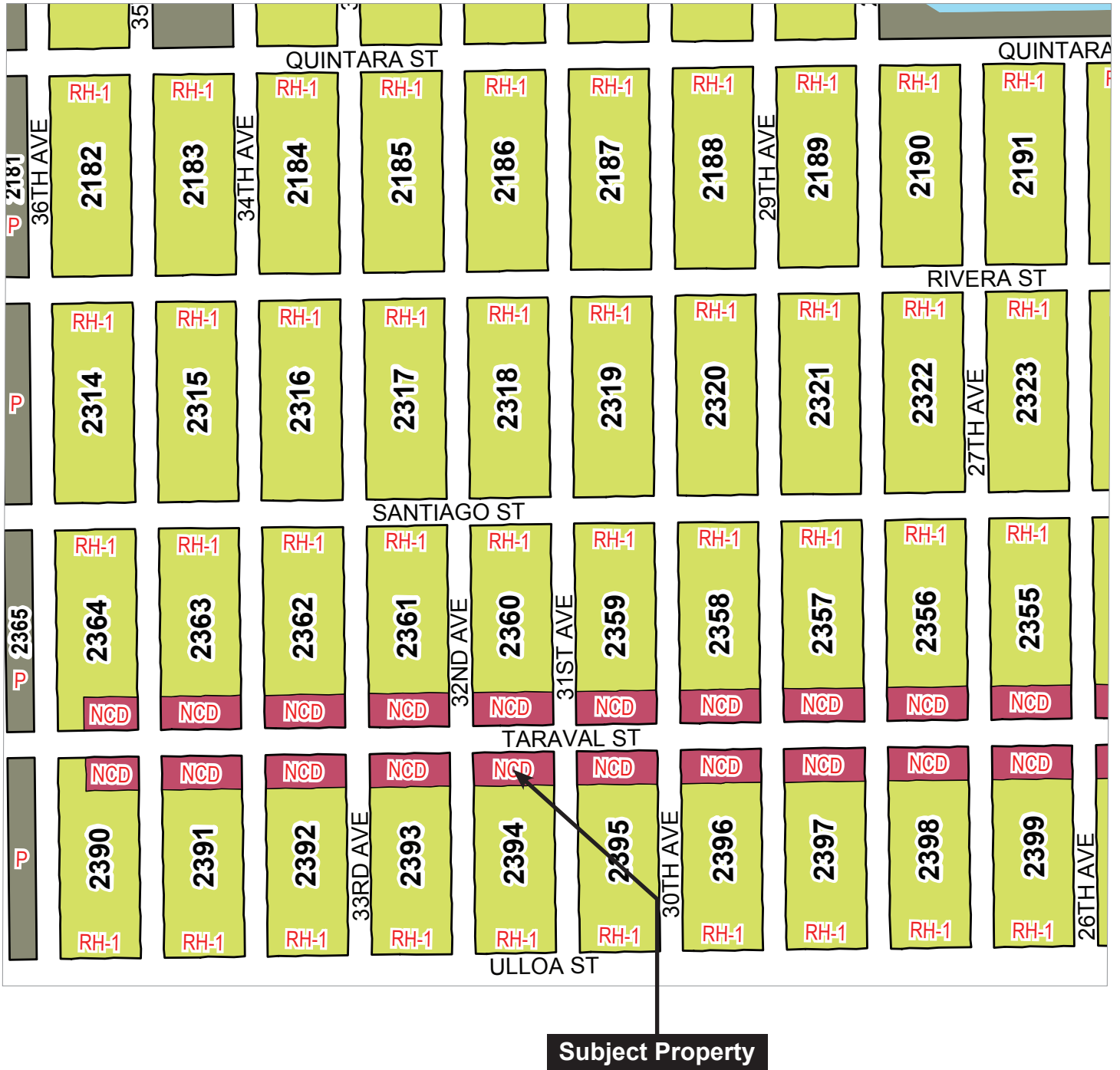


*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.

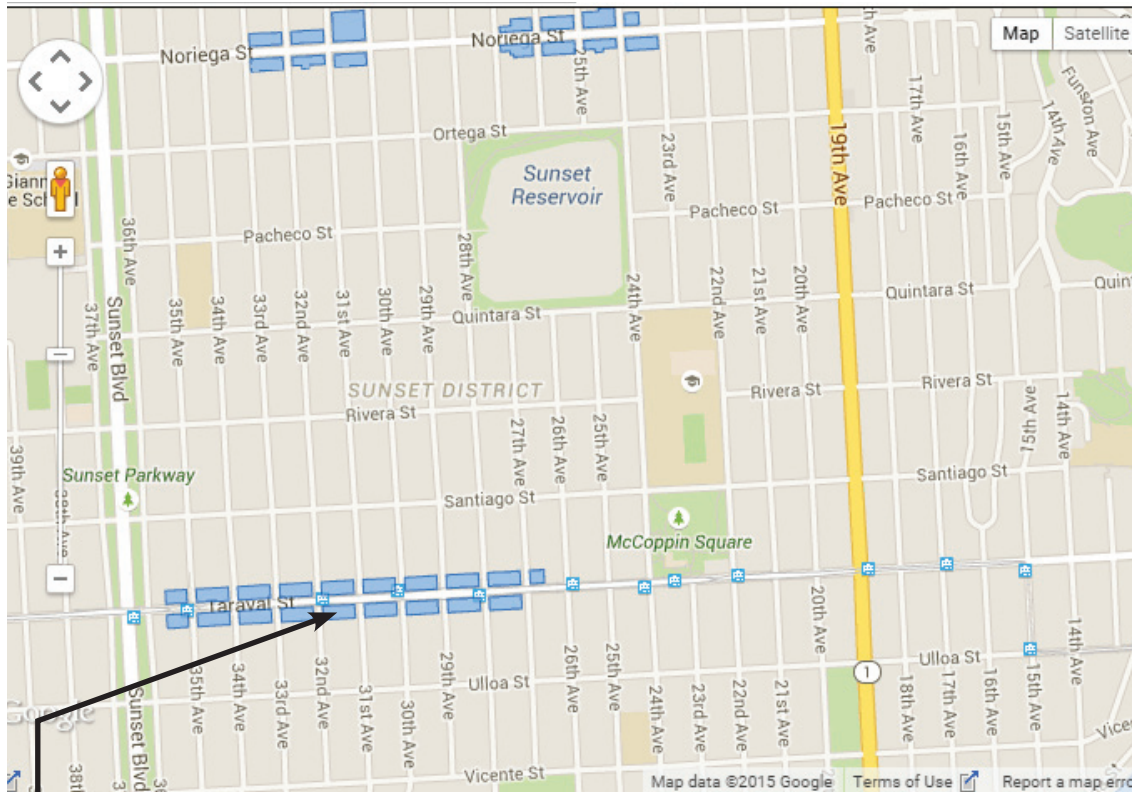
SAN FRANCISCO
PLANNING DEPARTMENT

Conditional Use Authorization
Case Number 2013.1223CUA
Medicinal Cannabis Dispensary
2139 Taraval Street

Zoning Map



Potential MCD Location Map



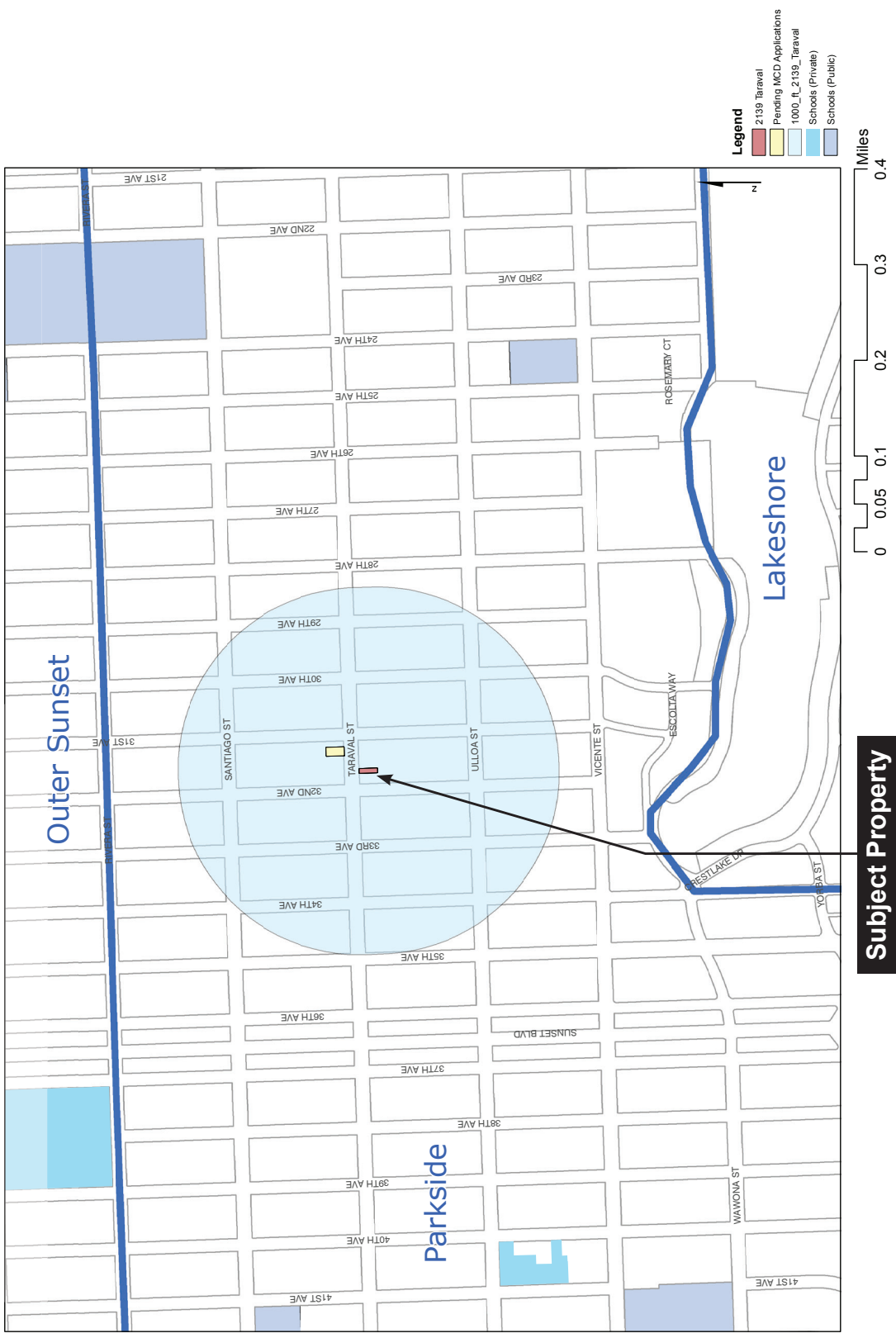
Subject Property

Notes: This map as an initial guide for investigating possible Medical Cannabis Dispensary (MCD) locations. It is not intended to supersede or be used in-lieu of applicable requirements found in the Planning Code.

This map indicates area which are (1) zoned to allow new MCDs and (2) not not located within 1,000' of a school. This map does not indicate uses which further restrict MCD locations including (i.e. community facilities, recreation buildings, and substance abuse treatment centers)

This map is based on the best information available at the time of publication. The City and County of San Francisco (CCSF) does not guarantee the accuracy, completeness, or usefulness of any information. CCSF provides this information on an “as is” basis without warranty of any kind, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone’s use of the information.

1000' Buffer Map



Subject Property

SAN FRANCISCO
PLANNING DEPARTMENT

Conditional Use Authorization
Case Number 2013.1223CUA
2139 Taraval Street
Block 2394 Lot 042

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Aerial Photo - South



Subject Property

Site Photo





SAN FRANCISCO PLANNING DEPARTMENT

1650 Mission Street, Suite 400 • San Francisco, CA 94103 • Fax (415) 558-6409

NOTICE OF PUBLIC HEARING

Hearing Date: **Thursday, May 21, 2015**
Time: **Not before 12:00 PM (noon)**
Location: **City Hall, 1 Dr. Carlton B. Goodlett Place, Room 400**
Case Type: **Conditional Use Authorization**
Hearing Body: **Planning Commission**

PROPERTY INFORMATION		APPLICATION INFORMATION	
Project Address:	2139 Taraval Street	Case No.:	2013.1223C
Cross Street(s):	Btw. 31st and 32nd Ave.	Building Permit:	2013.0723.2598
Block /Lot No.:	2394/042	Applicant:	Gordon Atkinson
Zoning District(s):	Taraval Street NCD, 50-X	Telephone:	(415) 731.9927
Area Plan:	N/A	E-Mail:	gordonatkinson@sbcglobal.net

PROJECT DESCRIPTION

The request is for Conditional Use Authorization per Planning Code Section 741.13 and 303 to establish a Medical Cannabis Dispensary d.b.a. "Sunset Organics", considered a non-active use as defined by Planning Code Section 145.4. The project includes tenant improvements proposed under Building Permit 2013.0723.2598. No exterior changes, other than signage, are proposed.

A Planning Commission approval at the public hearing would constitute the Approval Action for the project for the purposes of CEQA, pursuant to San Francisco Administrative Code Section 31.04(h).

ADDITIONAL INFORMATION

ARCHITECTURAL PLANS: If you are interested in viewing the plans for the proposed project please contact the planner listed below. The plans of the proposed project will also be available one week prior to the hearing through the Planning Commission agenda at: <http://www.sf-planning.org>

Members of the public are not required to provide personal identifying information when they communicate with the Commission or the Department. All written or oral communications, including submitted personal contact information, may be made available to the public for inspection and copying upon request and may appear on the Department's website or in other public documents.

FOR MORE INFORMATION, PLEASE CONTACT PLANNING DEPARTMENT STAFF:

Planner: **Tina Chang** Telephone: **(415) 575-9197** E-Mail: tina.chang@sfgov.org

中文詢問請電: (415) 575-9010

Para información en Español llamar al: (415) 575-9010



SAN FRANCISCO PLANNING DEPARTMENT

1650 Mission Street Suite 400 San Francisco, CA 94103

NOTICE OF BUILDING PERMIT APPLICATION (SECTION 312)

On **August 30, 2013**, the Applicant named below filed Building Permit Application No. **201307232598** with the City and County of San Francisco.

PROPERTY INFORMATION		APPLICANT INFORMATION	
Project Address:	2139 Taraval St.	Applicant:	Gordon Atkinson
Cross Street(s):	Btw. 31st and 32nd Ave.	Address:	735 A. Taraval St.
Block/Lot No.:	2394 / 042	City, State:	San Francisco, CA 94116
Zoning District(s):	Taraval Street NCD / 50-X	Telephone:	415.731.9927

You are receiving this notice as a property owner or resident within 150 feet of the proposed project. You are not required to take any action. For more information about the proposed project, or to express concerns about the project, please contact the Applicant listed above or the Planner named below as soon as possible. If you believe that there are exceptional or extraordinary circumstances associated with the project, you may request the Planning Commission to use its discretionary powers to review this application at a public hearing. Applications requesting a Discretionary Review hearing must be filed during the 30-day review period, prior to the close of business on the Expiration Date shown below, or the next business day if that date is on a week-end or a legal holiday. If no Requests for Discretionary Review are filed, this project will be approved by the Planning Department after the Expiration Date.

Members of the public are not required to provide personal identifying information when they communicate with the Commission or the Department. All written or oral communications, including submitted personal contact information, may be made available to the public for inspection and copying upon request and may appear on the Department's website or in other public documents.

PROJECT SCOPE		
<input type="checkbox"/> Demolition	<input type="checkbox"/> New Construction	<input checked="" type="checkbox"/> Alteration
<input checked="" type="checkbox"/> Change of Use	<input type="checkbox"/> Façade Alteration(s)	<input type="checkbox"/> Front Addition
<input type="checkbox"/> Rear Addition	<input type="checkbox"/> Side Addition	<input type="checkbox"/> Vertical Addition
PROJECT FEATURES	EXISTING	PROPOSED
Building Use	Mixed-Use, Commercial / Residential Above	Mixed-Use, MCD / Residential Above
Front Setback	0'-0"	No Change
Side Setbacks	0'-0"	No Change
Building Depth	79'-6"	No Change
Rear Yard	20'-6"	No Change
Building Height	17'-2"	No Change
Number of Stories	1	No Change
Number of Dwelling Units	1	No Change
Number of Parking Spaces	None	No Change
PROJECT DESCRIPTION		
The project includes tenant improvements for the change of use of an existing vacant, commercial space previously used as chiropractor's office to a Medical Cannabis Dispensary. A request for Discretionary Review has been made for the establishment of the Dispensary and a hearing has been scheduled for March 12, 2015. Notification for the Discretionary Review hearing will be communicated under a separate notice.		
The issuance of the building permit by the Department of Building Inspection or the Planning Commission project approval at a discretionary review hearing would constitute as the Approval Action for the project for the purposes of CEQA, pursuant to Section 31.04(h) of the San Francisco Administrative Code.		

For more information, please contact Planning Department staff:

Planner: Tina Chang
Telephone: (415) 575-9197
E-mail: tina.chang@sfgov.org

Notice Date:
Expiration Date:

中文詢問請電: (415) 575-9010

Para información en Español llamar al: (415) 575-9010

Plans

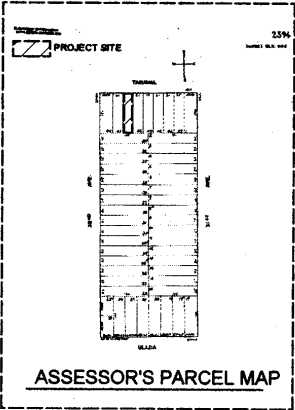
PROJECT INFORMATION	
ADDRESS	2139 TARAVAL ST.
OCCUPANCY GROUP	B/R3
BUILDING TYPE	V-B
ASSESSOR'S PARCEL NUMBER	2394-042
ZONING USE DISTRICT	NCD
EXISTING SQUARE FOOTAGE	800
PROPOSED SQUARE FOOTAGE	800

GENERAL NOTES

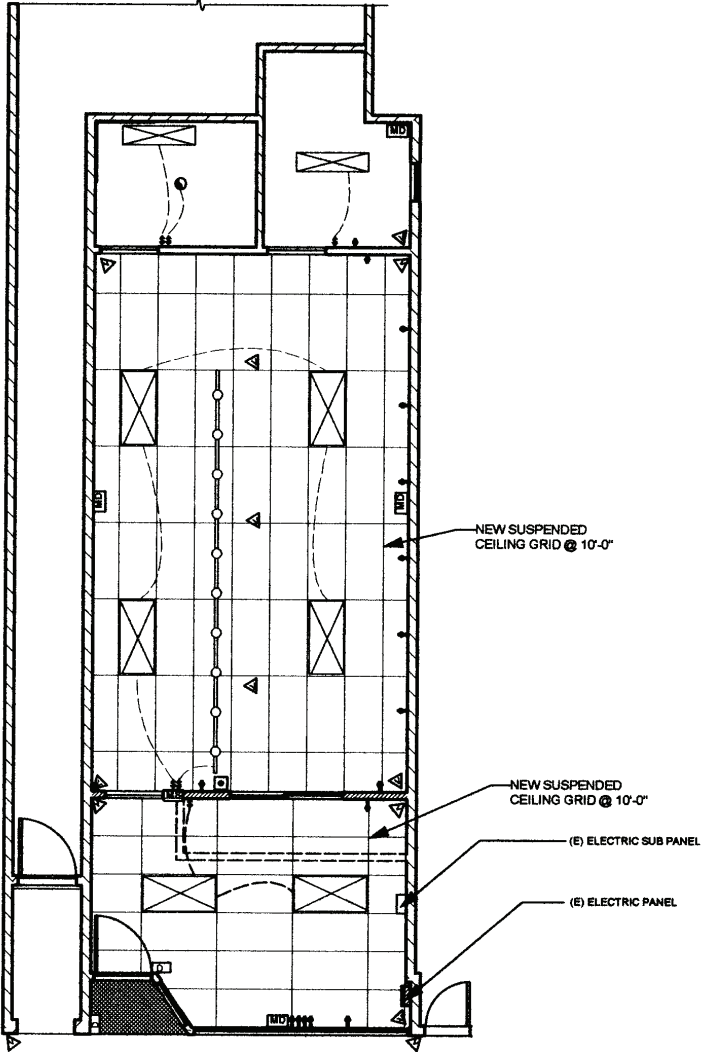
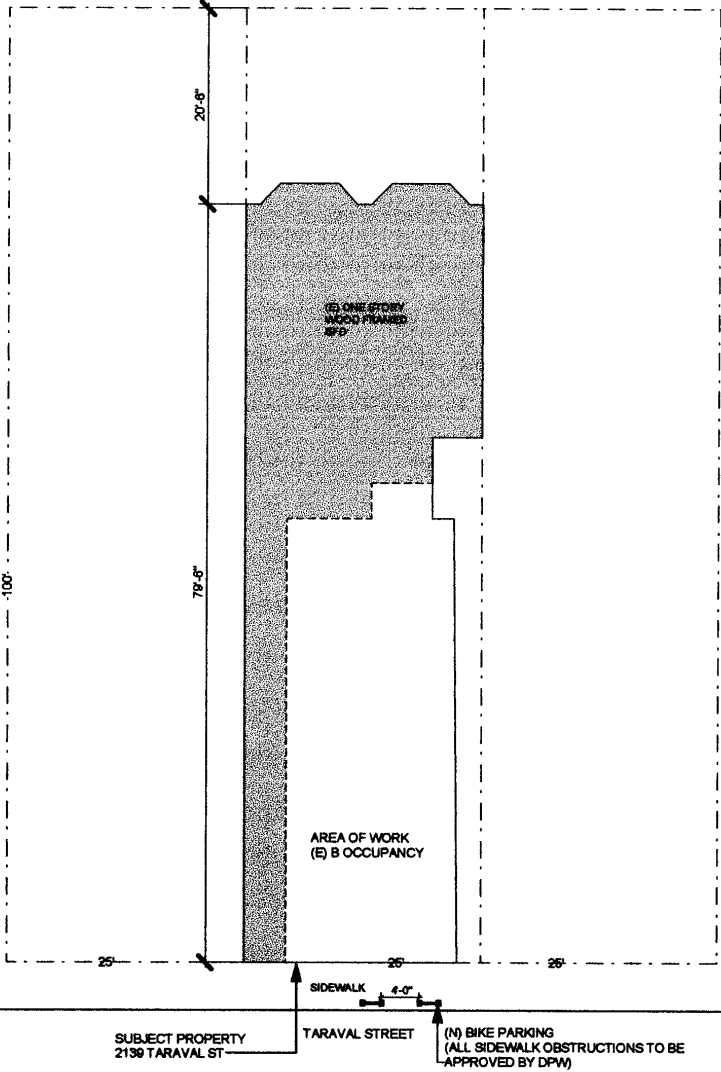
- All work shall conform to requirements of the 2010 CEC, 2010 ADA Standards, 2010 San Francisco Building Code, San Francisco Electrical Code, San Francisco Planning Code, San Francisco Mechanical Code, California Energy Code and all other applicable local and state codes, ordinances and regulations.
- All bidders shall visit the site of the proposed work and shall acquaint themselves with the existing conditions so they affect the work to be performed.
- The contractor shall verify all dimensions and all conditions at the site. Any omissions or conflicts in the drawings, specifications or field conditions shall be brought to the attention of the architect.
- Dimensions shall always take precedence over scale.
- All modifications or required drawings shall be issued by the architect.
- The contractor shall obtain inspection approval on all items in writing from the inspector. The contractor shall obtain and pay for all permits and licenses required by legally constituted authorities. The contractor shall obtain a certificate of occupancy and the release of liens on all material and labor at the completion of the project.
- Details marked "typical" shall apply in all similar cases unless specifically noted otherwise. Where no detail is shown, construction shall be guided by details for similar work.
- The contractor shall furnish a written guarantee for all work for a period of one year from date of completion as evidenced by final payment. Upon receipt of formal notice from architect, contractor shall make all repairs due to faulty materials, installation or construction or inadequate maintenance or supervision at no additional cost.
- The contractor shall adequately shore all existing construction for which the support is removed until all new supports are in place. Where walls are removed which provide lateral support for the building, a sequence of construction shall be followed which allows lateral forces to be supported by new walls prior to removal of existing walls or adequate temporary lateral bracing shall be provided until all new construction is in place.
- Requests for change orders and substitutions shall be approved in advance by the architect.

SHEET INDEX	
A1	A.P.M., SITE PLAN, GENERAL NOTES
A2	EXISTING AND PROPOSED FLOOR PLAN
A3	PROPOSED ELECTRICAL PLAN
A4	ADA DETAILS
A5	PHOTOGRAPHS, BUILDING FACADE
NOTE: ESTABLISHMENT SHALL HAVE NO MORE THAN FOUR EMPLOYEES ON PREMISES AT ANY TIME. (SFBC SEC. 2902.1)	

OCCUPANCY LOAD:	
LOBBY	189 SQ. FT./15=13
MERCANTILE AREAS	477 SQ. FT./30=16
STORAGE & STOCK AREAS	72 SQ. FT./300=1
TOTAL OCCUPANT LOAD =	29



SCOPE OF WORK
NEW MCD IN FORMER CHIROPRACTOR'S OFFICE
MINOR CHANGE OF INTERIOR



2 PROPOSED ELECTRICAL PLAN
Scale: 1/8" = 1'-0"

ELECTRICAL NOTES

- ALL SWITCHES TO BE INSTALLED @ 48" MAXIMUM FROM TOP OF BOX TO F.F.
- ALL ELECTRICAL OUTLETS TO BE INSTALL @ 15" MINIMUM FROM BOTTOM OF BOX TO F.F.
- ALL NEW SWITCHES AND HVAC CONTROLS WILL BE OPERABLE WITHOUT THE NEED TO PINCH OR GRASP

ELECTRICAL LEGEND	
	CLOSED-CIRCUIT VIDEO CAMERA
	MOTION DETECTOR
	MAGNETIC STRIKE
	MAGNETIC STRIKE CONTROLLER
	DOOR CONTROLLER
	120 VOLT 20A DUPLEX OUTLET
	SINGLE POLE SWITCH
	2x4 FLUORESCENT FIXTURE
	4x4 FLUORESCENT FIXTURE
	LV TRACK
	EXHAUST FAN

735a taraval street
SAN FRANCISCO, CA 94116
tel 415-731-9927 fax 415-731-9942 e-mail gordon@atkinson.com

DESIGNED BY
a. gordon atkinson, aia

DATE
6-30-13

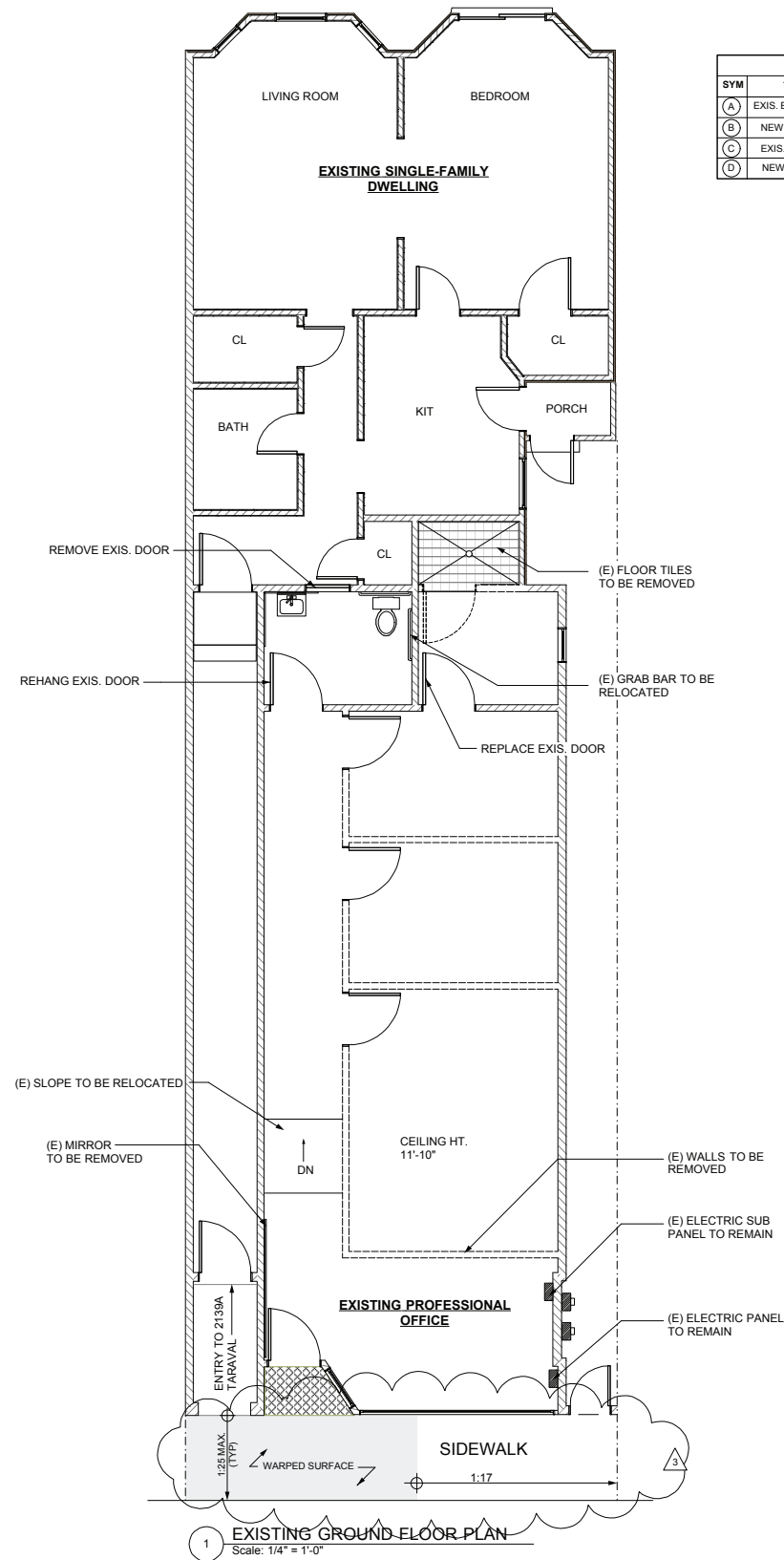
REVISION
AS NOTED

SCALE
1/8" = 1'-0"

PROJECT
A1

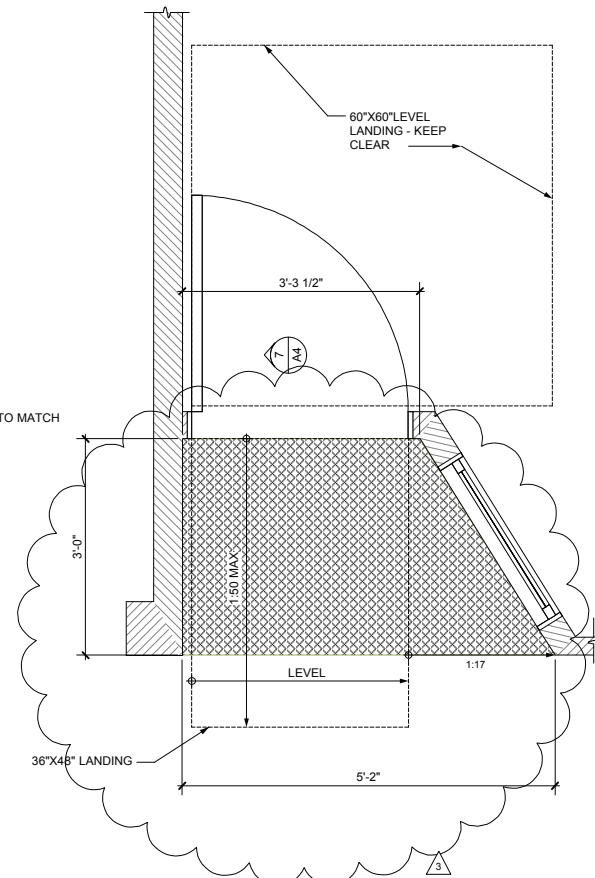
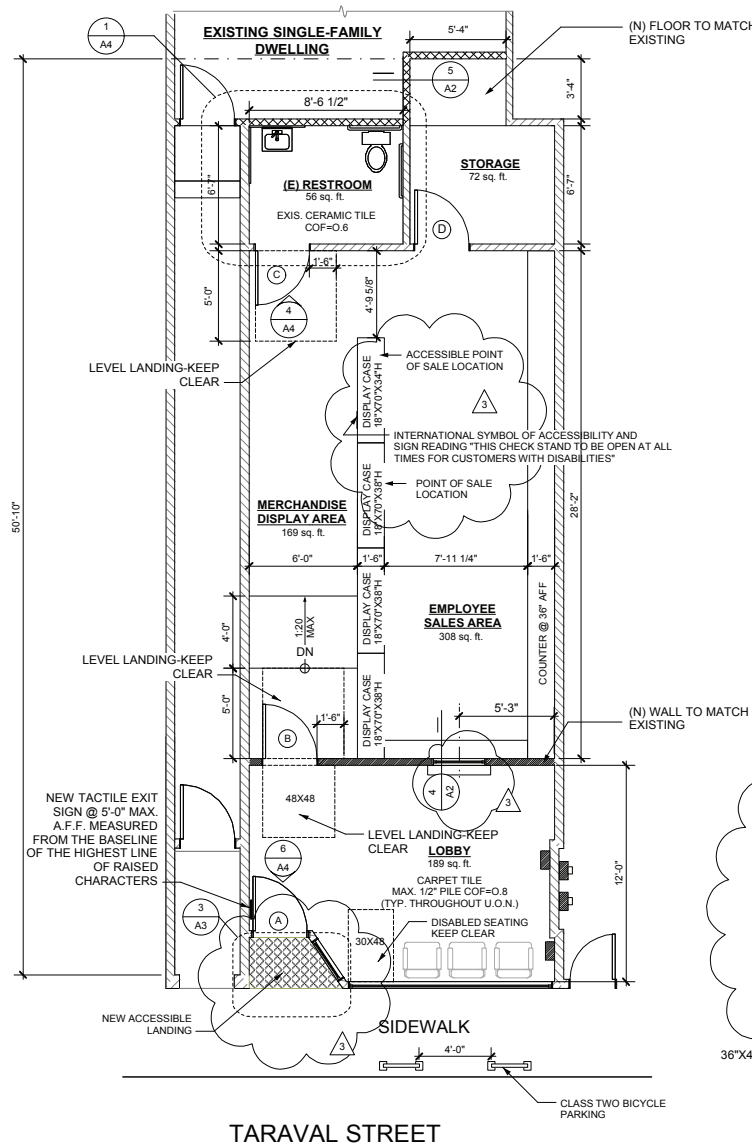
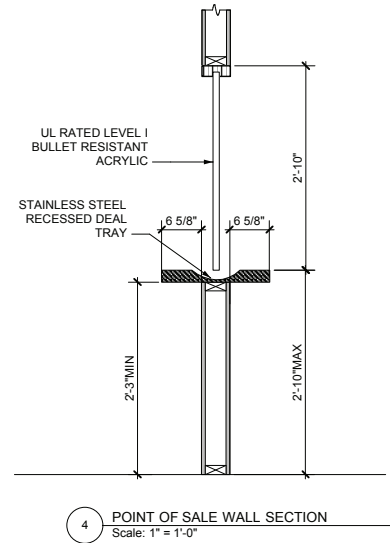
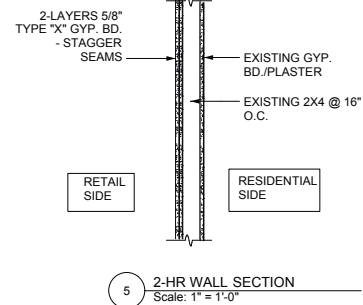
MEG
AGA

SUNSET ORGANICS HEALTH CARE CENTER
2139 TARAVAL STREET, SAN FRANCISCO, CA 94116
APM, SITE PLAN, GENERAL NOTES
PROPOSED ELECTRICAL PLAN



DOOR SCHEDULE			
SYM	TYPE	SIZE	HARDWARE
(A)	EXIS. ENTRY DOOR	3-0 X 7-0 X 1-3/4	EXIS. DEADBOLT, CLOSER, PULL & AUTOMATIC OPENER
(B)	NEW SC HB	3-0 X 6-8 X 1-3/4	KEYED LOCKSET W/ LEVER HANDLE & MAGNETIC STRIKE & CLOSER
(C)	EXIS. SC HB	3-0 X 6-8 X 1-3/4	PASSAGE LATCH W/ LEVER HANDLE, OCCUPANCY BOLT, CLOSER
(D)	NEW SC STEEL	3-0 X 6-8 X 1-3/4	KEYED LOCKSET W/ LEVER HANDLE & MAGNETIC STRIKE & CLOSER

WALL LEGEND	
	(E) WALL
	(N) WALL
	(E) WALL TO BE REMOVED
	(N) 2-HR. OCCUPANCY SEPARATION



735a taraval street
san francisco, ca 94116
tel 415-731-9927 fax 415-731-9942 e-mail gordonatkinson@stcigbbal.net

a. gordon atkinson, aia

drawn by MEG AGA

revised by 8-20-10

date 12-02-09

scale AS NOTED

STREET

A2

SUNSET ORGANICS HEALTH CARE CENTER
2139 TARAVAL STREET, SAN FRANCISCO, CA 94116

EXISTING AND PROPOSED GROUND FLOOR PLANS

PENDING INTERIM LEGISLATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (1) the MCD will bring measurable community benefits and enhancements to the NCD;
2 (2) the MCD has prepared a parking and transportation management plan sufficient to
3 address the anticipated impact of patients visiting the MCD; and

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

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

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

19 //

20 //

21 //

22 //

23 //

24 //

25 //

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

4
5 APPROVED AS TO FORM:

6 DENNIS J. HERRERA, City Attorney

7 By:

8 VICTORIA WONG
9 Deputy City Attorney

10 n:\legana\as2015\1500734\01010425.doc

LETTERS OF OPPOSITION

CAPITAL OFFICE

P.O. Box 276600 • Sacramento, CA 95827
916.857.6900 • FAX 916.857.6902

SOUTHERN CALIFORNIA OFFICE

P.O. Box 14630 • Santa Ana, CA 92711
714.796.7150 • FAX 714.796.7182

SF BAY AREA OFFICE

212-9th Street • Oakland, CA 94607
510.834.7232 • FAX 510.834.8784



PACIFIC JUSTICE
INSTITUTE

EDWIN MEENE, III, ESQ.
*Former Attorney General
Advisory Board Chairman*

BRAD W. DATES, ESQ.
President

KEVIN T. SNIDER, ESQ.
Chief Counsel

April 29, 2015

Edwin Lee, Mayor
John Avalos, Supervisor
London Breed, Supervisor
David Campos, Supervisor
Julie Christensen, Supervisor
Malia Cohen, Supervisor
Mark Farrell, Supervisor
Jane Kim, Supervisor
Eric Mar, Supervisor
Katy Tang, Supervisor
Scott Weiner, Supervisor
Norman Yee, Supervisor

1 Dr. Carlton B. Goodlett Pl
San Francisco, CA 94102

Cc: John Rahaim, Planning Director

Re: Medical Cannabis Dispensary-- 2139 Taraval Street

Dear Mr. Mayor and Supervisors,

This office represents the Chinese Gospel Church (herein "CGC" or "the Church") located at 2133 Taraval Street in the above-referenced matter. CGC is located next to the applicant for the Medical Cannabis Dispensary ("MCD").

More than four years ago, an application for a medical marijuana clinic was filed. Led by Supervisor Carmen Chu and her staff, including current supervisor Katy Tang, the application was unanimously defeated. This precedent should be followed relative to this application. Many community members expressed opposition to the proposed distribution of marijuana at this site. This included not only community residents, but, among others, representatives from the San Francisco Unified School District, and the Taraval Parkside Merchant's Association. The people in this community demonstrated that they did not want a MCD in this location at that time, and the same feeling remains today. Already CGC has collected over 3,000 signatures in opposition to the location of the MCD. Many of these signatories are of Chinese descent. Cannabis stores serve as the modern version of the neighborhood opium den. No parent in their right mind wants

their children in the vicinity of such an establishment. In view of the history of San Francisco, the optics of enabling the operation of a MCD in a community with a heavy Chinese population demonstrates a profound lack of judgment.

Concern for the safety and welfare of children is a substantial government interest. The State of California has passed legislation that prohibits the posting of tobacco product advertising within 1,000 ft of any school or public playground.¹ Further, the State of California has passed laws that prohibit MCDs from being located within 600 feet of any school throughout the state.² Lawmakers intended to keep narcotics away from children by passing the Juvenile Drug Trafficking and Schoolyard Act of 1988.³ The law's purpose was "not only the prevention of the sale of drugs to students on their way to and from school, but, of equal importance, the protection of school-age children from drug sellers, drug buyers, and the hazards presented in drug trafficking."⁴ While the MCD here is technically compliant with the law by not locating "within 600 feet of a public or private elementary, vocational, junior high or high school," allowing a MCD would undermine the legislative intent by allowing the MCD to operate within 1,000 feet of CGC. The children who attend CGC and other nearby businesses that serve children are every bit as vulnerable to the evils of drug trafficking as children who attend schools.

Marijuana is a Category I drug⁵ with questionable medical value. As a 2012 study from Yale University School of Medicine indicates, young people who use more damaging drugs often start with "soft" drugs such as marijuana as a gateway drug.⁶

Consistent with this, the City of San Francisco has expanded on protections for children in the Medical Cannabis Act.⁷ According to the provisions of San Francisco's ordinance, an MCD must operate in conformity with the other sections of San Francisco's municipal codes, including the San Francisco Planning Code.⁸ If operational after April 1, 2005, regardless of whether cannabis is smoked on the premises, the dispensary shall not be located less than 1,000 feet from any elementary or secondary school, or a Public or Community Facility that primarily serves persons under 18 years of age.⁹ A Public Facility is an institutional use which provides public services to the community.¹⁰ A Religious Institution is classified as an institutional use.¹¹ Courts in California have held that "[i]t clearly makes sense to restrict" businesses that can only serve adults, including MCDs, "from areas which are an intrinsic draw for children."¹² Churches

¹ Cal. Bus. & Prof. Code § 22961(a)

² Cal. Health & Safety Code § 11362.768

³ Cal. Health & Safety Code § 11353.6

⁴ *People v. Marzet*, 57 Cal. App. 4th 329, 338 (App. 2nd Dist. 1997).

⁵ 21 U.S.C. § 813

⁶ *Journal of Adolescent Health, Previous Use of Alcohol, Cigarettes, and Marijuana and Subsequent Abuse of Prescription Opioids in Young Adult*, February 2013, Vol. 52, Issue 2, pages 158-163. Lynn E. Fiellin, M.D., Jeanette M. Tetrault, M.D., William C. Becker, M.D., David A. Fiellin, M.D., Rani A. Hoff, Ph.D.

⁷ San Francisco, Cal., Health Code. Art. 33. See Cal. Health & Safety Code § 11362.83 (Allowing local ordinances which would further regulate the location and operation of Medical marijuana establishments.)

⁸ San Francisco, Cal., Health Code § 3307(c)(3)

⁹ San Francisco, Cal., Health Code § 202.2(e)(B)

¹⁰ *Id.* at § 102

¹¹ *Id.*

¹² *Madain v. City of St. Anton*, 185 Cal. App. 4th 1277, 1292 (App. 4th Dist. 2010) (Sills, P.J., concurring)

are an intrinsic draw for children because they "may have a Sunday-school class and have regularly organized youth groups other days of the week."¹³

CGC operates as a church, and in addition to ordinary religious worship, the Church's mission is to minister to as many people in the community as possible. In furtherance of this goal, CGC opens its facilities in order to provide social services, counseling and recreational gatherings to the community. CGC has been serving the community in this location, and in this manner, since October 1993. One important facet of these community offerings is services to children. CGC operates Sunday school for children ages 3 to 14. The Church also hosts activities during the week to which children are brought by their parents. Additionally, CGC has operated a children's summer camp for two to three weeks each summer which attracts 40 or 50 children each year. But an MCD poses significant issues relative to the children. Families are especially impacted, as parents do not want to bring their children to the Church due to safety concerns and the smell.

As the Church shares a wall with the marijuana outlet, CGC has apprehensions that children will constantly be exposed to not only the smell, but the sale of marijuana. They are rightfully troubled that this exposure will lead children to be influenced or tempted by the marijuana outlet.

In addition to these issues, CGC is also concerned about other problems that may arise due to the MCD's location. The MCD will contribute to noise and traffic issues, especially on the weekends when the Church conducts its religious services. Increased congestion and confusion could lead to conflicts and accidents that could endanger the safety of its members and guests. Moreover, CGC is concerned that the MCD will lead to an increase in crime in the area.

In view of the foregoing, the Church respectfully requests that this MCD be deemed incompatible with the neighborhood. Thank you for your deliberation and service to the community.

Sincerely,



Kevin T. Snider
Attorney for Chinese Gospel Church

¹³ *Id.*

March 3, 2015

Tina Chang
San Francisco Planning Department
1650 Mission St. Ste. 400
San Francisco CA 94103

RE: Building Permit Application – 2139 Taraval

Ms. Chang,

We respectfully request that the Planning Department hold a Discretionary Review hearing concerning the building permit application for 2139 Taraval St.

We believe that a medical marijuana facility would have an adverse effect on our neighborhood.

Currently in operation at the intersection of 32nd Ave. and Taraval St. are a liquor store, convenience store and massage parlor and the proposed dispensary would be adjacent to a local church.

Increased loitering would add to the current level of vandalism, trespassing, littering and other waste disposal on property in the vicinity which is a chronic problem.

We appreciate your consideration of our request.

Lynn and Janet Lockwood

2122 Taraval St. #A
San Francisco CA 94116

Jacqueline Dermitjakis

916-773-0215

jacderm@hotmail.com

BLK+Lot notations about this ~~with~~
Permit Building no 2013-0723-2598

Dear Elizabeth,

I have owned a house on the block
of 32nd Ave. since 1972 before that my father
owned it. I spent most of my life in that
house and only the past few years have retired
and live in Roseville.

It would be a complete disaster to
me and all of our neighbors to have a Medical
Cannabis Dispensary move into 2139 Tailor St.

Btw 31st + 32nd Ave. BLK 2594/142 case no. 2013-12237
Building permit no. 2013-0723-2598.

We have three young children living in
the house next to ours it is a family neighborhood
with kids walking down the hill from Lincoln
High school and the library.

People light up the Cannabis when
they exit the Dispensary I have seen this on Market
Street. Sincerely, Jackie Dermitjakis

LETTERS OF SUPPORT

This page intentionally blank.

From: juliegermenis@gmail.com
To: [Chang, Tina \(CPC\)](#)
Date: Monday, May 11, 2015 3:23:24 PM

Dear Tina Chang,

I live west of twin peaks and I believe Greg would benefit the sunset district by being able to provide quality service with the compassionate care program they have as well as veteran discounts, veterans groups, home deliveries, and a large CBD specific array of products. They have also reached out to the community by hosting various open house meetings and attending various neighbourhood meetings at the taraval police station and therefore deserve serious consideration for a permit.

Thank you for taking the time to read my opinion and I hope you consider issuing Greg a permit.

Best regards,
Julie Germenis

Tina Chang
San Francisco Planning Department
1650 Mission St #400
San Francisco, CA 94103-4279
(415) 558-6378
(415) 575-9197 (Direct Line)
Tina.Chang@sfgov.org
Dear Ms. Chang:

I am writing to urge you to support the opening of a Medical Cannabis Dispensary in the Sunset District. Such an action would allow law-abiding medical marijuana patients and their primary caregivers in the Sunset District to receive their medicine in a safe and convenient location and in accordance with state law. This is something that the Sunset District needs and deserves to have. There are some preconceived fears amongst some people regarding dispensaries in general but those fears have proven to be unfounded in numerous reports and studies. The stigma of "Drug Dealers" unfortunately has been connected (in some people's minds) with these medicinal dispensaries. Legally regulated dispensaries actually benefit the local community.

- Crime does NOT increase in fact crime is less prevalent in areas where there are dispensaries due largely to the fact that they have their own private security systems including metal detectors, cameras, and trained guards. This acts not only as a deterrent but fewer crimes go unreported and illegal street sales decrease.
- Neighboring business does NOT suffer; in fact the increased foot traffic stimulates local businesses.
- The community as a whole benefits with the community outreach programs and charitable contributions to the neighborhood.
- Legally regulated dispensaries abide by local regulations and the communities' input and are not a source of community complaints.
- These dispensaries also regularly pCall is in 24 minutes
- Pay all applicable state and local fees and taxes.
-

I understand that there is an application for such a dispensary to be located in the Taraval Neighborhood Commercial District near 32nd Avenue. I wholeheartedly approve of this and feel it would benefit patients, improve the community, and I can see no serious detrimental effects on this great city. I hope that you feel this way as well and will support it.

Sincerely


Signature


First & Last Name

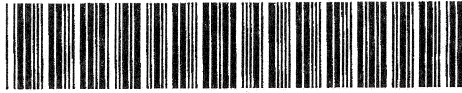
94116
Zip Code

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SUPERIOR COURT OF CALIFORNIA -- STATEMENT OF DECISION

BAY AREA COMPASSION HEALTH CARE VS. CITY AND COUNTY OF SAN FRANCISCO

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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STATEMENT OF DECISION

A BAY AREA COMPASSION HEALTH CARE VS. CITY AND COUNTY OF SAN FRANCISCO

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

GREG SCHOEPP, dba BAY AREA
COMPASSION HEALTH CARE CENTER,
INC.,

Petitioner,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, By and through Its BOARD OF
APPEALS, DEPARTMENT OF BUILDING
INSPECTION, PLANNING DEPARTMENT
and its ZONING ADMINISTRATOR,
DEPARTMENT OF PUBLIC HEALTH, and
DOES 1-10,

Respondents,

CANAAN TUTORING CENTER SERVICE,
INC., and CHINESE GOSPEL CHURCH,

Real Parties in Interest

Case No. CPF-11-511354

STATEMENT OF DECISION

Judge: The Hon. Harold E. Kahn
Place: Dept. 302

Date Action Filed: June 14, 2011

The Petition for Writ of Mandate filed by Petitioner Greg Schoepp, dba Bay Area Compassion Health Care Center ("Petitioner") in the above-captioned case came on for hearing at 9:30 a.m. on December 7, 2011, in Department 302 of this Court. Petitioner and Respondent City and County of San Francisco, on behalf of itself and the San Francisco Board of Appeals, the San Francisco

1 Department of Building Inspection, the San Francisco Planning Department and its Zoning
2 Administrator, and the San Francisco Department of Public Health (collectively, “the City”), appeared
3 through their respective counsel of record.

4 Having read and considered the moving, opposition and reply papers, evidence filed herein,
5 and the arguments of counsel, the Court determines that the Petition is DENIED, for the reasons set
6 forth below.

7 **FACTUAL AND PROCEDURAL BACKGROUND**

8 **I. PETITIONER’S APPLICATION FOR MCD PERMIT AND BUILDING PERMIT.**

9 Petitioner filed an application with the San Francisco Department of Public Health (DPH) on
10 or about December 1, 2009, for a permit to operate a medical cannabis dispensary (“MCD”) at 2139
11 Taraval Street, San Francisco, California. San Francisco Health Code Section 3305 requires DPH to
12 refer all applications for MCDs to the San Francisco Planning Department, the San Francisco
13 Department of Building Inspection (DBI), the Mayor's Office on Disability, and the San Francisco Fire
14 Department for review. (Petitioner’s Request for Judicial Notice [“RJN”] Exh. 9 [S.F. Health Code
15 § 3305].)¹

16 On or about December 3, 2009, as part of the MCD permit application process, Petitioner
17 submitted an application for a building permit to DBI, for “minor alterations” to the interior of the
18 building at 2139 Taraval Street for its use as an MCD (“Building Permit Application”). (AR 17-18;
19 Petitioner’s RJN Exh. 9 [S.F. Health Code §§ 3305 & 3306].) DBI referred the Building Permit
20 Application to the Planning Department, the Mayor's Office on Disability, and the Fire Department for
21 each department's approval.

22 San Francisco Planning Code Section 790.141 requires the Planning Commission to hold a
23 Mandatory Discretionary Review hearing to consider a building permit application associated with an
24 MCD application. (Petitioner’s RJN Exh. 16 [former S.F. Planning Code § 790.141(g) & (h)].)² On
25 May 20, 2010, the San Francisco Planning Commission heard Discretionary Review Case No.
26 2010.0018D, to consider the Building Permit Application. (AR 31 [“Mandatory Discretionary Review

27 ¹ The Court grants all parties’ Requests for Judicial Notice.

28 ² All references to Planning Code Section 790.141 are to the version of that ordinance in effect at the time of the Planning Commission discretionary review hearing and Board of Appeals proceeding.

1 of Building Permit Application No. 2009.12.03.2572"].) On June 11, 2010, the Planning Commission
2 issued a memorandum approving the project as compliant with Planning Code Section 790.141,
3 subject to conditions on the MCD's operating hours. (*Ibid.*) The Fire Department and Mayor's Office
4 on Disability separately approved the Building Permit Application as well. (AR 18.) In its decision,
5 the Planning Commission stated, "You can appeal the Commission's action to the Board of Appeals by
6 appealing the issuance of the permit. Please contact the Board of Appeals at (415) 575-6880 for
7 further information regarding the appeals process." (AR 36.)

8 On September 15, 2010, after all necessary underlying approvals had been granted, DBI issued
9 building permit number 200912032572 (the "Building Permit") to authorize construction at the
10 property for its proposed use as an MCD. (AR 17-18.) The Building Permit expressly incorporated
11 the conditional approval of the Planning Commission as one of several "Conditions and Stipulations"
12 of the Building Permit. (See AR 18 ["Approved: As per Planning Commission Action – NC-2," dated
13 June 14, 2010; other "Conditions and Stipulations" included approval of Mayor's Office on Disability
14 and Fire Department].)

15 **II. BOARD OF APPEALS PROCEEDINGS.**

16 On or about September 27 and 28, 2010, respectively, Real Parties in Interest Canaan Tutoring
17 Center Service and Chinese Gospel Church filed Preliminary Statements of Appeal of the Building
18 Permit with the San Francisco Board of Appeals, designated Appeal Nos. 10-105 and 10-106. (AR
19 14-20, 22-25.)

20 After full briefing, on November 17, 2010 and February 9, 2011, the Board heard Appeal Nos.
21 10-105 and 10-106 at duly noticed hearings. At these hearings, the Board accepted extensive
22 documentary and testimonial evidence and deliberated on the appeals. (See generally Transcript of
23 Proceedings ["Tr. of Proc."], Nov. 17, 2011 and Tr. of Proc., Feb. 9, 2011, both lodged by Petitioner.)
24 At the February 9, 2011 hearing, the Board denied the Building Permit and made and adopted findings
25 in support of its decision. (AR 2-5.) On March 16, 2011, the Board considered and denied Petitioner's
26 Request for Rehearing. (See Tr. of Proc., Mar. 16, 2011, lodged by Petitioner.) Having heard public
27 testimony, considered documentary evidence, and reviewed the record, on March 18, 2011, the Board
28

1 granted the appeals and denied the Building Permit, and issued findings in support of its decision.
2 (AR 2-5.)

3 As the basis for its decision, the Board stated, "Under the Board's discretionary authority
4 pursuant to Charter Section 4.106 and Section 26(a) of the Business and Tax Regulations Code, the
5 Board finds that under the unique facts presented by these Appeals, the establishment of an MCD at
6 this location would adversely affect the surrounding property and its residents and would not be in the
7 best interests of the community for the following reasons...." (AR 4.) The Board then made findings,
8 including the following:

- 9 • "there are legitimate community needs to provide for children's safety and to limit access
10 to marijuana for a vulnerable population";
 - 11 • several programs for children operate within 1000 feet of the Property;
 - 12 • there is a children's educational, residential and day treatment program just over 1000
13 feet from the Property;
 - 14 • the Property is in a densely populated commercial corridor serviced by the L Taraval
15 Muni line, and serves as a main transportation route for students from several nearby
16 middle and high schools, including two that lie just beyond 1000 feet from the proposed
17 MCD (citing letters in the record from the Principal of St. Ignatius College Preparatory;
18 the S.F. Unified School District Superintendent; and State Sen. Leland Yee);
 - 19 • the 2300 Lincoln High School students have an open campus and routinely patronize
20 nearby businesses, including the 7-Eleven store located diagonally from the Property,
21 "creat[ing] a teenage population in the area vulnerable to an MCD in this location";
 - 22 • "[b]ased on extensive testimony at the hearing from neighbors and long-time residents of
23 the neighborhood, the Board finds there is widespread opposition to opening an MCD at
24 the Property because of concerns for the safety of neighborhood children";
 - 25 • the City "has the highest concentration of licensed MCDs per square mile in the State,"
26 and that there are already two licensed MCDs in the Taraval District;
- 27
28

- evidence was submitted that home delivery services for medical cannabis exist in the City, such that Taraval District residents have “alternative means of obtaining medical cannabis without having to travel to other parts of the City.”

(AR 4-5.) The Board explicitly declined to apply the Planning Code in reaching its decision:

In so concluding, the Board makes no findings as to whether Appellants or the other nearby businesses serving children in the neighborhood qualify as schools, community facilities or recreational facilities within the meaning of Planning Code 790.141(b), and declines to speculate as to the meaning of that section's reference to a non-existent Section 790.50(f). The Board notes, however, that its discretionary denial of this permit is consistent with the intent of Section 790.141(b), which is to prevent MCDs from being located in close proximity to facilities that primarily serve children under 18 years of age.

(*Ibid.* [emphasis added].)

ANALYSIS

I. STANDARD OF REVIEW.

Section 1094.5 of the Code of Civil Procedure provides the standard of review for this action. In an action brought pursuant to section 1094.5, the Court's inquiry “is limited to whether the respondent acted without or in excess of its jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion.” (*Bell v. City of Mountain View* (1977) 66 Cal.App.3d 332, 342; Code of Civ. Proc. § 1094.5.) “Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (Code of Civ. Proc. § 1094.5.) The Board's exercise of its discretion is sound if it is “neither arbitrary nor capricious but directed toward promoting the public interest.” (*Guinnane v. San Francisco City Planning Commission* (1989) 209 Cal.App.3d 732, 741.)

Under the abuse of discretion standard, the City's findings should be upheld if supported by substantial evidence. (Code of Civ. Proc. § 1094.5(c); *Krater v. City of Los Angeles* (1982) 130 Cal.App.3d 839, 844.) The fact that an action is taken by the Board raises the “strong presumption that official duty has been regularly performed, that the facts necessary to support its conclusions have been ascertained and found, and that such findings are supported by substantial evidence.” (*Luxor*

1 *Cab Co. v. Cahill* (1971) 21 Cal.App.3d 551, 557; see also *City and County of San Francisco v. Super.*
2 *Ct. (Hinman)* (1959) 53 Cal.2d 236, 251 [same].³

3 **II. THE BOARD OF APPEALS DID NOT PROCEED IN EXCESS OF ITS**
4 **JURISDICTION.**

5 **A. The Board Had Jurisdiction to Hear the Appeals.**

6 Petitioner argues the Board of Appeals had no jurisdiction to hear the Real Parties' appeals
7 because the Real Parties did not appeal the Planning Commission's discretionary review decision to the
8 Board of Appeals within 15 days of that decision and did not pay the \$600 filing fee required for such
9 appeals, citing Business and Tax Regulations Code Article I, Section 8. This argument fails for several
10 reasons.

11 First, whether the Real Parties directly appealed the Planning Commission's decision is irrelevant
12 to the Board of Appeals' jurisdiction to hear Appeal Nos. 10-105 and 10-106. The Board has jurisdiction
13 over "appeals with respect to any person who has been denied a permit or license, or whose permit or
14 license has been suspended, revoked or withdrawn, or who believes that his or her interest or the public
15 interest will be adversely affected by the grant, denial, suspension or revocation of a license or permit..."
16 (Petitioner's RJN Exh. 8 [S.F. Charter § 4.106(b), (d) & (e)].) In hearing such appeals, the Board has
17 broad powers of *de novo* review, including discretion to determine how a proposed project will "affect
18 the public health, safety or general welfare." (*Lindell Co. v. Board of Permit Appeals of the City and*
19 *County of San Francisco* (1944) 23 Cal.2d 303, 314; *Guinnane, supra*, 209 Cal.App.3d at p. 739.)
20 Regardless of any earlier right of appeal that may have existed, the Board had jurisdiction in Appeal
21 Nos. 10-105 and 10-106 to address all issues raised in the appeals, to consider the public health, safety
22 and general welfare, and, on that basis, to decide whether the Permit should be denied. (*Lindell, supra*,
23 23 Cal.2d at p. 314.)

24 Second, the Planning Commission's discretionary review decision was an interim determination
25 that was not independently appealable. The Board of Appeals' jurisdiction is defined and limited by the
26 City's Charter and the Municipal Code. Section 4.106 of the Charter establishes the right to appeal "the

27 ³ The Court rejects Petitioner's argument that the Court should exercise its independent judgment in evaluating the
28 evidence in this action. The independent judgment standard applies only where a fundamental vested right is at issue, and
cases involving land use regulation do not affect fundamental vested rights. (*Pescosolido v. Smith* (1983) 142 Cal.App.3d
964, 969 [citing *Krater, supra*, 130 Cal.App.3d at p. 844].)

1 grant, denial, suspension or revocation of a permit” and certain decisions of the Zoning Administrator to
2 the Board. (Petitioner's RJN Exh. 8 [S.F. Charter § 4.106(b), (d) & (e)].) The Charter does not
3 empower the Board to hear appeals of a discretionary review decision by the Planning Commission, like
4 the one at issue here, which is neither a grant, denial, suspension or revocation of a permit nor a Zoning
5 Administrator's decision. (See *Guinnane*, *supra*, 209 Cal.App.3d at p. 738 [where power of Central
6 Permit Bureau to perform discretionary review of project was “delegated to the concerned agencies,
7 including the Planning Commission,” and where Planning Commission disapproved project, Central
8 Permit Bureau then issued denial of permit, and petitioner appealed that denial to Board of Appeals,
9 challenging Planning Commission's action].)

10 Business and Tax Regulations Code Article I, Section 8 does not require a different result. By its
11 terms, Section 8 does not create a direct appeal from the Planning Commission's decision. Section 8 is
12 titled “Method of Appeal to the Board of Appeals.” It states in relevant part,

13 [A]ppeals to the Board of Appeals shall be taken within 15 days from the
14 making or entry of the order or decision from which the appeal is taken....

15 For each appeal from any order, requirement, decision or other
16 determination...made by ...the Planning Department of
Commission...including an appeal from disapproval of a permit which results
from such an action, the fee shall be \$600.

17 (Petitioner's RJN Exh. 5 [S.F. Bus. & Tax Reg. Code § 8 & subd. (a)(2)].) As its title suggests,
18 Section 8 simply sets forth the procedural requirements for appeals, including the time for and cost of
19 an appeal, rather than creating a substantive right to an appeal. Any rights to appeal Planning
20 Commission decisions are set forth in specific provisions of the Planning Code. (See, *e.g.*, S.F.
21 Planning Code §§ 309(e)(3) & 322(d).) If Section 8 had been intended to create a right of direct
22 appeal from every Planning Commission decision, then Planning Code Sections 309(e)(3) and 322(d)
23 would be surplusage. Principles of statutory construction require this Court to interpret the law to
24 avoid such a result. (See *Graham v. Super. Ct.* (2005) 132 Cal.App.4th 1193, 1200.) Reading the
25 Municipal Code to give all its terms meaning, the Court concludes that Section 8 sets forth the
26 methods by which any available appeals must be taken, but does not create a substantive right of
27 appeal.

1 Third, the Court gives deference to the Planning Commission's conclusion, based on its
2 interpretation of the City's Municipal Code, that its discretionary review decision in this case was
3 appealable only through an appeal of the subsequent issuance of the Building Permit. (See AR 36
4 [Planning Commission stated that appeal from its decision was available "by appealing the issuance of
5 the permit"].)⁴ "The standard for judicial review of agency interpretation of law is the *independent*
6 *judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the
7 circumstances of the agency action." (*Yamaha Corp. of Amer. v. State Bd. of Equalization* (1998) 19
8 Cal. 4th 1, 7, 8 [citing Judicial Review of Agency Action [Feb. 1997] 27 Cal. Law Revision Com. Rep.
9 (1997) p.81] [italics in original].) Because discretionary review decisions are part of the Planning
10 Commission's regular duties, deference to its interpretation of the Municipal Code regarding appeals of
11 those decisions is appropriate.

12 For these reasons, the Planning Commission's discretionary review decision was appealable only
13 through an appeal of the Building Permit, which occurred here. Thus, the Board of Appeals did not
14 proceed in excess of its jurisdiction by hearing Appeal Nos. 10-105 and 10-106.

15 **B. The Board's Findings Were Consistent with the Planning Code.**

16 Next, Petitioner argues that the Board of Appeals proceeded in excess of its jurisdiction when
17 the Board stated "that its discretionary denial of this permit is consistent with the intent of [Planning
18 Code] Section 790.141(b), which is to prevent MCDs from being located in close proximity to
19 facilities that primarily serve children under 18 years of age," on the ground that this finding is
20 contrary to the plain language of Section 790.141(b), which specifies the types of facilities that are
21 entitled to a 1000-foot buffer zone. This argument has no merit.

22 The Board explicitly declined to make any finding regarding whether Section 790.141 applied to
23 Real Parties or other local child-serving businesses. (AR 5 ["In so concluding, the Board makes no
24 findings as to whether Appellants or the other nearby businesses serving children in the neighborhood
25 qualify as schools, community facilities or recreational facilities within the meaning of Planning
26

27 ⁴ The "permit" in question is the Building Permit, as stated in the Planning Commission's decision. (See AR 31 [describing
28 Planning Commission's hearing as "Mandatory Discretionary Review of Building Permit Application No.
2009.12.03.2572"].)

1 Code 790.141(b).”].) Thus, the scope of Section 790.141 is not a basis for the Board’s decision. Instead,
2 the Board exercised its broad discretionary power, which, as *Lindell* and *Guinnane* hold, allows it to
3 consider the public health, safety and welfare in determining whether a permit should be granted.
4 (*Lindell, supra*, 23 Cal.2d at p. 314; *Guinnane, supra*, 209 Cal.App.3d at p. 739.)

5 Pursuant to its discretionary power, the Board had jurisdiction to deny the Permit. Therefore,
6 the Board's decision created no conflict with Section 790.141 or any other section of the Planning
7 Code and did not constitute a de facto legislative amendment.

8 **III. THE BOARD OF APPEALS DID NOT ABUSE ITS DISCRETION.**

9 **A. The Board Proceeded in a Manner Prescribed by Law Given Its Findings
Regarding the Planning Commission's Determination.**

10 Petitioner also alleges that the Board failed to proceed in a manner prescribed by law because its
11 statement that its discretionary denial of the Permit “is consistent with the intent of [Planning Code]
12 Section 790.141(b)” to limit the proximity of MCDs to facilities serving children is contrary to its
13 statement that it was not making findings regarding whether the Real Parties fell within the definition of
14 Section 790.141(b), and contrary to its findings that (1) the Planning Commission determined there were
15 no facilities within the meaning of Section 790.141(b) within 1000 feet of the proposed MCD, and (2)
16 the Planning Commission stated that the Real Parties and other local businesses identified in the appeals
17 did not fall within Section 790.141(b).

18 As discussed above, the Board specifically declined to use Section 790.141 as a basis for its
19 decision (AR 5) and instead properly based its decision on its broad discretionary power to deny a
20 permit on the grounds of public health, safety and welfare, regardless of compliance with the Planning
21 Code. (*Lindell, supra*, 23 Cal.2d at p. 314; *Guinnane, supra*, 209 Cal.App.3d at p. 739; Part II.B.,
22 *supra*.)

23 Thus, the Court concludes that the Board proceeded in a manner prescribed by law by stating
24 that it believed its decision was consistent with the intent of Section 790.141, while noting the
25 Planning Commission's determination and declining to address whether that determination was
26 correct. The Board was not required to accept the Planning Commission’s determination.
27
28

B. THE BOARD'S DECISION IS SUPPORTED BY THE FINDINGS.

1. The Board's Acknowledgment of the Planning Commission's Determinations Does Not Undermine Its Decision.

Petitioner further argues that the Board's decision is not supported by its statement that it made no findings regarding whether the Real Parties fell within the definition of Section 790.141(b), and its findings that (1) the Planning Commission determined that there were no facilities within the meaning of Section 790.141(b) within 1000 feet of the proposed MCD, and (2) the Planning Commission stated that the Real Parties and other local businesses identified in the appeals did not fall within Section 790.141(b). This argument likewise has no merit.

As discussed above, the Board acknowledged the Planning Commission's interpretation of the Planning Code but explicitly declined to address the correctness of that interpretation. (See AR 5.) Thus, the meaning of Section 790.141 is not at issue in this proceeding, and the findings identified by Petitioner do not undermine the Board's decision. Instead, undertaking a *de novo* review of the issues raised by the appeals, the Board was entitled to, and did, exercise its sound discretion to consider all of the evidence before it, and, based on considerations of public health, safety and welfare, to deny the permit. (*Lindell, supra*, 23 Cal.2d at p. 314; *Guinnane, supra*, 209 Cal.App.3d at p. 739.) As discussed below in Part III.C., the Board made extensive findings relating to the community's need to limit marijuana access to minors, the proximity of several schools and child-serving businesses, and other factors. Those findings, which do not conflict with the findings cited by Petitioner, support the Board's decision.

2. The Board Was Not Required to Make Findings of Error by DBI.

Petitioner next contends that the Board's decision and Order are not supported by the findings because, despite overturning issuance of the Building Permit, the Board made no findings that DBI erred in interpreting or applying the San Francisco Building Code. This argument also fails.

Because the Board has the discretionary power, on *de novo* review, to consider the entire controversy and to decide whether the permit should be issued, based on considerations of public health, safety and welfare (*Lindell, supra*, 23 Cal.2d at p. 314; *Guinnane, supra*, 209 Cal.App.3d at p. 739), the Board was not required to identify any error in the interpretation or application of the

1 Building Code in order to overturn the issuance of the Permit.⁵ Therefore, the Board's failure to
2 identify such an error is irrelevant. (See *Guinnane, supra*, 209 Cal.App.3d at p. 741; *Martin v. City*
3 *and County of San Francisco* (2005) 135 Cal.App.4th 392, 400.)

4 **C. THE BOARD'S FINDINGS ARE SUPPORTED BY SUBSTANTIAL**
5 **EVIDENCE.**

6 The administrative record contains substantial evidence supporting the Board's findings. Over
7 the course of three lengthy public hearings, the Board heard extensive testimony and received
8 documentary evidence regarding a range of public health, safety and welfare issues, including the
9 proximity of children's programs and middle and high schools to the Property (see, e.g., AR 186, 217-
10 218, 221-222, 230, 232, 233; Tr. of Proc., Nov. 17, 2010 at pp. 45, 51, 58); potential dangers to
11 children posed by the proposed MCD (see, e.g., AR 83, 94-95, 107-108, 14-115, 118-127, 172-173,
12 216, 223, 224-225, 226-227, 228-229, 235, 245; Tr. of Proc., Nov. 17, 2010 at pp. 54, 55-56; Tr. of
13 Proc., Feb. 9, 2011 at p. 7; Tr. of Proc., Mar. 16, 2011 at p. 11); the potential of an MCD to attract
14 juveniles (see, e.g., AR 94-95, 109-114, 181-183, 220, 221-222, 234; Tr. Nov. 17, 2010, at pp. 41-42);
15 concerns of community leaders, including the Principal of St. Ignatius College Preparatory (AR 217-
16 218), the S.F. Unified School District Superintendent (AR 234), and State Senator Leland Yee (AR
17 186); the availability of medical cannabis through home delivery services (see, e.g., AR 185; Tr. of
18 Proc., Nov. 17, 2010 at pp. 39, 41; Tr. of Proc., Feb. 9, 2011 at p. 7); and the existence of two other
19 MCDs in the Taraval District (see, e.g., AR 95; Tr. of Proc., Feb. 9, 2011 at pp. 4-5.). In the exercise
20 of its discretion, the Board was entitled to weigh this evidence against the evidence cited by Petitioner
21 that safety concerns for children were adequately addressed; that the proposed MCD would benefit
22 patients by increasing access to medical cannabis; and that MCD permitting provisions were enacted
23 to serve the public necessity, convenience and welfare. (*Iscoff v. Police Comm'n of City and County of*
24 *San Francisco* (1963) 222 Cal.App.2d 395, 410; *Lindell, supra*, 23 Cal.2d at pp. 314-15; see Part I.A,

25 ⁵ Business and Tax Regulations Code Section 26(a) grants to DBI, as well as all other City departments, the "sound
26 discretion" to grant or deny a permit, considering "the effect of the proposed business or calling upon surrounding property
27 and upon its residents, and inhabitants thereof." (Petitioner's RJN Exh. 6 [S.F. Bus. & Tax Reg. Code § 26(a)].) Thus,
28 DBI's discretion was not limited to determining whether the proposed MCD complied with the Building Code. Instead,
DBI was free to deny the permit if it believed doing so was in the best interest of the "surrounding property and [] its
residents, and inhabitants thereof." (*Ibid.*) The Board's discretion is "at least as broad" as DBI's. (*Guinnane, supra*, 209
Cal.App.3d at p. 739).

1 *supra*, and cases cited therein.) Based on this evidence, the Board acted well within its discretionary
2 power in determining that, based on the evidence, the permit should be denied.

3 **IV. NEITHER THE BOARD NOR DBI ABUSED ITS DISCRETION.**

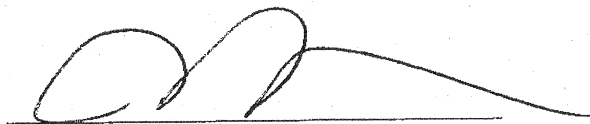
4 For the reasons stated above, the Court concludes that the acts of the Board were not arbitrary
5 and capricious and therefore the Board did not abuse its discretion. (See Code of Civ. Proc. § 1094.5;
6 *Guinnane, supra*, 209 Cal.App.3d at p. 741.) Therefore, DBI's revocation of the Permit pursuant to the
7 Board's Order also was not arbitrary and capricious and therefore was not an abuse of discretion.

8 **CONCLUSION**

9 For these reasons, the Court DENIES the Petition for Writ of Mandate. The City shall recover
10 its costs.

11
12 IT IS SO ORDERED.

13 Dated: 2/17/12

14 
15

16 HAROLD E. KAHN
17 Judge of the Superior Court
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California Superior Court
City and County of San Francisco
Law & Motion Department • Room 302

GREG SCHOEPP, dba BAY AREA
COMPASSION HEALTH CARE CENTER,
INC.,

Petitioner,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, By and through Its BOARD OF
APPEALS, DEPARTMENT OF BUILDING
INSPECTION, PLANNING DEPARTMENT
and its ZONING ADMINISTRATOR,
DEPARTMENT OF PUBLIC HEALTH, and
DOES 1-10,

Respondents,

CANAAN TUTORING CENTER SERVICE,
INC., and CHINESE GOSPEL CHURCH,

Real Parties in Interest

Case No. CPF-11-511354

**Certificate of Service by Mail
(CCP § 1013a(4))**

I, Cynthia Herbert, Clerk of the Superior Court of the City and County of San Francisco, certify that:

- 1) I am not a party to the within action;
- 2) On February 21, 2012, I served the attached:

STATEMENT OF DECISION

by placing a copy thereof in a sealed envelope, addressed to the following:

Victoria Wong
Deputy City Attorney
City Hall, Room 234
1 Dr. Carlton B Goodlett Pl.
San Francisco, CA 94102

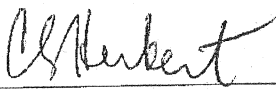
Christine Wagner
506 Broadway
San Francisco, CA 94133

and,

3) I then placed the sealed envelope in the outgoing mail at 400 McAllister St., San Francisco, CA 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practice.

FEB 21 2012

Dated: _____

By: 

CYNTHIA HERBERT, Clerk



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH

Gavin Newsom, Mayor
Mitchell H. Katz, M.D.
Director of Health

ENVIRONMENTAL HEALTH SECTION
Medical Cannabis Dispensary Inspection Program

Rajiv Bhatia, M.D., M.P.H.
Medical Director

Written Statement of Compliance with Article 33, Section 3308 (c)*
of the San Francisco Health Code (Operate on a **not-for-profit** basis)

9-23-10
Date

BAY AREA COMPASSION HEALTH CENTER 2139 TANNER ST
Medical Cannabis Dispensary Name Medical Cannabis Dispensary Address

The undersigned permittee(s) of the above-referenced Medical Cannabis Dispensary hereby attest compliance with Article 33, Section 3308(c)* of the San Francisco Health Code during the calendar year _____.

I declare under the penalty of perjury that the aforementioned is true and correct.

Gregory Schoepf
Owner name/title

[Signature]
Signature

Owner name/title

Signature

*3308 (c) The medical cannabis dispensary shall operate on a **not for profit** basis. It shall receive only compensation for the reasonable costs of operating the dispensary including reasonable compensation incurred for services provided to qualified patients or primary caregivers to enable that person to use or transport cannabis pursuant to California Health and Safety Code Section 11362.7 et seq., or for payment for reasonable out-of-pocket expenses incurred in providing those services, or both. Reasonable out-of-pocket expenses may include reasonable expenses for patient services, rent or mortgage, utilities, employee costs, furniture, maintenance and reserves. Sale of medical cannabis to cover anything other than reasonable compensation and reasonable out-of-pocket expenses is explicitly prohibited.

This form must be filed once per year, commencing March 2008.

1390 Market St., Suite 210 San Francisco, CA 94102
Phone 415-252-3841 Fax 415-252-3910



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH

Gavin Newsom, Mayor
Mitchell H. Katz, M.D.
Director of Health

ENVIRONMENTAL HEALTH SECTION
Medical Cannabis Dispensary Inspection Program

Rajiv Bhatia, M.D., M.P.H.
Medical Director

Written Statement of Compliance with Article 33, Section 3308(d)*
San Francisco Health Code

9-23-10
Date

BAY AREA COMPRESSION HEALTH CENTER
Medical Cannabis Dispensary Name

2139 TARAVER ST
Medical Cannabis Dispensary Address

GREGORY J SCHOEPF
Ownership Name on Permit

The undersigned permittee(s) of the above-referenced Medical Cannabis Dispensary hereby attest compliance with Article 33, Section 3308(d)* of the San Francisco Health Code.

I declare under the penalty of perjury that the aforementioned is true and correct.

GREGORY J SCHOEPF
Name/ title

[Signature]
Signature

Name/ title

Signature

*3308(d) Medical cannabis dispensaries shall sell or distribute only cannabis manufactured and processed in the State of California that has not left the State before arriving at the medical cannabis dispensary.

This form must be filed once per year, commencing April, 2010.

1390 Market St., Suite 210 San Francisco, CA 94102
Phone 415-252-3841 Fax 415-252-3910



San Francisco Department of Public Health
Environmental Health Section
1390 Market Street, Ste. 210

Website: www.sfdph.org
General Info No. 252-3800

MEDICAL CANNABIS DISPENSARY INSPECTION PROGRAM

Location Address: 2139 Taraval		Inspection Type: Patient	Inspection Date: 9/23/10
Business Name: Bay Area Compassion Health Center		Edibles subject to Cert. Food Handler Requirement <input type="checkbox"/> Yes <input type="checkbox"/> No	Re-Inspection Date: 10/13/10
Owner Name: BACH, Inc.		Grown on site: <input type="checkbox"/> Yes <input type="checkbox"/> No	On-site smoking observed: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Phone: 404-6630	Location ID: 61660	Sq. Ft / # Plants:	Vaporizing: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Facility Health Permit/License: Posted <input type="checkbox"/> Not Posted <input type="checkbox"/>	Seller's Permit/ Bus. Reg. Cert: Posted <input type="checkbox"/> Not Posted <input type="checkbox"/>	Community Relations Staff Person (Name and telephone): Greg 298-0948
---	--	--

Items/Violations	The following items are not in compliance with San Francisco Health Code Article 33 and/or DPH Regulations and must be corrected within 10 days. Failure to comply may result in permit suspension or revocation.	DATE
Operations		
1 Collective/Cooperative arrangement	- Facility plans to sell clones - limited to 99 on site.	10/13
2 Max. sales quantities and age requirement		
3 Hours of operation (8am-10PM)		
4 General sanitation		
5 Permits/Licenses valid	- Business Reg. OK	
6 Required signs properly posted	Membership forms submitted.	
7 Handwashing, Utensil/Glove Use		
8 Disinfection of vaporizer mouthpiece		
9 Weighing scales approved where applicable	- Seller's Permit OK.	
10 Adequate security and lighting	1) Obtain fire department approval.	
11 Proper Print and Electronic Advertising	2) Planning dept must send referral back to DPH.	
12 Outside litter removal twice daily		
Membership		
13 Proper membership application procedure		
14 Maintain list of members		
15 Facility tracking member contributions		
16 Annual membership meetings		
Documents		
17 "Not for Profit" statement on file	Hearing Notice sign must be posted for 10 days prior to hearing.	
18 "Grown in California" statement on file		
19 Sales Tax Documentation		
Edibles		
20 Proper Packaging/Labeling		
21 <input type="checkbox"/> Certified Food Handler Certificate		
22 <input type="checkbox"/> HACCP Plans Required		
23 <input type="checkbox"/> HACCP Plans On File		
Cannabis Grow Room		
23 Building/Electrical permit obtained		
24 Other		

Inspector: Larry Kessler Signature: [Signature] Phone Number: 252-3841 Received by: [Signature]



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH

ENVIRONMENTAL HEALTH SECTION
Medical Cannabis Dispensary Inspection Program

Gavin Newsom, Mayor
Mitchell H. Katz, M.D.
Director of Health

Rajiv Bhatia, M.D., M.P.H.
Medical Director

Written Statement of Compliance with Article 33, Section 3308 (c)*
of the San Francisco Health Code (Operate on a **not-for-profit** basis)

OCT-23-09

Date

BAY AREA COMPASSION HEALTH CARE CENTER, INC. 2139 TARAVAL STREET
Medical Cannabis Dispensary Name Medical Cannabis Dispensary Address

The undersigned permittee(s) of the above-referenced Medical Cannabis Dispensary hereby attest compliance with Article 33, Section 3308(c)* of the San Francisco Health Code during the calendar year 2010.

I declare under the penalty of perjury that the aforementioned is true and correct.

GREGORY J. SCHOEPP

Owner name/title

Owner name/title

[Signature]
Signature

Signature

*3308 (c) The medical cannabis dispensary shall operate on a **not for profit** basis. It shall receive only compensation for the reasonable costs of operating the dispensary including reasonable compensation incurred for services provided to qualified patients or primary caregivers to enable that person to use or transport cannabis pursuant to California Health and Safety Code Section 11362.7 et seq., or for payment for reasonable out-of-pocket expenses incurred in providing those services, or both. Reasonable out-of-pocket expenses may include reasonable expenses for patient services, rent or mortgage, utilities, employee costs, furniture, maintenance and reserves. Sale of medical cannabis to cover anything other than reasonable compensation and reasonable out-of-pocket expenses is explicitly prohibited.

This form must be filed once per year, commencing March 2008.

1390 Market St., Suite 210 San Francisco, CA 94102
Phone 415-252-3841 Fax 415-252-3910

1 CHRISTINE WAGNER #167200
2 506 Broadway
3 San Francisco, CA 94133
4 Telephone: 707/367-1709
5 Facsimile: 415/421-1331

6 Attorney for Petitioner
7 GREG SCHOEPP

ENDORSED
FILED
San Francisco County Superior Court

JUN 14 2011

CLERK OF THE COURT
BY: DENNIS TOYAMA
Deputy Clerk

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10
11 GREG SCHOEPP, dba BAY AREA
12 COMPASSION HEALTH CARE
13 CENTER, INC.,

14 Petitioner,
15 v.

16 CITY AND COUNTY OF SAN FRANCISCO,
17 By and Through Its BOARD OF APPEALS,
18 DEPARTMENT OF BUILDING INSPECTION,
19 PLANNING DEPARTMENT and its ZONING
20 ADMINISTRATOR, DEPARTMENT OF
21 PUBLIC HEALTH, and DOES 1-10,

22 Respondents,

23 CANAAN TUTORING CENTER SERVICE,
24 INC, and CHINESE GOSPEL CHURCH,

25 Real Parties in Interest,
26 _____/

27 Greg Schoepp, dba Bay Area Compassion Health Care Center, Inc.,
28 petitions this Court for a peremptory writ of mandate pursuant to California Code
of Civil Procedure (CCP) Section 1094.5, or otherwise under CCP Section 1085.

Case No. **CPF-11-511354**
VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE
PURSUANT TO CODE OF CIVIL
PROCEDURE (CCP) SECTION
1094.5, OR IN THE ALTERNATIVE,
CCP SECTION 1085; PRAYER FOR
RELIEF

1 CHRISTINE WAGNER #167200
506 Broadway
2 San Francisco, CA 94133
Telephone: 707/367-1709
3 Facsimile: 415/421-1331

4 Attorney for Petitioner
5 GREG SCHOEPP

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10
11 GREG SCHOEPP, dba BAY AREA
12 COMPASSION HEALTH CARE
CENTER, INC.,

13 Petitioner,
14 v.

15 CITY AND COUNTY OF SAN FRANCISCO,
16 By and Through Its BOARD OF APPEALS,
17 DEPARTMENT OF BUILDING INSPECTION,
18 PLANNING DEPARTMENT and its ZONING
ADMINISTRATOR, DEPARTMENT OF
PUBLIC HEALTH, and DOES 1-10,

19 Respondents,
20

21 CANAAN TUTORING CENTER SERVICE,
22 INC, and CHINESE GOSPEL CHURCH,

23 Real Parties in Interest,
24 _____/

25 Greg Schoepp, dba Bay Area Compassion Health Care Center, Inc.,
26 petitions this Court for a peremptory writ of mandate pursuant to California Code
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28

Case No.

VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE
PURSUANT TO CODE OF CIVIL
PROCEDURE (CCP) SECTION
1094.5, OR IN THE ALTERNATIVE,
CCP SECTION 1085; PRAYER FOR
RELIEF

1 Petitioner seeks a writ (1) directing Respondent Board of Appeals to
2 reverse its Decision and Order (a) overruling the issuance of Petitioner's Building
3 Permit No. 200912032572 and (b) directing Respondent Department of Building
4 Inspection to deny Petitioner the subject building permit, **and** (2) directing
5 Respondent Department of Building Inspection or its Director to (a) reinvoke or
6 reissue Petitioner's Building Permit No. 200912032572 and (b) extend the time
7 by which the construction work referenced therein must be completed.
8

9 Due to the adverse actions of Respondents, Petitioner has been
10 denied the right to make minor interior alterations to the building he has leased
11 and, as a consequence, is not able to move forward on his Application for Permit
12 to Operate a Medical Cannabis Dispensary in San Francisco.
13

14 Due to the adverse actions of Respondents, qualified medical
15 cannabis patients and caregivers in San Francisco, particularly those residing or
16 working in the Sunset District and western parts of the City, have been and
17 continue to be harmed by the consequential denial of safe access to their
18 preferred medicine in their neighborhood.
19

20 Due to the adverse actions of Respondents, City of San Francisco
21 taxpayers and residents have been and continue to be harmed, as the subject
22 building remains vacant and, instead of enjoying the benefit of collecting tax
23 revenues from a newly created business, is conversely and needlessly spending
24 tax revenues generated elsewhere to now defend this legal action.
25

26 Petitioner seeks incidental damages and costs pursuant to CCP
27 Section 1095, an award of attorney fees pursuant to California Code of Civil
28

1 Procedure Section 1021.5 or Government Code Section 800, and all other relief
2 prayed for or otherwise found by this Court to be just and proper.

3 By this verified petition it is alleges as follows:
4

5
6 **INTRODUCTION**

- 7 1. Petitioner has a substantial and beneficial interest in obtaining the
8 requested relief, having been issued Building Permit No. 200912032572 to
9 make minor interior alterations to a building located at 2139 Taraval Street
10 in San Francisco. The construction work to be performed under this
11 Building Permit must be completed before Petitioner can move forward
12 with his Application for Permit to Operate a Medical Cannabis Dispensary
13 (MCD) at the location, pursuant to provisions of Article 33 of the San
14 Francisco Health Code.
15
16 2. Respondents have clear and present duty to act in accordance with all
17 applicable provisions of the San Francisco Charter and municipal codes¹,
18 as well as all other laws, rules, regulations and policies governing their
19 actions.
20
21 3. Petitioner has been and continues to be harmed as a result of Respondent
22 Board of Appeal's Decision and Order dated February 9, 2011 and
23 Respondent Department of Building Inspection's subsequent revocation of
24 the Building Permit issued to Petitioner.
25
26 4. Petitioner has exhausted his administrative remedies.
27

28 ¹ All code references made in this Petition are to the San Francisco municipal
codes unless otherwise specified.

- 1 5. Petitioner has no plain, speedy or adequate remedy at law.
- 2 6. This Court has jurisdiction over this matter.
- 3 7. As a result of actions of Respondents, Petitioner has incurred and
- 4 continues to incur damages and costs.
- 5
- 6

7 **THE PARTIES**

- 8 8. Petitioner, Greg Schoepp, is the holder of Building Permit No.
- 9 200912032572, issued to Petitioner by Respondent Department of
- 10 Building Inspection (DBI) on September 15, 2010 and subsequently
- 11 revoked by DBI on or about March 29, 2011.
- 12
- 13 9. Respondent, City and County of San Francisco (City or SF), is a Charter
- 14 City existing and operating pursuant to the authority granted it under the
- 15 laws of the State of California and its Charter.
- 16
- 17 10. Respondent, Department of Public Health (DPH), is a City agency existing
- 18 and operating under provisions of the Charter and specified provisions of
- 19 the City's municipal codes. DPH, by and through its Director and/or
- 20 agents to whom the Director's authority has been delegated, is the lead
- 21 agency responsible for administering Article 33 of the Health Code related
- 22 to the permitting and operation of MCDs.
- 23
- 24 11. Respondent, Department of Building Inspection (DBI), is a City agency
- 25 existing and operating under provisions of the Charter and specified
- 26 provisions of the City's municipal codes. DBI is responsible for all
- 27 structural and life safety concerns in the construction, demolition or
- 28

1 alteration of buildings including, but not limited to, matters pertaining to
2 electrical and plumbing permits, HVAC systems, Title 24 energy standards
3 and building access pursuant to Federal Americans with Disabilities Act
4 (ADA) requirements.

5
6 12. Respondent, Planning Department (or Planning), is a City agency existing
7 and operating under provisions of the Charter and specified provisions of
8 the City's municipal codes. Among its duties, the Planning Department
9 administers and enforces the Planning Code. Generally, the Planning
10 Department is responsible for interpreting and regulating the type and
11 scale of land use activities that may take place at a given location.

12 Through the Planning Code and Zoning Maps, the Planning Department
13 places limits on these activities and the overall dimensions of the
14 structures in which they occur.
15

16 13. Respondent, Zoning Administrator (ZA), is appointed by the Director of the
17 Planning Department based upon his/her qualifications and is responsible
18 for determining all zoning variances. As part of his/her duties, the ZA
19 interprets zoning ordinances under the Planning Code.
20

21 14. Respondent, Planning Commission (or Commission), is a seven-member,
22 appointed body, existing and operating under Article IV, Section 4.105 of
23 the City Charter and specified provisions of the City's municipal codes. All
24 permits dependent upon, or affected by, the Planning Code administered
25 by the Planning Department must be approved by the Commission prior to
26 issuance. The Commission may delegate this approval function to the
27
28

1 Planning Department.

2 15. Respondent, Board of Appeals (or Board), is a five-member, appointed
3 body, existing and operating under Article IV, Section 4.106 of the City
4 Charter and Article 1, Section 14 of the Business & Tax Regulations Code.
5 The Board's authority is limited to review of permits and licenses issued by
6 various City agencies, except for building permits on projects that have
7 received a permit pursuant to a conditional use authorization, and to
8 review of certain actions of the ZA.
9

10 16. Respondents, Does 1-10, have yet to be identified by Petitioner and, if and
11 when identified, will be named as Respondents to this action.
12

13 17. Real Party in Interest, Canaan Tutoring Center Service, was the Appellant
14 in Appeal Case No. 10-105 before Respondent Board of Appeals.

15 18. Real Party in Interest, Chinese Gospel Church, was the Appellant in
16 Appeal Case No. 10-106 before Respondent Board of Appeals.
17

18 **REGULATORY BACKGROUND**

19 **Applicable Law, Agency Powers & Duties and Administrative Process**

20 **The Medical Cannabis Act - Article 33 - SF Health Code**

21
22 19. Pursuant to authority granted under California Health and Safety Code
23 Section 11362.5 et seq, the City Board of Supervisors approved the
24 adoption of the Medical Cannabis Act in or around December 2005, as set
25 forth in SF Ordinance 275-05 and codified at Article 33 of the Health Code.
26
27

28 20. In adopting the Medical Cannabis Act, the City Board of Supervisors

1 added to and/or amended various provisions of the Planning, Health,
2 Traffic and Business & Tax Regulations Codes, to establish a
3 comprehensive regulatory framework for MCDs in San Francisco. These
4 zoning, permitting and operating provisions for MCDs were adopted to
5 serve "the public necessity, convenience and welfare".
6

7 21. The Medical Cannabis Act governs the application, permitting and
8 operation of MCDs in the City, and is administered by DPH.
9

10 Planning Code Requirements for MCDs in NC-2 Districts

11 22. Various sections of the Planning Code govern the location and use of
12 buildings for purposes of operating an MCD in the City, depending upon
13 the zoning district in which an MCD intends to operate.
14

15 23. MCDs are zoned as Principal Permitted Uses in Small-Scale
16 Neighborhood Commercial (NC-2) Districts within the City, subject to the
17 requirements of Article 7 of the Planning Code.

18 24. NC-2 Districts encompass linear shopping streets which provide a mix of
19 convenience goods and services to the surrounding neighborhoods, and
20 are commonly located along both collector and arterial streets which have
21 transit routes. Neighborhood-serving businesses are strongly encouraged
22 in NC-2 Districts.
23

24 25. The particular zoning criteria for MCDs in NC-2 Districts is governed by
25 the provisions of Section 790.141 of the Planning Code. Planning Code
26 Section 790.141(b) makes cross-reference to subsections of Planning
27 Code Section 790.50, which identifies various institutions that require a
28

1 'buffer zone' of 1000' feet from a proposed MCD in order for the MCD to
2 locate and operate nearby.

3 General Operating Requirements for MCDs

4 26. Operating requirements for MCDs in the City include compliance with
5 California Health & Safety Code Section 11362.5 et seq and the
6 *Guidelines for the Security and Non-Diversion of Marijuana Grown for*
7 *Medical Use* issued by the California Attorney General in August 2008,
8 which require, in pertinent part, that all activity thereunder be conducted
9 not for profit. Health Code Sections 3301(f), 3308(a) and (c).
10

11 27. Operating requirements for all MCDs in the City include, but are not limited
12 to: limitations on hours of operation and amounts of medical cannabis that
13 can be dispensed; qualified patient and caregiver identification verification;
14 records maintenance and financial disclosures; prohibition against
15 smoking, ingesting or otherwise consuming medical cannabis within 50
16 feet of the premises; prohibition against liquor consumption on premises;
17 signage, advertising, packaging and handling criteria; with limited
18 exception, denied entry to or employment of persons under 18 years of
19 age; maintenance of adequate security for the premises, including lighting
20 and alarms designed to ensure the safety of persons and to protect the
21 premises from theft; requirements for litter removal; a designated
22 community relations representative for purposes of fielding complaints
23 regarding its operations; and inspection by DPH no fewer than two times
24 annually. Health Code Sections 3308 and 3312.
25
26
27
28

1 28. Any violation of these operating requirements, or the rules and regulations
2 adopted by the Director of DPH, may subject an MCD to possible
3 sanctions, including suspension or revocation of its permit to operate.
4 Health Code Sections 3312(c), 3313-3317.

5
6 Permitting Requirements for MCDs

7 29. A permit to operate an MCD in the City is required. Health Code Sections
8 3303 and 3309.

9 30. In order to obtain a permit to operate an MCD in the City, a permit
10 applicant must satisfactorily complete a multi-agency application and
11 review process.

12 31. In addition to an application for permit to operate, a building permit
13 application must be submitted and reviewed so that concerns about a
14 project may be identified and resolved during the review of the building
15 permit application.
16

17
18 DPH Application for Permit to Operate an MCD

19 32. To initiate the permitting process, an ***Application for Permit to Operate a***
20 ***Medical Cannabis Dispensary*** must be made to the Director of DPH, the
21 lead agency responsible for the issuance of MCD permits, and a non-
22 refundable fee paid for the investigation and processing of the application
23 by various City agencies. Health Code Section 3304(a).

24
25 33. 'Application for Permit to Operate' requirements include, but are not
26 limited to, Department of Justice background checks for management
27 personnel; information concerning proposed consumption on premises, if
28

1 any; and proposed security measures to ensure the safety of persons and
2 to protect the premises from theft. Health Code Section 3304.

3 34. In addition to review by DPH, an *Application for Permit to Operate a*
4 *Medical Cannabis Dispensary* is reviewed by the Planning Department,
5 DBI, the Fire Department (Fire), and the Mayor's Office on Disability
6 (MOD). Health Code Section 3305(a).
7

8 35. The Planning Department, DBI, Fire and MOD are required to confirm the
9 information provided by the MCD applicant and make recommendations to
10 DPH concerning compliance with the codes that they administer. Health
11 Code Section 3305(b).
12

13 DBI Application for Building Permit

14 36. As part of the *Application for Permit to Operate a Medical Cannabis*
15 *Dispensary*, a separate Building Permit Application must be made to DBI.
16

17 37. To alter a building for use as an MCD, an ***Application for Building***
18 ***Permit Additions, Alterations or Repairs*** must be submitted to DBI and
19 a non-refundable application fee paid.

20 38. Under its jurisdiction, DBI reviews the *Application for Building Permit*
21 *Additions, Alterations or Repairs* to determine a proposed project's
22 compliance with various State and local structural, mechanical, electrical,
23 plumbing and disabled access codes related to life safety issues. DBI
24 reviews architectural plans, drawings, and building specifications, and
25 conducts site visits, in order to make its determination on whether to issue
26 a permit or not.
27
28

1 39. An *Application for Building Permit Additions, Alterations or Repairs* for a
2 proposed MCD is also submitted to the Planning Department, DPH, Fire
3 and MOD for review.

4 Planning Department Supplemental MCD Application Form

5 40. As part of the *Application for Permit to Operate a Medical Cannabis*
6 *Dispensary*, a Supplemental MCD Application Form must be submitted to
7 the Planning Department.
8

9 41. The **Planning Department Supplemental MCD Application Form**
10 requires an applicant to submit (a) the *Application for Building Permit*
11 *Additions, Alterations or Repairs* submitted to DBI, as well as (b)
12 architectural drawings, (c) a letter of authorization from the property owner
13 (if different from applicant), (d) an application and fee for CEQA review
14 and (e) any other information the applicant finds necessary to assist the
15 Planning Department in making its determinations.
16

17 42. Under its jurisdiction, the Planning Department reviews a proposed MCD
18 for consistency with the City's General Plan and Priority Policies as
19 required under Planning Code Section 101.1(b).
20

21 43. Under its jurisdiction, the Planning Department reviews a proposed MCD
22 to ensure compliance with Planning Code requirements specific to zoning
23 districts where MCDs are allowed to locate and operate.
24

25 44. Under its jurisdiction, the Planning Department reviews a proposed MCD
26 site for proximity to specified, neighboring 'sensitive uses', as listed in
27 applicable sections of the Planning Code, to ensure a required 1000' feet
28

1 of 'buffer zone' from such neighboring uses.

2 45. Once it has accepted an *Application for Building Permit Additions*,
3 *Alterations or Repairs* for a proposed MCD from DBI, the Department
4 must post notice of the Building Permit Application at the proposed project
5 site and cause written notice thereof to be mailed to property owners and
6 occupants of buildings within a 300' foot radius of the site.
7

8 46. After the requisite notice has been provided, a hearing before the Planning
9 Commission is scheduled to consider whether the Planning Commission
10 will exercise its discretionary review powers over the Building Permit
11 Application for an MCD.
12

13 Planning Commission Discretionary Review

14 47. The Planning Commission is authorized to exercise discretionary review of
15 Building Permit Applications.

16 48. Under its discretionary review (DR) powers, the Planning Commission
17 may determine that modifications to a proposed Building Permit
18 Application are necessary in order to comply with relevant design
19 guidelines of the City's General Plan, and can require the building permit
20 applicant to make the required modifications as a condition for issuance of
21 a building permit.
22
23

24 Final Requirements For Issuance of Permits

25 49. After the Planning Department, DBI, Fire and MOD inspect the proposed
26 MCD site and confirm that the information provided by the applicant is in
27 compliance with the codes they administer, these agencies make written
28

1 recommendations to DPH. Health Code Section 3305(b).

2 50. Once DBI has received confirmation from the Planning Department, DPH,
3 Fire and MOD that all other application and code requirements have been
4 satisfied, including any conditions or stipulations imposed by these
5 agencies or the Planning Commission, and is satisfied that the codes it
6 administers are complied with, DBI issues a building permit to the
7 applicant.
8

9 51. After receiving written approval from the other agencies, and notice from
10 DBI that a building permit has been issued, DPH notices a public hearing
11 on the *Application for Permit to Operate a Medical Cannabis Dispensary*.
12 Health Code Section 3306.
13

14 52. After a public hearing, and upon finding that all necessary conditions and
15 requirements have been met, a Provisional Permit to Operate an MCD
16 may be issued by DPH. Health Code Sections 3306 and 3307.
17

18 53. No dispensing of medical cannabis is authorized under a Provisional
19 Permit to Operate an MCD; such activity would be unlawful and grounds
20 for denial of a final permit. Health Code Sections 3303 and 3307.

21 54. After a Provisional Permit to Operate an MCD is issued, and the
22 construction work under the building permit is complete, the applicant
23 must secure a Certificate of Final Completion and Occupancy from DBI.
24 Health Code Section 3307(d).
25

26 55. Upon presentation to DPH of the Certificate of Final Completion and
27 Occupancy, a Final Permit to Operate an MCD is issued and the Police
28

1 Department is notified. Health Code Section 3307(d) and (e).

2 Board of Appeals Review

3 56. The Board of Appeals is authorized to review various agency decisions
4 regarding the granting, denial or revocation of permits and licenses, with
5 the exception of building permits for projects that are granted or denied
6 pursuant to a conditional use authorization.
7

8 57. With limited exception, any appeal shall be filed with the Board of Appeals
9 not later than 15 days after the action of the department from which the
10 appeal is taken.
11

12 58. A final decision of DPH to grant, deny, suspend or revoke a Permit to
13 Operate an MCD, or to impose administrative sanctions as provided in
14 Article 33 of the SF Health Code, may be appealed to the Board of
15 Appeals. Health Code Section 3317.
16

17 **PROCEDURAL HISTORY**

18
19 59. Petitioner is a managing owner of Crown Lock and Safe, a local, family-
20 owned business that has been providing security products and services to
21 businesses and residents in the City for over 50 years.
22

23 60. Petitioner is confined to a wheelchair and is disabled as that term is
24 defined by the Federal Americans with Disabilities Act (ADA).

25 61. Petitioner, a qualified patient under California Health & Safety Code
26 Section 11362.5 et seq, uses medical cannabis to relieve pain
27 experienced as a result of his disabling condition.
28

1 62. In reliance upon the provisions of Health Code Section 3301 et seq and
2 applicable provisions of the Planning Code, Petitioner seeks to establish
3 an MCD in San Francisco in order to provide other qualified patients and
4 caregivers living in the Sunset District and west side of the City with safe
5 access to their preferred medicine.
6

7 63. In reliance upon the provisions of Health Code Section 3301 et seq and
8 applicable provisions of the Planning Code, and having performed due
9 diligence, Petitioner determined that vacant property located at 2139
10 Taraval Street met the NC-2 District zoning criteria for the establishment of
11 an MCD.
12

13 64. 2139 Taraval Street was last used as a chiropractor's office and, until
14 Petitioner took lease of the property, had stood vacant for approximately 2
15 years.
16

17 65. 2139 Taraval Street is located along a commercial corridor that is serviced
18 by the L Taraval Muni streetcar line, allowing for ease of access to the
19 proposed MCD by its qualified patient and caregiver members.
20

21 66. Petitioner hired a local architect, Mr. Gordon Atkinson, to assist in
22 preparing and submitting to the appropriate City agencies, the
23 architectural plans, drawings and other required documents that would
24 satisfy the criteria of the applicable Health, Planning and Building Codes
25 for the build out of the proposed MCD.
26

27 67. Pursuant to Health Code Section 3301 et seq, Petitioner submitted to DPH
28

1 an *Application for Permit to Operate a Medical Cannabis Dispensary*
2 (or "Application for Permit to Operate") at 2137 Taraval Street in San
3 Francisco. The application was made to DPH on or about December 1,
4 2009.

5
6 68. Petitioner paid to the City a non-refundable fee of \$8459.00 to cover the
7 cost of the Application for Permit to Operate and associated fees for
8 review by the Planning Department and other City agencies.

9
10 69. On both the DPH Application for Permit to Operate and the **Planning**
11 **Department Supplemental MCD Application Form**, Petitioner
12 confirmed, among other things, that no consumption of medical cannabis
13 would take place at the proposed MCD.

14
15 70. Pursuant to Health Code Section 3308(c) and the Director of DPH's Rules
16 and Regulations, Petitioner has annually attested that the proposed MCD
17 would be operating on a not-for-profit basis, as indicated on written forms
18 prepared by and submitted to DPH.

19
20 71. Pursuant to Health Code Section 3318, Petitioner applied for and has
21 maintained City Business Registration Certificates for the proposed MCD,
22 despite the fact that he has yet to be permitted to operate.

23
24 72. Pursuant to applicable provisions of the municipal codes, Petitioner also
25 submitted a separate **Application For Building Permit, Additions,**
26 **Alterations or Repairs** (or "Building Permit Application") to DBI on or
27 about December 3, 2009, requesting permission to make minor alterations
28

1 to the interior building space.

2 73. Petitioner paid to DBI an additional, non-refundable fee of \$ 677.03 to
3 cover the cost of the review of the Building Permit Application by DBI.

4 74. Pursuant to applicable provisions of the City's municipal codes, and as
5 part of the DPH Application for Permit to Operate, DBI Building Permit
6 Application and Planning Department Supplemental MCD Application
7 Form requirements, Petitioner submitted both written descriptions and a
8 proposed floor plan which described the proposed security system for the
9 MCD, consisting of numerous motion detectors and security cameras to
10 be installed on both the outside and inside of the building.
11

12 75. Public notice of the DBI Building Permit Application was posted at the
13 proposed project site on or about February 26, 2010.
14

15 76. Petitioner hired consultants to conduct Petitioner's public outreach efforts,
16 which efforts included weekly open house meetings and meetings
17 conducted at the local police station, to present the project and to educate
18 neighboring residents, merchants and members of the general public, and
19 to address concerns raised with regard to the proposed MCD.
20

21 77. Petitioner met with area district Supervisor Carmen Chu, as well as
22 officers of the local division of the SF Police Department, to discuss the
23 proposed project and Petitioner's plans for operating the MCD safely and
24 securely.
25

26 78. Public notice of a Discretionary Review Hearing on the Building Permit
27
28

1 Application, scheduled before the Planning Commission on May 20, 2010,
2 was timely posted and thereafter mailed by the Planning Department to
3 persons entitled to such notice.

4 79. On May 20, 2010, the Planning Commission heard Discretionary Review
5 Case No. 2010.0018D, to consider Petitioner's intended use of the site for
6 an MCD, its operational plans, and the proposed minor alterations to the
7 building for such intended use as an MCD, for purposes of determining
8 whether or not to give Commission approval to Petitioner's Building Permit
9 Application.
10

11 80. Prior to the May 20, 2010 hearing, the Planning Commission was
12 presented with the Planning Department's recommendations to approve
13 the project subject to hours of operation restrictions, which were based
14 upon the Planning Department's review of both the Application for Permit
15 to Operate and the Building Permit Application, as described in an
16 evidentiary document entitled *Discretionary Review Analysis Medical*
17 *Cannabis Dispensary: Hearing Date May 20, 2010*. See attached Exhibit
18 A, exclusive of attachments referenced on p. 11 thereof.
19
20
21

22 81. At the May 20, 2010 hearing, additional evidence was presented, oral
23 testimony was taken and deliberations were conducted, culminating in a 5-
24 1-1 decision to adopt the recommendations of the Planning Department
25 and thereby approve the issuance of Petitioner's Building Permit
26 Application, subject only to hours of operation modifications under a final
27 permit to operate, based upon the Planning Commission's Findings that
28

1 the proposed project met the Planning Code criteria for establishing an
2 MCD as outlined in Planning Code Section 790.141.

3 82. By letter from the Planning Commission Secretary dated June 11, 2010,
4 interested parties were informed that, pursuant to Planning Commission
5 Action No. DRA-0149, the Planning Commission had agreed with and took
6 action upon the Planning Department's recommendations to take
7 Discretionary Review and approve Petitioner's proposed use of 2139
8 Taraval Street for an MCD, conditioned upon specified, limited hours of
9 operation. See attached Exhibit B.
10

11 83. No subsequent action was taken to challenge the Planning Commission's
12 Action No. DRA-0149 by any aggrieved person or party.
13

14 84. Petitioner's Building Permit Application was reviewed by other City
15 agencies between on or about December 3, 2009 to on or about
16 September 7, 2010 and, except for the modifications placed upon the
17 proposed MCD's hours of operation, was approved without Condition or
18 Stipulation.
19

20 85. Based upon this multi-agency review and approval, DBI issued a Building
21 Permit 200912032572 to Petitioner on September 15, 2010, including a
22 Job Card authorizing Petitioner to perform the work authorized under the
23 Building Permit. See attached Exhibit C.
24

25 86. The Building Permit issued to Petitioner required that the work authorized
26 thereunder be completed prior to an expiration date of September 10,
27 2011.
28

1 87. Thereafter, on or about September 27, 2010, Real Party in Interest,

2 Canaan Tutoring Center Service, filed a Preliminary Statement of Appeal

3 with the Board of Appeals and was assigned Appeal No.10-105. The

4 basis for the appeal stated thereon was the issuance of Petitioner's

5 Building Permit No. 200912032572.

6
7 88. On or about September 27, 2010, Petitioner was notified by the Board that

8 Appeal No. 10-105 had been filed and that his Building Permit was

9 suspended until the Board decided the matter and released a notice of

10 Decision and Order.

11
12 89. On September 28, 2010, Real Party in Interest, Chinese Gospel Church,

13 filed a Preliminary Statement of Appeal with the Board of Appeals and was

14 assigned Appeal No. 10-106. The basis for the appeal stated thereon was

15 the issuance of Petitioner's Building Permit No. 200912032572.

16
17 90. On or about September 28, 2010, Petitioner was notified by the Board that

18 Appeal No. 10-106 had been filed and that his Building Permit was

19 suspended until the Board decided the matter and released a notice of

20 Decision and Order.

21
22 91. Appellant and Real Party in Interest, Canaan Tutoring Center Service, filed

23 its supporting brief on October 20, 2010, naming the Planning Department

24 as the Responding Party and, contrary to its Preliminary Statement of

25 Appeal that served as the basis for challenging the issuance of Petitioner's

26 Building Permit, instead sought to challenge, among other things, the

27
28

1 Planning Department's interpretation of Planning Code Sections
2 790.141(b) and 790.50, as set forth in its *Discretionary Review Analysis*
3 *Medical Cannabis Dispensary:Hearing May 20, 2010*.

4
5 92. Appellant and Real Party in Interest, Chinese Gospel Church, also filed its
6 supporting brief on October 20, 2010, named the Planning Department as
7 the Responding Party and, contrary to its Preliminary Statement of Appeal
8 that served as the basis for challenging the issuance of Petitioner's
9 Building Permit, instead sought to challenge, among other things, the
10 Planning Department's interpretation of Planning Code Sections
11 790.141(b) and 790.50, as set forth in its *Discretionary Review Analysis*
12 *Medical Cannabis Dispensary:Hearing May 20, 2010*.

13
14
15 93. The briefs submitted by Appellants/Real Parties in Interest did not
16 challenge any finding, determination or approval by the Department of
17 Building Inspection relating to the structural, mechanical, electrical,
18 plumbing or disability access elements that served as the basis for
19 granting Petitioner's Building Permit.
20

21 94. Briefs opposing Appeal Nos. 10-105 and 10-106 were filed by both
22 Petitioner and the Planning Department.

23
24 95. The Planning Department's Opposition Brief provide interpretations of
25 Planning Code Section 790.141 and applicable provisions of Planning
26 Code Section 790.50.

27 96. The Planning Department's Opposition Brief offered explanation
28

1 concerning a typographical error in Planning Code Section 790.141(b) that
2 references a non-existent Planning Code Section 790.50(f). The Planning
3 Department's Opposition Brief, in referencing companion Sections
4 890.133 and 890.50(a) governing the location and operation criteria for
5 MCDs in zoning districts under Article 8 of the Planning Code, made clear
6 that the 790.50(f) reference was meant to reference 790.50(a).
7

8 97. In its Opposition Brief, the Planning Department determined that neither
9 Real Party in Interest, nor any of the other four businesses referenced by
10 them, namely Grace Infant Center, Amabile School of Music, Ann Healy
11 Irish Dance and Think Tank Learning, came within the definition of
12 Planning Code Section 790.50(a), for purposes of the 1000' feet 'buffer
13 zone' requirements of Planning Code Section 790.141(b).
14
15

16 98. Appeal Case Nos. 10-105 and 10-106 were jointly heard and decided by
17 the Board, as a result of hearings conducted on November 17, 2010 and
18 February 9, 2011, at which evidence was presented, oral testimony was
19 taken, deliberations conducted, and written Findings made and adopted,
20 culminating in a Decision granting the appeals and an Order that the
21 Building Permit issued to Petitioner by DBI be overruled and denied.
22

23 99. No evidence challenging any finding, determination or approval by the DBI
24 relating to the structural, mechanical, electrical, plumbing or disability
25 access elements of Petitioner's proposed MCD, for purposes of
26 challenging DBI's issuance of Petitioner's Building Permit, was presented
27 to or considered by the Board at its hearings conducted on November 17,
28

1 2010 or February 9, 2011, nor was anything mentioned about deficiencies
2 pertaining to DBI's issuance of the Building Permit in the Board's Decision
3 and Order thereon.

4 100. Petitioner timely filed a request for Rehearing and, after a hearing at
5 which evidence was presented, oral testimony was taken, and
6 deliberations conducted, the request for Rehearing was denied on March
7 16, 2011.

8
9 101. On March 18, 2011, the Board served its Decision & Order and written
10 Findings on Appeal Case Nos. 10-105 and 10-106. See attached Exhibits
11 D and E.

12
13 102. On or about March 29, 2011, pursuant to the Board's Order,
14 Respondent DBI revoked Petitioner's Building Permit No. 200912032572.

15 103. The resulting Petition for Writ of Mandate was timely filed on June 14,
16 2011, pursuant to the provisions of CCP Section 1094.6(b), and is now
17 before this Court.

18
19 104. Petitioner, through counsel, has requested that Respondent Board
20 prepare the Administrative Record pursuant to CCP Section 1094.6(c). In
21 agreement with Deputy City Attorney Gessner, Counsel for Respondent
22 Board, and at Petitioner's election, Petitioner is having transcripts of the
23 administrative proceedings prepared. Counsel for Petitioner has also
24 requested review of records and dvds of the proceedings before the
25 Planning Commission on May 20, 2010, as these are not in the Board's
26 files. See Christine Wagner Declaration attached as Exhibit F.
27
28

1 105. The Administrative Record and Transcripts of the proceedings, when
2 received, will be served on the parties and lodged with the Court.
3

4 **ALLEGATIONS and BASIS FOR REQUESTED RELIEF**
5

6 106. Incorporating here by reference the facts contained in the foregoing
7 paragraphs 1-105, Respondent Board's Decision and Order and written
8 Findings adopted on February 9, 2011, and the actions taken by
9 Respondent Board to reach such determinations, is and are improper
10 under CCP Sections 1094.5(b) and 1085, for the following reasons:
11

12 **Respondent Board Proceeded Without Or In Excess Of Jurisdiction**

13 107. Respondent Board of Appeals proceeded without or in excess of
14 jurisdiction, in that it has no authority to make legislative amendments to
15 the Planning Code, de facto or otherwise. Respondent Board, in finding
16 that "the intent of Section 790.141(b)...is to prevent MCDs from being
17 located in close proximity to facilities that primarily serve children under 18
18 years of age[,]" and basing its Decision and Order adverse to Petitioner
19 thereon, effectively determined that Petitioner's proposed MCD was not
20 allowed to locate or operate within the 1000' feet 'buffer zone' from *any*
21 business or institution that serve children under 18 years of age, despite
22 the facts that the businesses that were the subject of the appeals did not
23 meet the express definitions of Planning Code Sections 790.141(b) and
24 790.50. Legislative amendments to the Planning Code are within the
25 exclusive jurisdiction of the Planning Commission and/or the City Board of
26
27
28

Supervisors, pursuant to the City Charter and other applicable provisions of the City's municipal codes.

108. Respondent Board of Appeals proceeded without or in excess of jurisdiction, in that it failed to heed the Planning Department's expertise and interpretation of provisions of Planning Code Sections 790.141(b) and 790.50 when it issued its Decision and Order adverse to Petitioner. The Planning Department has the authority to interpret and administer the Planning Code.

109. Respondent Board proceeded without or in excess of jurisdiction, in that Respondent Board does not have discretionary authority, under any provision of the Charter or other municipal code, to determine what the "best interests of the community" are.

110. Respondent Board of Appeals proceeded without jurisdiction, in that no Permit to Operate an MCD had been issued to Petitioner by DPH when the Board received Appeal Nos. 10-105 and 10-106, nor has any Final Permit to Operate an MCD ever been issued to Petitioner by the Director of DPH that might serve as the basis for appeal to the Board.

111. Respondent Board of Appeals proceeded without jurisdiction, in that it had no authority to review Planning Commission Action No. DRA-0149 which, as a result of the May 20, 2010 hearing before the Commission and subsequently noticed by its Secretary on or about June 11, 2010, approved the intended location and use of the property at 2139 Taraval Street for Petitioner's proposed MCD. Such determination was within the

jurisdiction of the Planning Commission.

112. Alternatively, Respondent Board of Appeals proceeded in excess of jurisdiction, in that Appeal Case Nos. 10-105 and 10-106, if found to have challenged the Planning Commission Action No. DRA-0149, were not timely filed. Had Real Parties in Interest desired to have the Planning Commission Action No. DRA-0149 reviewed by Respondent Board, it should have done so within 15 days of such Action being taken.

113. Alternatively, Respondent Board of Appeals proceeded without or in excess of jurisdiction, in that its review of the Planning Department's Discretionary Review Analysis, pursuant to Appeal Case Nos. 10-105 and 10-106, was untimely. Had Real Parties in Interest desired to have the Planning Department's Discretionary Review Analysis reviewed by Respondent Board, it should have done so within 15 days of such DR Analysis being submitted or otherwise considered by the Planning Commission on May 20, 2010.

Respondent Board Committed Prejudicial Abuse of Discretion

114. Assuming, arguendo, that Respondent Board was within its jurisdiction and authority to take adverse action on Petitioner's Building Permit Application and, as a result, his pending Application for Permit to Operate an MCD, Respondent Board abused its discretion in doing so, to the prejudice of Petitioner, in that its written Findings are not supported by substantial evidence in light of the whole record.

Respondent Board's Decision Is Not Support By The Findings

115. Respondent Board's Decision and Order granting Appeal Nos. 10-105 and 10-106 and directing Respondent DBI to revoke Petitioner's Building Permit is not supported by the written Findings, in that Respondent Board made no findings as to whether or not the structural, electrical, mechanical, plumbing or disability access determinations made by DBI were in compliance with applicable provisions of the State and municipal codes.

116. Respondent Board's Decision and Order granting Appeal Nos. 10-105 and 10-106 and directing Respondent DBI to revoke Petitioner's Building Permit is not supported by the written Findings, in that Respondent Board, in "making no findings as to whether Appellants or the other nearby businesses serving children in the neighborhood qualify as schools, community facilities or recreational facilities within the meaning of Planning Code 790.141(b)," and conversely finding that the Planning Commission approved the project at its May 20, 2010, effectively deferred to the Planning Commission's findings that Petitioner's proposed MCD satisfied the criteria set forth in Planning Code Section 790.141(b).

117. Respondent Board's Decision and Order granting Appeal Nos. 10-105 and 10-106 and directing Respondent DBI to revoke Petitioner's Building Permit is not supported by the written Findings. To the contrary, "[i]n the proceedings before this Board, the Planning Department stated that neither the Appellants nor the businesses cited in Paragraph 4(b) below

1 constitute a school, community facility or recreational building within the
2 Code[.]” thereby providing the legal basis for denying the appeals before
3 it.

4 Respondent Board Failed To Proceed In The Manner Required By Law

5 118. Respondent Board failed to proceed in the manner required by law, for
6 the reasons stated in paragraphs 106-117 above.
7

8 119. Additionally, Respondent Board failed to proceed in the manner
9 required by law when it failed to consider all documents, plans, drawings,
10 testimony and other evidence that was before the Planning Commission
11 on May 20, 2010, and that served as the basis for the Planning
12 Department’s recommendations presented in its *Discretionary Review*
13 *Analysis Medical Cannabis Dispensary:Hearing May 20, 2010*, in that
14 neither Respondent Board nor Real Parties in Interest solicited such
15 administrative records for review.
16

17 120. Additionally, Respondent Board failed to proceed in the manner
18 required by law when it failed to consider all architectural plans, drawings,
19 specificatons and other evidence that was considered by DBI as the basis
20 for issuing Building Permit No. 200912032572 to Petitioner. Neither
21 Respondent Board nor Real Parties in Interest solicited such
22 administrative records for review, as would have been necessary in order
23 to serve as the basis for granting the appeals and ordering DBI to revoke
24 Petitioner’s Building Permit.
25
26
27
28

1 121. Additionally, upon review of the Respondent Board's Decision and
2 Order and written Findings adopted February 9, 2011, in light of the
3 administrative record and transcripts of proceedings to be lodged with this
4 Court at a future date, Respondent Board failed to acknowledge and/or
5 accept into the record most or all of the evidence presented by Petitioner,
6 Respondent Planning Department, and members of the public who
7 testified in support of the proposed MCD, including "legitimate community
8 needs" for safe access to medical cannabis by qualified patients and
9 caregivers in the Sunset District and western portions of San Francisco.
10

11 122. Additionally, Respondent Board failed to consider the legislative
12 requirements for the operation of an MCD, as set forth in Article 33 of the
13 Health Code, the DPH Director's applicable Rules and Regulations, and
14 applicable provisions of the Planning Code, which set forth numerous and
15 onerous time, place and manner restrictions on permitted MCDs, paying
16 special regard to security and public safety precautions which are required
17 as a condition the operating permit, to protect the public and to keep
18 medical cannabis out of the hands of persons under 18 years of age.
19

20 123. Additionally, Respondent Board failed to apply the provisions of
21 Planning Code Sections 109, when reviewing the application of non-
22 existent Section 790.50(f) to Appellants/Real Parties in Interest and other
23 identified businesses located within 1000' feet of Petitioner's proposed
24 MCD. Planning Code Section 109 required Respondent Board to sever
25 the phrase "or recreational buildings that primarily serves persons under
26
27
28

1 18 years of age” as invalid, while allowing for review and application of the
2 remaining provisions of Planning Code Section 790.141(b) to
3 Appellants/Real Parties in Interest and the other businesses referenced by
4 them.

5 Respondent Board’s Findings Are Not Supported By The Evidence
6

7 124. Assuming, arguendo, that Respondent Board was within its jurisdiction
8 and authority to take adverse action on Petitioner’s Building Permit
9 Application and, as a result, his pending Application for Permit to Operate
10 an MCD, Respondent Board abused its discretion in doing so, to the
11 prejudice of Petitioner, in that its written Findings are not supported by the
12 weight of the evidence.
13

14 125. Respondent Board’s Finding No. 4, which found that the proposed
15 MCD “would adversely effect the surrounding property and its residents
16 and would not be in the best interests of the neighborhood” is speculative,
17 conclusory and unsupported by any evidence that the Board had before it.
18

19 126. Respondent Board’s Finding Nos. 4.a. and 4.f., wherein “[t]he Board
20 finds that there are legitimate community needs to provide for children’s
21 safety and to limit access to marijuana for a vulnerable population[,]” and
22 that “concerns for the safety of neighborhood children” are widespread,
23 failed to acknowledge that such needs and concerns are appropriately
24 addressed by the permitting provisions of Article 33 of the Health Code;
25 applicable sections of the Planning Code governing ‘buffer zones’ from
26 sensitive uses; multi-agency review of Petitioner’s building and operating
27
28

1 plans; and Petitioner's background and expertise in the security business,
2 and will in the future be addressed by the operating provisions of Article
3 33 of the Health Code and the DPH Director's applicable Rules and
4 Regulations once a final permit to operate the MCD is issued.

5 127. Respondent Board's Finding No. 4.e., that a teenage population in the
6 area is "vulnerable to an MCD" is non-sensical and otherwise speculative,
7 conclusory and unsupported by the evidence.

8 128. Respondent Board's Finding No. 4.f., that "the City and County of San
9 Francisco has the highest concentration of licensed MCDs per square mile
10 in the State" is irrelevant, unsupported by any credible evidence and does
11 not take into account the qualified patient population density of the City
12 and County.

13 129. Respondent Board's Finding No. 4.d., that "the Property sits in a
14 densely populated commercial corridor that is serviced by the L Taraval
15 MUNI streetcar line and serves as a main transportation corridor..."
16 supports the Board of Supervisors' reasoning behind the allowance of
17 MCDs in NC-2 Districts when it adopted the enabling ordinance in 2005.

18 **Respondent Board Did Not Provide Petitioner with a Fair Trial**

19 130. While there is argument and ample evidence to overturn Respondent
20 Board's Decision and Order of February 9, 2011 on both jurisdictional and
21 substantive grounds, there is also evidence that various City and State
22 officials approached Respondent Board to voice opposition to Petitioner's
23 proposed MCD, including Supervisor Carmen Chu, State Senator Leland
24
25
26
27
28

1 Yee, Superintendent of Schools Carlos Garcia and finally, then Police
2 Captain Denise Schmitt, whose inflammatory and alarmist letter written to
3 the Planning Department and linking criminal activity with the operation of
4 MCDs, was found by the Police Commission to be unsubstantiated and
5 lacking in credibility. As Respondent Board is an appointed body, it
6 appears that the Board made its Decision and Order as a result of bias,
7 political persuasion and ethnic community outcry, given the lack of
8 credible evidence to support its Decision and Order adverse to Petitioner.
9

10 **Respondents Acted Arbitrarily and Capriciously**

11 131. Alternatively, and based upon the foregoing paragraphs 1-130
12 incorporated here by reference, Respondent Board of Appeal's Decision
13 and Order is invalid under CCP Section 1085, in that the foregoing acts of
14 Respondents are arbitrary, capricious and entirely lacking in evidentiary
15 support, and failed to follow procedures established by law, rule,
16 regulation or policy.
17
18

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner prays that:

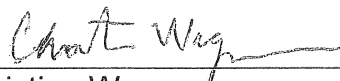
22 A Peremptory Writ of Mandate be issued, ordering Respondent Board of
23 Appeals to set aside its Decision and Order adopted on February 9, 2011, and
24 commanding Respondent DBI to reinvoke and reissue Petitioner's Building
25 Permit No. 200912032572, subject to all rights and privileges thereunder;
26
27 Petitioner recover his costs and damages sustained as a result of the acts
28

1 of Respondents pursuant to CCP Section 1095, according to proof;

2 Petitioner be awarded recovery of attorneys fees pursuant to CCP Section
3 1021.5 or Government Code Section 800, according to proof; and that

4 Petitioner be granted such other and further relief as this Court considers
5 just and proper.
6

7
8 Dated 14 June 2011



Christine Wagner
Attorney for Petitioner, Greg Schoepp

VERIFICATION

I, Greg Schoepp, am the Petitioner in this proceeding. The facts alleged in the above petition are true of my knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 6-14-11



Greg Schoepp, Petitioner

sale include dried Cannabis flowers and concentrates, liniments, salves, creams, tinctures, capsules, edibles, oils, drinks, powdered mixes, food supplements and possibly periodicals and books. There would not be any smoking, vaporizing, ingesting, or medicating of any kind on or around premises. Patients and caregivers limit their stay to 15 minutes. Advice and instruction may occur on site however, there would not be any social lounge or area to linger. The patients and/or their caregivers would purchase their medicine and leave the premises and persons under the age of 21 would not be permitted on the premises unless accompanied by an adult parent or guardian. Children would not be allowed on the premises. The project includes the use of 16 on-site surveillance cameras to mitigate any loitering or noise issues.

SITE DESCRIPTION AND PRESENT USE

The project site is a 25-foot wide by 100-foot deep flat lot on Taraval Street, between 31st and 32nd Avenues in the Sunset District. The subject building is a one-story structure that contains approximately 800 square feet of commercial/retail space with no on-site parking and one, non-complying, residential unit in the rear of the structure. The commercial/retail space was a former chiropractor's office and has been vacant for several years.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The Project site is located in the NC-2 (Neighborhood Commercial – Small Scale) and RUSD (Taraval Street Taraval Restaurant and Fast-Food Sub-District) as defined in Planning Code Sections 711.1 and 781.1, respectively. The NC-2 Districts are linear shopping streets which provide convenience goods and services to the surrounding neighborhoods as well as limited comparison shopping goods for a wider market. The range of comparison goods and services offered is varied and often includes specialty retail stores, restaurants, and neighborhood-serving offices. NC-2 Districts are commonly located along both collector and arterial streets which have transit routes.

These districts range in size from two or three blocks to many blocks, although the commercial development in longer districts may be interspersed with housing or other land uses. Buildings typically range in height from two to four stories with occasional one-story commercial buildings. The small-scale district controls provide for mixed-use buildings which approximate or slightly exceed the standard development pattern. Rear yard requirements above the ground story and at residential levels preserve open space corridors of interior blocks.

Most new commercial development is permitted at the ground and second stories. Neighborhood-serving businesses are strongly encouraged. Eating and drinking and entertainment uses, however, are confined to the ground story. Limits on late-night activity, drive-up facilities, and other automobile uses protect the livability within and around the district, and promote continuous retail frontage. Existing residential units are protected by limitations on demolition and upper-story conversions.

The RUSD is intended to preserve the mix and variety of goods and services provided to the Sunset and Parkside neighborhoods and City residents, prevent further proliferation of restaurant uses and prevent further aggravation of parking and traffic congestion in this district.

The NC-2/RUSD District in this area runs along Taraval Street between Funston and 36th Avenues on both sides of the street for approximately 25 blocks. The Project site is located in an area of mixed use along Taraval Street with single-family residential use to the rear (south). Retail and commercial uses in this area include restaurants, grocery stores, bakeries, general retail stores, etc. serving the surrounding residents within this area. The area is served by several public transit lines, including the L, the 29 and the 48.

Medical cannabis dispensaries in NC-2 Districts are only permitted with the approval of the Planning Commission under a Mandatory Discretionary Review permit and may only operate between the hours of 8 a.m. and 10 p.m., Monday through Sunday. The Planning Commission may further restrict hours of operation. Per Section 790.141 of the Planning Code, a medical cannabis dispensary shall be as defined by Section 3301(f) of the San Francisco Health Code provided that: (i), it is located not less than 1,000 feet from the parcel containing the grounds of an elementary or secondary school, public or private, or a community facility that primarily serves persons under 18 years of age or a recreation building as defined in Section 790.50(f) of this Code that primarily serves persons under 18 years of age; (c) 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; (d) regardless of whether medical cannabis is smoked on the premises the parcel containing the medical cannabis dispensary is not 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; and (e) no alcohol is sold or distributed on the premises for on or off-site consumption.

HEARING NOTIFICATION

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Posted Notice	10 days	May 10, 2010	February 26, 2010	73 days
Mailed Notice	10 days	May 10, 2010	May 10, 2010	10 days

The Project Sponsor has conducted several outreach meetings to answer questions (see attached). Specifically, the applicant advertised with flyers (in English and Chinese) for the outreach meetings, which were held every Wednesday evening from February 2010 to date, and spoke with community groups and polled pedestrians.

PUBLIC COMMENT

	SUPPORT	OPPOSED	NO POSITION
The adjacent neighbor(s)	2	0	Chinese Gospel Church
Other neighbors on the block or directly across the street	See Below	See Below	-
Neighborhood Groups	-	2	-

The Planning Department has received 405 pages of multi-signed petitions and 177 letters and e-mails in opposition resulting in thousands of signatures in opposition to the proposed Medical Cannabis Dispensary on the project site. Concerns include increased crime, noise and loitering in the area, accessibility of cannabis to minors, and reduced property values. A letter was received by the Taraval Police Station, expressing concern regarding potential increased level of crime activity (see attached). The Department has received 12 pages of multi-signed petitions and 359 letters and e-mails of support; in addition, the applicant has submitted 1,508 additional petition signatures in support of the project from local residents and merchants (see attached). Due to the number of responses, it could not be determined if any are duplicate submittals and only a sample is attached with this Staff Report. Many of the signatures opposing and in support of the project are from locations outside the Sunset District. Due to the large number of signatures in support and opposition, precise numbers and addresses are difficult to determine, however the neighborhood appears to be well represented.

Opponents believe the proposed Medical Cannabis Dispensary is inappropriate at this location due to proximity to the following uses:

DISTANCE IN MILES TO SUBJECT SITE:	YOUTH SERVICE	ADDRESS
0.01	Canaan Tutoring	2109 Taraval St.
0.06	Ann Healy Irish Dance	2036 Taraval St.
0.18	Synergy Sports & Learning	2453 Taraval St.
0.23	Young Artists Studio	2414 28 th Av
0.23	Little Star Preschool	2540 Taraval St.
0.29	Sunset Movement Arts	1647 Taraval St.
0.3	Brainchild Education	1614 Taraval St.
0.47	Living Water Fellowship	2312 Vicente St.
0.49	Rainbow Montessori	2358 24 th Av
0.53	St. Clair's Taekwondo	3035 Taraval St.
0.54	Inspire Music	1241 Taraval St.
0.55	Parkside Library	1200 Taraval St.
0.57	Dianne Feinstein Elementary	2550 25 th Av
0.61	Robert Louis Stevenson Elementary	2051 34 th Av
0.71	Our Rainbowkids	2566 23 rd Av
0.75	Abraham Lincoln H. S.	2162 24 th Av
0.76	St. Gabriel School	2550 41 st Av
0.83	St. Ignatius College Prep	2001 37 th Av
0.89	Dora's Family Daycare	2667 22 nd Av
1.07	St. Cecilia School	660 Vicente St.
1.1	AP Giannini Middle School	3151 Ortega St.
1.12	S.F. Montessori Academy	1566 32 nd Av

PROXIMITY TO EXISTING MCD'S

While considering case 2007.0115D on June 21, 2007, 174 Valencia Street (dba Mr. Nice Guy) the Planning Commission determined that in considering the legalization of an MCD, proximity to other existing MCDs shall not influence the Commissions' final decision. However, the nearest MCD to the project site is located at 1944 Ocean Avenue, 2.3 miles from the site (approximately 12,000 feet).

PROJECT ANALYSIS

The project would comply with Section 145.1 of the Planning Code in that at least ½ the total width of the commercial street frontage would be devoted to entrances to commercially used space, windows or display space at the pedestrian eye-level. The structure contains a 17-foot-wide window at the ground level and at pedestrian eye-level, which is, along with the entrance, 68% of the width of the site. The applicant is proposing to install a safety window film that reinforces the glass, helps keep broken glass in place, and allows light to penetrate the interior space to deter crime on the premises.

The applicant chose the Sunset District because of San Francisco's disproportionate distribution of MCDs in other areas of the City and believes there is a need to provide the Sunset's 70,000 residents with local, safe, and legal, access to the medicine that they need. The Sunset District has a low incidence of crime and it is the intention of the applicant to help keep it that way. The applicant researched potential locations for their MCD for 14 months to find the location at 2139 Taraval Street. Determining factors included areas where MCDs are permitted, convenient public transit access, a safe and comfortable environment for patients and a location that is currently not served by other MCDs. The proposed MCD, if approved, would be the 29th MCD within the City and County of San Francisco.

Applying Planning Code requirements for MCDs in this District, the permitted locations would be approximately between 33rd and 29th Avenues (see TARAVAL MCD RADIUS map, attached) only. Although there are several lots on Taraval Street to the west of 37th Avenue that are zoned NC-1, new MCDs are not permitted within this district.

The project meets the requirement under Planning Code Section 790.141 in that it is located more than 1,000 feet from any parcel containing the grounds of an elementary or secondary school (see above), public or private, or a community facility that primarily serves persons under 18 years of age or a recreation building as defined in Section 790.50(f) of the Code that primarily serves persons under 18 years of age. Although the first three businesses listed above are located less than 1,000 feet from the project site, Canaan Tutoring, Ann Healy Irish Dance, and Synergy Sports & Learning, none of these establishments are licensed by the State of California, which is a criteria under Section 790.50 of the Planning Code. Further, the applicant contends that the proposed use would be a neighborhood serving use in that the nearest MCD is approximately 2.3 miles away and residents of the Sunset District must travel out of their neighborhood for their medicine.

Supporters of the project believe the excessive opposition is due to miscommunication and lack of knowledge regarding the use of cannabis for medicinal purposes. They have written that the use of cannabis relieves many chronic conditions such as pain, seizure disorders, cancer, diabetes, depression, anxiety and many other ailments and have cited studies that state cannabis is not as addictive as alcohol and/or caffeine. Not unlike the purchase of alcohol or cigarettes at the local markets, identification (proof of age over 21 years) would be required to purchase the medicinal cannabis. Further, several residents have indicated that they are physically handicapped and traveling outside their neighborhood for medicine is a hardship. Supporters also claim that the lack of an MCD in this district, while so many others exist in other neighborhoods, is discriminatory.

ENVIRONMENTAL REVIEW STATUS

The Project was determined by the San Francisco Planning Department to be Categorically Exempt under Class 1 from Environmental Review under the California Environmental Quality Act Guidelines on October 23, 2009.

GENERAL PLAN FINDINGS

The Departments believes the proposed use is consistent with the following relevant objectives and policies of the Commerce and Industry Element of the General Plan.

OBJECTIVE 1: MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

POLICY 1.2: Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

The location for the existing MCD meets all of the requirements in Sections 790.141 of the Planning Code.

POLICY 1.3: Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

Planning Code Section 711.1 permits the establishment of an MCD within the NC-2 (Small-Scale Commercial) District, with the review and approval of the Planning Commission at a public hearing. The Project site is located in the NC-2 (Neighborhood Commercial – Small Scale) and RUSD (Taraval Street Taraval Restaurant and Fast-Food Sub-District) District as defined in 711.1 and 781.1, respectively. The NC-2 Districts are linear shopping streets which provide convenience goods and services to the surrounding neighborhoods as well as limited comparison shopping goods for a wider market. The range of comparison goods and services offered is varied and often includes specialty retail stores, restaurants, and neighborhood-serving offices. NC-2 Districts are commonly located along both collector and arterial streets which have transit routes.

OBJECTIVE 7: ENHANCE SAN FRANCISCO'S POSITION AS A NATIONAL AND REGIONAL CENTER FOR GOVERNMENTAL, HEALTH, AND EDUCATIONAL SERVICES.

POLICY 7.3: Promote the provision of adequate health and educational services to all geographical districts and cultural groups in the city.

The chronically ill patients served by the proposed use are in great need of this type of medical service; by allowing the services provided by the MCD, patients are assured safe access to high quality medicine for their ailments. The nearest MCD is located more than two miles away, therefore, the Sunset District is not currently served by a local MCD.

The project is consistent with the following relevant Priority Policies of Planning Code Section 101.1 ("Prop M findings"):

Planning Code Section 101.1 establishes Eight Priority Planning Policies and requires review of permits for consistency with said policies. The Project complies with said policies in that:

1. No neighborhood serving retail uses are being displaced or otherwise affected by the proposal.

The proposed MCD would occupy a vacant commercial/retail space and would not displace any neighborhood serving retail use.

2. Existing housing and neighborhood character will not be adversely affected by the proposed project.

The site contains a legal, non-complying residential unit at the rear of the property which would not be affected by the proposed MCD. The proposed MCD would occupy an existing ground floor commercial space and will adhere with all signage regulations defined in Article 33 of the Health Code to help preserve the existing neighborhood character. The proposed use would not adversely affect the existing housing and neighborhood character.

3. The Project would have no adverse impact on the City's existing supply of affordable housing.

The existing residence at the rear of the property would remain, therefore, the proposed use will not adversely affect any affordable housing.

1. The Project will not significantly effect automobile traffic congestion or parking problems in the neighborhood.

The site does not contain any on-site parking and none is proposed. The subject property is close to multiple public transit lines and the intent is for the use to be for the residents in the immediate area. Further, the immediate neighborhood provides sufficient short-term street parking.

2. No industrial or service industry establishment would be displaced by the Project.

The use will not displace any industrial or service industry establishments.

3. Earthquake safety requirements would be considered during review of any building permit applications.

The MCD will follow standard earthquake preparedness procedures and have emergency supplies and follow emergency response policies and procedures.

4. That landmarks and historic buildings will be preserved.

The applicant is proposing very minor exterior and interior changes to the building, thereby preserving the building's existing storefront. The project would not have any impact on any landmark or historic buildings.

5. The Project has no impact on open space or parks or their access to sunlight and vistas.

The MCD will not restrict access to any open space or parks and will not impact any open space or park's access to sunlight or vistas.

CRITERIA

The proposal meets the Criteria for establishing a Medical Cannabis Dispensary as outlined in Section 790.141 of the Planning Code:

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

Criteria Met: *The applicant has applied for a permit from the Department of Public Health. A copy of the referral from the Health Department to the Planning Department is included in this packet. (Exhibit A)*

2. If medical cannabis is smoked on the premises, the parcel containing the medical cannabis dispensary is located not less than 1,000 feet from the parcel containing the grounds of an elementary or secondary school, public or private, or a community facility that primarily serves persons under 18 years of age, or a recreation building as defined in Section 790.50(a) of this Code that primarily serves persons under 18 years of age, unless not required by State law, and, regardless of whether medical cannabis is smoked on the premises, if the dispensary was not in operation as of April 1, 2005, as defined in Subsection (i), it is located not less than 1,000 feet from the parcel containing the grounds of an elementary or secondary school, public or private, or a community facility that primarily serves persons under 18 years of age or a recreation building as defined in Section 790.50(f) of this Code that primarily serves persons under 18 years of age;

Criteria Met: *The project is not located within a 1,000-foot radius of the grounds of an elementary or secondary school, public or private, or a community facility that primarily serves persons under 18 years of age, or a recreation building as defined in Section 790.50(a) of the Planning Code and there would not be any on-site smoking.*

3. 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 Met: *Smoking or vaporizing will not be permitted on the premises.*

4. Regardless of whether medical cannabis is smoked on the premises the parcel containing the medical cannabis dispensary is not 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.

Criteria Met: There is no facility providing substance abuse services, licensed or certified by the State of California or funded by the Department of Public Health on the project parcel.

5. Alcohol is not sold or distributed on the premises for on or off-site consumption.

Criteria Met: Alcohol would not be sold or distributed on the subject property.

6. Acceptance of a complete application for a building permit for a medical cannabis dispensary by the Planning Department shall cause a notice to be posted on the proposed site and shall cause written notice to be sent via U.S. Mail to all owners and occupants of properties within 300 feet of the subject lot in the same Assessor's Block and on the block face across from the subject lot as well as to all individuals or groups that have made a written request for notification regarding specific properties, areas or medical cannabis dispensaries.

Criteria Met: The notice for the Section 312 (change of use notice) was sent to all owners and occupants within 300 feet of the subject property stating that a new Medical Cannabis Dispensary was seeking review and approval to operate and that the use was subject to a Mandatory Discretionary Review hearing before the Planning Commission at a public hearing.

STAFF RECOMMENDATION

The Department recommends the Commission take Discretionary Review and approve the project with the following conditions:

1. Hours of operation shall be Monday to Saturday from 9 a.m. to 8 p.m. and Sundays from 3 p.m. to 8 p.m.
2. The Project Sponsor may request to extend the hours of operation to open at 8 a.m. and close at 10 p.m. Mondays through Saturdays after six months of operation and may be approved by the Zoning Administrator, provided there have not been any complaints or violations on the subject property.

BASIS FOR RECOMMENDATION

The State of California passed Proposition 215 in 1996, known as the Compassionate Use Act, by a 56% majority and Proposition 215, in San Francisco, passed by a 78% majority. The legislation established the right of seriously ill Californians, including those suffering from illnesses such as AIDS, cancer and glaucoma, to obtain and use marijuana for medical purposes when prescribed by a physician. MCDs began to be established in San Francisco shortly after Proposition 215 passed as a means of providing safe access to medical cannabis for those suffering from debilitating illnesses. At that time, San Francisco did not have any regulatory controls in place to restrict the placement and operations of the dispensaries. As

a result, over 40 dispensaries were established in the city without any land use controls, often resulting in incompatible uses next to each other.

The Medical Cannabis Act was approved by the Board of Supervisors and Mayor became effective on December 30, 2005. The Act, set forth in Ordinance 275-05 and supported by Ordinances 271-05 and 273-05, amended the Planning, Health, Traffic, and Business and Tax Regulation Codes in order to establish a comprehensive regulatory framework for MCDs in San Francisco. The Act designates the Department of Public Health (DPH) as the lead agency for permitting MCDs. DPH conducts its own review of all applications and also refers applications to other involved City Agencies, including the Planning Department, in order to verify compliance with relevant requirements. The Planning Department's review is generally limited to the location and physical characteristics of MCDs.

The proposed MCD at 2139 Taraval Street meets all the requirements under the Planning Code and General Plan and the Department believes this would be a necessary use to the residents of the Sunset. The Department recommends that the Commission take Discretionary Review and approve the project for the following reasons:

- The proposed project is located more than 1,000 feet from any parcel containing the grounds of an elementary or secondary school, public or private, or a community facility that primarily serves persons under 18 years of age or a recreation building as defined in Section 790.50(f) of the Code.
- There is a limited area where a new MCD may locate within this District.
- Persons under the age of 21 would not be permitted on the premises.
- The project site is located approximately 2 miles from the nearest Medical Cannabis Dispensary and would therefore serve a need within this community.
- The use would include 16 security cameras.
- The project would have restricted hours of operation: Monday through Saturday from 9 a.m. to 8 p.m. and 3 p.m. to 8 p.m. on Sunday.
- The project is consistent with the General Plan Policies and Objectives and complies with the Planning Code, including Section 790.141 criteria.

Attachments:

Block Book Map
Sanborn Map
Aerial Photographs
Zoning Map
Street and Block Photographs
1,000-Foot Radius Map to Schools, Etc. from project site
Planning Department MCD Location Map
Taraval Street MCD Radius Map showing potential MCD sites.
Section 311 Notice
Environmental Review
Department of Health Application
Applicants' Frequently Asked Questions
MCD Citywide Location map as of 2008
Planning Department Guidelines for New MCDs
Sample Resident Response
Letter from Capt. Schmidt, S.F.P.D.
Letter from Applicant
Reduced Plans



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

DATE: June 11, 2010
TO: Interested Parties
FROM: Linda Avery
Planning Commission Secretary
RE: Planning Commission Action – No. DRA-0149

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Property Address: 2139 Taraval Street
Building Permit Application No. 2009.12.03.2572
Discretionary Review Case No. 2010.0018D

On May 20, 2010, the Planning Commission conducted a Discretionary Review hearing to consider the following project:

2139 TARAVAL STREET - south side between 31st and 32nd Avenues; Lot 042 in Assessor's Block 2394 - **Mandatory Discretionary Review** of Building Permit Application No. 2009.12.03.2572 for a change of use of the vacant ground floor space, previously a chiropractors' office to a medical cannabis dispensary (d.b.a. "Bay Area Compassion Health Centers, Inc.") per Planning Code Section 790.141 in an NC-2 (Neighborhood Commercial, Small-Scale) District and RUSD (Taraval Restaurant and Fast Food Sub-District).

ACTION

The Commission agreed with the Department's recommendation to take Discretionary Review and approve with the conditions that

Hours of operation shall be Monday to Saturday from 9:00 a.m. to 8:00 p.m. and Sundays from 3:00 p.m. to 8:00 p.m.

The Project Sponsor may request to extend the hours of operation to open at 9 a.m. and close at 10 p.m. Mondays through Saturdays after six months of operation and may be approved by the Zoning Administrator, provided there have not been any complaints or violations on the subject property.

FINDINGS

The reasons the Commission took this action described above includes:

- The proposal meets the Criteria for establishing a Medical Cannabis Dispensary as outlined in Planning Code Section 790.141.

Speakers at the hearing included:

Memo

In support of the project:	In support of DR Request Opposed Project:
Paul Hansbury	Supervisor Carmen Chu
Connie Taylor	Alisa Berkowitz
Edwin Bresein	Wendy
Nicholas Lau	Sonia Ng
Susan Tibbon	Pauline Ha
Linda Shah	Peter Wong
Nancy Dicianni	Nora Speirs
Alfred Martinez	Richard Moy
Eric Goebel	Herbert
Janet Hough	Sharon Moy
Andrew Hagman	Ellen Conaway
Richard Bruni	William Conaway
Roy Jarl	Yang Yi
Aaron Michael Zimmerman	Jim Chon
Morningstar Lennon	Katie Girlieh
Rev. Khevan	Lisa Tsang
Josephine Guerra	Grace Chan
Wyman Chen	Sammy Au
Heather Hall	Bryant Woo
Anne E.W. Doherty	Kuo-In Chang
Jerri Ann Wright	Fan-Chun chang
Anthony Muniz	Selina Chin

James W. Fichett	Clay Foster
Marion Dorning	Tom Fong
Alex Escalante	Tom Orgain
Eddy Robinson	Jane Gamp
Zachary Richard	Cammy Blackstone
Joe Schepp	Terry Fong
Pete Heine	Billy Thach
Brian K. Ford	Awadalla
Eric Goebel	Bill Tam
Russell Kyle	Wei Hong Liu
Gregory Ledbetter	Gary Wong
Richard Watts	Rose Tsai
Orlon Ryel	Shu Hwa Ho
Michael Goldman	Johnson Chiu
Hector Torres Sr.	Yumi Sam
Maureen Burns	Nicholas Young
Theresa Cooper	Carole Young
Catherine A. Smith	Linh Ly
Christine Moyes	Kelly Yip
Kerry Stoll	Lucy Wong
Gilbert C	Betsy Fong
Daniel	Shirley Van
Jonathan Beaver	Jane Chan
Albert Blais	Michelle Lam

Floyd Rowry	Anna Louie
Nick Hochberg	Lay – Beng Ho
Alex Straus	Kim Yee
Denise Dorey	Frankie Young
Christine Wagner	Ai-Man Amy Tang
Chad Conner	Ashley Summers
Stewart Rhoads	Kathy Tang
John Martinelli	Wen Liu
Max Leroy	Elaine He
Sandy Cheng	Betty Gee
Gabriel Martin	Carrie Chan
Shona	Bill Lai
Cathy Smith	Hal Cochrane
Ivette Fernandez	Anthony Tam
Michael	Kuo Jea
Amy Hui	Sue C. Yee
Analch Sil Rama	Lo Lan Chau
Eamon Ward	Helen Lam
Katrina Haverkamp	Chang Ding Huang
Edward Davis	Grace Pang
Kevin Delany	Phuong Lu
	Yee Mei Tang
	Wei Gung Wu
	Cecilia Ng

	Marilyn Moffett
	Betty Yep
	Sophia Chen
	Allan Sam
	Dallas Udouch
	Yingxia Lin
	Yue You Tian
	Peter Chow
	Cathren Koehlert
	Monica Landeros
	Lucy Ho
	Bill Chui
	Nancy Chin
	Tommy Au
	Kit Chong
	Greg Star
	Bill Gotu
	James A. O'Connor
	Ester Maria Abarca
	Theresa Martin
	Arthur Cecchin
	Loretta Bi
	William Tsang
	Lam

Ayes: Commissioners Alexander, Olague, S. Lee, Moore, Sugaya

Nayes: Commissioner W. Lee

Absent: Commissioner Antonini

Case Planner: Delvin Washington (415) 558-6443

You can appeal the Commission's action to the Board of Appeals by appealing the issuance of the permit. Please contact the **Board of Appeals** at **(415) 575-6880** for further information regarding the appeals process.

cc: Linda Avery

City and County of San Francisco
DEPARTMENT OF BUILDING INSPECTION

J O B C A R D



OFFICE HOURS: THE BUILDING INSPECTION IS OPEN DAILY, MONDAY THRU FRIDAY,
FROM 8:00 a.m. TO 5:00 p.m. DISTRICT BUILDING INSPECTORS KEEP OFFICE HOURS DAILY,
MONDAY THRU FRIDAY, FROM 8:00 a.m. TO 8:30 a.m. AND FROM 3:00 p.m. TO 4:00 p.m.

REQUESTS FOR INSPECTIONS ARE TAKEN ONLY DURING THE HOURS OF
8:30 A.M. TO 3:00 P.M. BY CALLING (415) 558-6570

APPLICATION NO. 2009-12-03-2572 ISSUED SEP 15 2010
JOB ADDRESS: 2139 Taraval St BLOCK: _____ LOT: _____
NATURE OF WORK: _____

WORK PERMITTED UNDER AUTHORITY OF THIS BUILDING PERMIT NUMBER MUST BE COMPLETED
PRIOR TO EXPIRATION DATE OF 9-10-2011

EXTENSION OF TIME TO COMPLETE WORK UNDER THIS BUILDING PERMIT NUMBER MAY BE GRANTED UPON
WRITTEN REQUEST PRIOR TO THE DATES NOTED ABOVE.

For informations on the Permit Process, Building Plans Review, Access Issues, etc., please see page 4 of this
JOB CARD for useful and appropriate telephone numbers.

*** ELECTRICAL & PLUMBING WORK MUST HAVE PERMITS SEPARATE FROM A BUILDING PERMIT. ***

**KEEP THIS CARD POSTED IN A CONSPICUOUS PLACE ON THE JOB SITE AT ALL TIMES.
PLANS AND PERMIT DOCUMENTS SHALL BE ON THE JOB SITE
AT ALL TIMES WHEN WORK IS IN PROGRESS.
AFTER COMPLETION OF WORK, RETAIN THIS CARD FOR YOUR RECORDS.**

City and County of San Francisco
DEPARTMENT OF BUILDING INSPECTION
INSPECTION RECORD

APPLICATION NO. 2009-12-03-2572ISSUED SEP 15 2010JOB ADDRESS: 2139 Taraval St

BLOCK: _____ LOT: _____

NATURE OF WORK: _____

Do Not Pour CONCRETE until the following are signed

	INSPECTIONS	Dates	Inspectors
	Foundation Forms		
	Foundation Steel		
	Grounding Electrode		
	O.K. TO POUR		

Do Not CONCRETE SLAB until the following are signed

	INSPECTIONS	Dates	Inspectors
	Plumbing Underground		
	Electrical Underground		
	Fire Service Underground		

Do Not COVER until the following are signed

	INSPECTIONS	Dates	Inspectors
	Rough Plumbing		
	Shower Pan		
	Flu, Vents & Ducts (PLBG)		
	Heating Hydrostatic Test		
	Rough Sprinklers (PLBG)		
	Rough Electrical		
	Rough Sprinklers (FIRE)		
	Hydrostatic (FIRE)		
	Sound Transmission		
	Rough Framing		
	Insulation		
	Environmental Air, Vents, Ducts (BLDG)		
	Lath		
	O.K. TO COVER		

ADDITIONAL WORK REQUIRING APPROVALS

	INSPECTIONS	Dates	Inspectors
	Special		
	Special		
	Special		
	Fire Alarm		
	Energy Ordinance		

FINAL INSPECTION REQUIRED

	INSPECTIONS	Dates	Inspectors
	Disabled Access		
	Sprinklers (PLBG)		
	Mechanical		
	Plumbing		
	Electrical		
	Street Use & Mapping		
	Urban Forestry		
	Fire Department		
	Health Department		
	Building		
	CERTIFICATE OF FINAL COMPLETION		

WARNING: THE PROVISIONS OF YOUR BUILDING INSPECTION PERMIT WILL BE NULLIFIED UNLESS ALL FINAL INSPECTIONS ARE SIGNED OFF ABOVE BY THE APPROPRIATE INSPECTORS.

WARNING

ADDITIONAL INFORMATION

Pursuant to Article 20 of Chapter 10, Part II of the San Francisco Municipal Code (Public Works Code), certain building permits may be issued only after the permittee analyzes the soil for the presence of hazardous wastes and, where applicable, certifies that it has completed site mitigation. No officer, employee, or agency of the City conducted the soil sampling and analysis, recommended site mitigation measures, conducted the site mitigation or checked or verified the reports submitted or work performed for accuracy, reliability or adherence to protocols. In issuing this permit, neither the city nor any of its officers or employees make any representation that the soil on or about the site is free from the presence of hazardous wastes. Nor does the City's implementation of this process relieve any person from their duties and responsibilities relating to hazardous waste contamination under state and federal law. Neither soil analysis pursuant to Article 20 of Public Works Code nor the issuance of this permit is intended to alter, extinguish, or transfer these responsibilities.

1. Building Permit.

All requests for extension of time must be in writing to Director, Dept. of Building Inspection. Permits are issued subject to Appeal within 15 days to Board of Permit Appeals. Incur no expenses until right of Appeal has lapsed.

2. Demolition Permit.

If Demolition involves Abandonment of Side Sewer Permittee must obtain a Side Sewer Permit. The S then be blocked at the Main Sewer.

3. Permit to Lower Curb/To Excavate in Street or Sidewalk.

Issued to construct Auto Runway as per Article 15. Public Works Code.

Excavation should be carried out in accordance with Article 8 of Public Works Code.

If issued with Building permit time for completion is same as Building; if issued alone, complete work within 6 months. Void if not started within 6 months.

4. Street Space Permit.

No refuse, excavated materials, concrete or mortar is to be disposed of upon Paved Streets, catch basins, material or equipment shall be left on Roadway of Police Tow-Away Zone during hours when Tow-Away Waterways must be kept clear.

All provisions of Section 724.3 of the Public Works Code are incorporated into this permit by reference. Street and sidewalk areas occupied must not exceed a width 1/2 the width of the sidewalk plus 1/3 the

5. Permit to Repair or Construct Sidewalk.

Handicap Ramps required in vicinity of Crosswalks per plan No.11-33, 982, Ch. 2. Before beginning work, Area Inspector Tel. 554-5837. Permit valid for 3 months from date issued, unless extension authorized. Some sidewalks have been constructed over a subsidewalk basement or other below ground structure. In such cases, limit, modify, or alter in any way the responsibility of the property owner to ensure that such subsidewalk structure complies with San Francisco Building Code, Electrical Code, Fire Code, Mechanical Code, Plumbing Code, Public Works Code. In addition, issuance of this permit does not limit the liability of the property owner or his or her agent. If actions of a third party result in damage to the sidewalk or subsidewalk structure; consequently, permit City and County of San Francisco makes no representations that issuance of a sidewalk permit will not damage or alter subsidewalk structure. The Department of Building Inspection, in conjunction with the Department of Public Works, may require property owners to construct or alter subsidewalk spaces separately from a sidewalk permit. Property owners are encouraged to independently analyze the structural integrity of subsidewalk space and determine whether to repair or modified.

6. Hold Harmless Clause.

The Permittee(s) by acceptance of this permit, agree(s) to indemnify and hold harmless the City and County of San Francisco against any and all claims, demands and actions for damages resulting from operations under this permit. The City and County of San Francisco, and to assume the defense of the City and County of San Francisco in any such claims and actions.

BOARD OF PERMIT APPEALS STIPULATIONS.

**CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF BUILDING INSPECTION
(415)558-6088**

Application/Permit No: 200912032572

<input type="checkbox"/> ERECT	<input checked="" type="checkbox"/> ALTER BUILDING	<input type="checkbox"/> ERECT SIGN	DATE OF ISSUE	15-SEP-10
<input type="checkbox"/> DEMOLISH BUILDING	<input type="checkbox"/> GRADE			
<input type="checkbox"/> LOWER CURB	<input type="checkbox"/> OCCUPY STREET SPACE		FILING FEE RECEIPT #	091229
<input type="checkbox"/> EXCAVATE STREET OR SIDEWALK	<input type="checkbox"/> POST NOTICE			
<input type="checkbox"/> HOUSE NUMBER CERTIFICATE	<input type="checkbox"/> REPAIR OR CONSTRUCT SIDEWALK			

<input type="checkbox"/> FINAL PLAN CHECK	<input type="checkbox"/> EXPEDITER FEE	<input type="checkbox"/> PENALTY
<input type="checkbox"/> STRUCTURAL LTR	<input checked="" type="checkbox"/> DCP FEE	<input type="checkbox"/>

LOCATION OF JOB: STREET ADDRESS	HOUSE NUMBER:	EXISTING	ASSIGNED BLOCK/LOT
2139 TARAVAL ST			2394/042

FRONTAGE FT. 1 # STORIES 5 B B TYPE B, R-3 LEGAL OCCUPANCIES _____
BUILDING USE OFFICE ESTIMATED COST \$ 8,700.00
SIDEWALK SQ. FTGE _____ ST. SPACE LINEAR FT. _____ 9 FT. CURB SECT. TO BE LOWERED _____
PARKING METER LINEAR FT. _____ PARKING METER DAYS _____

TIME FOR COMPLETION OF WORK UNDER THIS BUILDING PERMIT EXPIRES **360 Days** AFTER DATE OF
ISSUANCE. IF UNDER ENFORCEMENT ORDERS, SPECIAL TIME PERIODS WHERE SPECIFIED WILL APPLY.
(NOTE: STREET SPACE PERMIT EXPIRES ON COMPLETION OF WORK OR WHEN REVOKED BY DIRECTOR OF
PUBLIC WORKS. SEE BACK OF FORM FOR OTHER TIME LIMITS.)

BAY AREA COMPASSION HEALTH CTR 415-221-6913	PERMIT	1221262
FEE PAYOR		
3619 BALBOA ST	APPEAL	
ADDRESS		
SAN FRANCISCO CA 94121	CENTRAL PERMIT BUREAU-D.B.I.	YANBRENDA
CITY		

SEPARATE PERMITS MUST BE OBTAINED FOR ELECTRICAL, PLUMBING OR OTHER RELATED WORK
9003-18(Rev. 10/95)

* ADDITIONAL INFORMATION REGARDING SPECIFIC PERMITS IS GIVEN ON THE BACK OF THIS FORM.

AUDITED FOR REFUND

444

14433

2.89

SURCHARGE

BQA SURCHARGE

SUBTOTAL OF FEES WITH APPLICABLE SURCHARGES

STRONG MOTION

SUBTOTAL OTHER FEES

$$\frac{1.00}{198.82}$$

SEPARATE PERMITS MUST BE OBTAINED FOR ELECTRICAL, PLUMBING OR OTHER RELATED WORK
9003-18(Rev. 10/95)

APPROVED
Dept. of Building Insp.
SEP 15 2010
Vivian L. Day
VIVIAN L. DAY
DIRECTOR/CHIEF BUILDING OFFICIAL
DEPT. OF BUILDING INSPECTION

APPROVED FOR ISSUANCE

3LDG. FORM 3/8

APPLICATION NUMBER
000910032572

OSHA APPROVAL REQD ☐
APPROVAL NUMBER:

**APPLICATION FOR BUILDING PERMIT
ADDITIONS, ALTERATIONS OR REPAIRS**

FORM 3 ☒ OTHER AGENCIES REVIEW REQUIRED

FORM 8 ☐ OVER-THE COUNTER ISSUANCE

2 NUMBER OF PLAN SETS

**CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF BUILDING INSPECTION**

APPLICATION IS HEREBY MADE TO THE DEPARTMENT OF BUILDING INSPECTION OF SAN FRANCISCO FOR PERMISSION TO BUILD IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS SUBMITTED HERewith AND ACCORDING TO THE DESCRIPTION AND FOR THE PURPOSE HEREINAFTER SET FORTH.

▼ DO NOT WRITE ABOVE THIS LINE ▼

DATE FILED 9/13/09	FILING FEE RECEIPT NO. 0912288	(1) STREET ADDRESS OF JOB 2139 TANAVALU ST	BLOCK & LOT 2394 012
PERMIT NO. 122/262	ISSUED SEP 15 2010	(2A) ESTIMATED COST OF JOB \$2700	(2B) REVISED COST: BY: DATE: 3/26/10

INFORMATION TO BE FURNISHED BY ALL APPLICANTS

LEGAL DESCRIPTION OF EXISTING BUILDING

(4A) TYPE OF CONSTR. VB	(5A) NO. OF STORIES OF OCCUPANCY 1	(6A) NO. OF BASEMENTS AND CELLARS 1	(7A) PRESENT USE BUSINESS OFFICE	(8A) OCCUP. CLASS B, R-3	(9A) NO. OF DWELLING UNITS 1
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DESCRIPTION OF BUILDING AFTER PROPOSED ALTERATION

(4) TYPE OF CONSTR. VB	(5) NO. OF STORIES OF OCCUPANCY 1	(6) NO. OF BASEMENTS AND CELLARS 0	(7) PROPOSED USE (LEGAL USE) Medical MED Cannabis Dispensary	(8) OCCUP. CLASS B, R-3	(9) NO. OF DWELLING UNITS 1
---------------------------	--------------------------------------	---------------------------------------	---	----------------------------	--------------------------------

(10) IS AUTO RUNWAY TO BE CONSTRUCTED OR ALTERED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(11) WILL STREET SPACE BE USED DURING CONSTRUCTION? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(12) ELECTRICAL WORK TO BE PERFORMED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(13) PLUMBING WORK TO BE PERFORMED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
--	--	--	--

(14) GENERAL CONTRACTOR SCHOEPF CONSTRUCTION	ADDRESS 3729 BRIDGES ST	ZIP 94121	PHONE 415-221-6913	CALIF. LIC. NO. 542172	EXPIRATION DATE
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(15) OWNER (LESSEE (GROSS OUT ONE)) Greg Schoepf	ADDRESS 3729 BRIDGES ST	ZIP 94121	BTRC#	PHONE (FOR CONTACT BY DEPT.) 415-298-0948
---	----------------------------	--------------	-------	--

(16) WRITE IN DESCRIPTION OF ALL WORK TO BE PERFORMED UNDER THIS APPLICATION (REFERENCE TO PLANS IS NOT SUFFICIENT)

EXT. AREA COMPASSION HEALTH CENTERS

NEW MED NFORMER CHIROPRACTOR'S OFFICE

INTERIOR ALTERATIONS

ADDITIONAL INFORMATION

(17) DOES THIS ALTERATION CREATE ADDITIONAL HEIGHT OR STORY TO BUILDING? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(18) IF (17) IS YES, STATE NEW HEIGHT AT CENTER LINE OF FRONT FT.	(19) DOES THIS ALTERATION CREATE DECK OR HORIZ. EXTENSION TO BUILDING? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(20) IF (19) IS YES, STATE NEW GROUND FLOOR AREA SQ. FT.
(21) WILL SIDEWALK OVER SUB-SIDEWALK SPACE BE REPAIRED OR ALTERED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(22) WILL BUILDING EXTEND BEYOND PROPERTY LINE? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(23) ANY OTHER EXISTING BLDG. ON LOT? (IF YES, SHOW ON PLOT PLAN) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(24) DOES THIS ALTERATION CONSTITUTE A CHANGE OF OCCUPANCY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

(25) ARCHITECT OR ENGINEER (DESIGN <input checked="" type="checkbox"/> CONSTRUCTION <input type="checkbox"/> A. GORDON ARNOLD	ADDRESS 335A TANAVALU ST	CALIF. CERTIFICATE NO. 32921
--	-----------------------------	---------------------------------

(26) CONSTRUCTION LENDER (ENTER NAME AND BRANCH DESIGNATION IF ANY, IF THERE IS NO KNOWN CONSTRUCTION LENDER, ENTER "UNKNOWN")	ADDRESS
--	---------

IMPORTANT NOTICES

No change shall be made in the character of the occupancy or use without first obtaining a Building Permit authorizing such change. See San Francisco Building Code and San Francisco Housing Code.

No portion of building or structure or scaffolding used during construction, to be closer than 6'0" to any wire containing more than 750 volts See Sec 385, California Penal Code.

Pursuant to San Francisco Building Code, the building permit shall be posted on the job. The owner is responsible for approved plans and application being kept at building site.

Grade lines as shown on drawings accompanying this application are assumed to be correct. If

NOTICE TO APPLICANT

HOLD HARMLESS CLAUSE. The permittee(s) by acceptance of the permit, agree(s) to indemnify and hold harmless the City and County of San Francisco from and against any and all claim, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City and County of San Francisco and to assume the defense of the City and County of San Francisco against all such claims, demands or actions.

In conformity with the provisions of Section 3800 of the Labor Code of the State of California, the applicant shall have coverage under (I), or (II) designated below or shall indicate item (III), or (IV), or (V), whichever is applicable. If however item (V) is checked item (IV) must be checked as well. Mark the appropriate method of compliance below.

CONDITIONS AND STIPULATION

REFER TO:	APPROVED: <i>Renalby</i> BUILDING INSPECTOR, DEPT. OF BLDG. INSP.	DATE: _____ REASON: _____
<input type="checkbox"/>	APPROVED: <i>As per Planning Commission Action</i> <i>F. D. W.</i> NC-2 6/14/2016 DEPARTMENT OF CITY PLANNING	DATE: 8/24/2016 REASON: <i>F. D. W.</i> NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: N/A BUREAU OF FIRE PREVENTION & PUBLIC SAFETY	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input checked="" type="checkbox"/>	APPROVED: <i>Lighting only</i> <i>Mechanical work</i> <i>under separate permit</i> MECHANICAL ENGINEER, DEPT OF BLDG. INSPECTION	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: N/A CIVIL ENGINEER, DEPT. OF BLDG INSPECTION	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: <i>↓</i> BUREAU OF ENGINEERING	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input checked="" type="checkbox"/>	APPROVED: <i>Plans approved per SF Health Code</i> <i>Article 33.</i> <i>Larry Kessler 252-3841</i> DEPARTMENT OF PUBLIC HEALTH	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: This is a publicly funded project and requires plan review, inspection and final sign-off by the Mayor's Office on Disability. Call 554-6785 Approved <i>Carla Johnson</i> , Access Compliance Officer Date <u>8/24/16</u> No field inspections by MAD required MAYOR'S OFFICE ON DISABILITY	DATE: _____ REASON: _____ NOTIFIED MR. _____
APPROVED:		DATE: _____

HOLD SECTION - NOTE DATES AND NAMES OF ALL PERSONS NOTIFIED DURING PROCESSING



AFFIDAVIT OF SERVICE

Canaan Tutoring Center Service, Appellant
2109 Taraval Street
SF, CA 94116

I, Cecilia S. Huang, Sr. Clerk Typist for the Board of Appeals, hereby certify that on this 18th day of March, 2011, I served the attached Notice(s) of Decision & Order for Appeal No(s). 10-105, Canaan Tutoring Center Service vs. DBI, PDA, subject property at 2139 Taraval St., on the appellant(s) by mailing a copy via U.S. mail, first class, to the address above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Francisco, California.

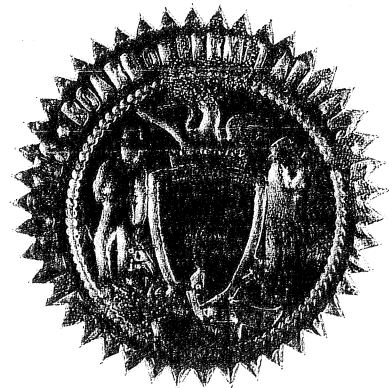
3/18/11
Date

Cecilia Huang
Cecilia S. Huang

cc: DPW BSM, DBI BID (if applicable), DBI CPB (if applicable), Planning Dept. (if applicable), and Redevelopment Agency (if applicable)

OTHER PARTIES
OR CONCERNED CITIZENS:

Greg Schoepp, Permit Holder
3619 Balboa Street
SF, CA 94121



BOARD OF APPEALS
CITY AND COUNTY OF SAN FRANCISCO

Appeal Nos. 10-105 and 10-106

<u>CANNAN TUTORING CENTER SERVICE & CHINESE GOSPEL CHURCH,</u>)	
	Appellants)
)
vs.)
)
<u>DEPARTMENT OF BUILDING INSPECTION,</u>)	
PLANNING DEPARTMENT APPROVAL		

On October 17, 2010 February 9, 2011, and March 16, 2011, these Appeals, filed by Canaan Tutoring Center Service (No. 10-105) and Chinese Gospel Church (No. 10-106), of the issuance of Building Permit Application No. 2009/12/03/2572, came before duly noticed hearings of the Board of Appeals. The permit is for the construction of a medical cannabis dispensary ("MCD") at the property located at 2139 Taraval Street (the "Property").

Having heard all the public testimony and reviewed all the documents in the record on this matter, the Board of Appeals hereby grants the Appeal and denies the permit.

The Decision of this Board is based on the following Findings:

1. According to the Record, on or about December 3, 2009, Greg Schoepp filed Building Permit Application No. 2009/12/03/2572 (the "Permit") with the San Francisco Department of Building Inspection ("DBI") for construction work to authorize a new medical cannabis dispensary ("MCD") at a vacant chiropractor's office located at 2139 Taraval Street. The permit holder, Greg Schoepp, is the lessee of the Property and proposes to operate an MCD at the Property under the name Bay Area Compassion Health Centers. The MCD was the subject of a Mandatory Discretionary Review Hearing (Case No. 2010.0018D) at the Planning Commission, which approved the project as proposed on May 20, 2010. DBI issued the Permit on September 15, 2010 and Appellants timely appealed.
2. Appellants are two entities operating on the same block at the proposed MCD, both of which claim that the MCD would pose a public safety risk for children in the neighborhood, including children who frequent their operations. Appellant Canaan Tutoring Center Service is located at 2109 Taraval Street, four buildings away from the Property. It provides tutoring services to approximately 30-40 children in grades K-8, weekdays from 2:00-7:30 p.m. Appellant Chinese Gospel Church is located at 2133 Taraval Street, immediately adjacent to the Property. It offers weekend services, a Sunday school class that serves approximately 12 children, ages 3-14, and hosts weeknight activities to which Church members bring their children. In past years, the Church has hosted summer camps serving between 40-50 children.

3. San Francisco Planning Code ("Code") Section 790.141(b) prohibits a new MCD from being located less than 1,000 feet from an elementary or secondary school, or a community facility or recreational building that primarily serves persons under 18 years of age. This Code provision states that the definition of "recreational building" is contained in Section 790.50(f), a section which does not in fact exist in the Code. In approving the Permit, the Planning Commission determined that there were no schools, community facilities or recreational buildings within the 1,000 feet of the Property covered by this Planning Code provision, including those operated by Appellants. In the proceedings before this Board, the Planning Department stated that neither the Appellants nor the businesses cited in Paragraph 4(b) below constitute a school, community facility or recreational building within the meaning of the Code.
4. Under the Board's discretionary authority pursuant to Charter Section 4.106 and Section 26(a) of the Business & Tax Regulations Code, the Board finds that under the unique facts presented by these Appeals, the establishment of an MCD at this location would adversely effect the surrounding property and its residents and would not be in the best interests of the community for the following reasons:
 - a. The Board finds that there are legitimate community needs to provide for children's safety and to limit access to marijuana for a vulnerable population. These needs are uniquely prevalent in the Taraval Street corridor where the Property is located because of the density of schools, programs and services for children under age 18 in the surrounding area.
 - b. There are several programs for children under age 18 operating within 1,000 feet of the Property. In addition to the programs sponsored by the Appellants (see paragraph 2, above), these programs include, but are not limited to: Think Tank Learning at 2455 Taraval Street (providing a variety of academic and college preparatory classes); Ann Healy Irish Dance at 2036 Taraval Street (offering dance classes for children); Amabile School of Music at 1929 Taraval Street (offering private music lesson for persons age 2 to adult); and Grace Infant Center at 3201 Ulloa Street (a licensed day care facility for infants ages 2-30 months).
 - c. The Board notes that Edgewood Center for Children and Families, an educational institution that provides educational, residential and day treatment programs, and that qualifies as a "school" under the requirements of Code Section 790.141(b), is located just 50 feet outside the 1,000 feet threshold.
 - d. The Board further finds that the Property sits in a densely populated commercial corridor that is serviced by the L Taraval MUNI streetcar line and serves as a main transportation route for students from several area middle and high schools at which there are many students under the age of 18. These include Independence High School, Saint Ignatius College Preparatory, and Lincoln High School, of which the latter two sit just outside the 1,000 feet threshold. (See letters in the record from Patrick Ruff, Principal of St. Ignatius College Preparatory, dated October 29, 2010; San Francisco Unified School District ("SFUSD") Superintendent Carlos Garcia, dated November 2, 2010; and State Senator Leland Yee, dated November 17, 2010.)

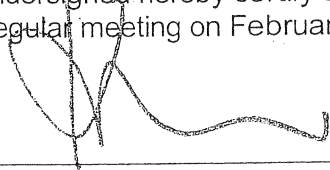
- e. The approximately 2300 students at Lincoln High School, located just 8 blocks from the Property, have an open campus for lunch and students routinely patronize the local merchants on Taraval Street where the Property is located. The 7-Eleven store located diagonally across from the Property has a regular stream of customers comprised of students walking or riding public transit to and from area schools. These activities create a teenage population in the area vulnerable to an MCD in this location.
- f. Based upon extensive testimony at the hearing from neighbors and long-time residents of the neighborhood, the Board finds there is widespread neighborhood opposition to opening an MCD at the Property because of concerns for the safety of neighborhood children.
- g. The Board also takes notice of the fact that the City and County of San Francisco has the highest concentration of licensed MCDs per square mile in the State, and that two MCDs are already located on the Ocean Avenue corridor in the Taraval District (per evidence submitted in the case). In addition, the Board notes evidence in the record that home delivery services for medical cannabis are available in San Francisco, and therefore residents of the Taraval district have alternative means of obtaining medical cannabis without having to travel to other parts of the City.

For the reasons set out above, the Board finds and concludes that the establishment of an MCD at this location would not be in the best interests of the community, and denies the Permit pursuant to its discretionary authority under the Charter and the Business and Tax Regulations Code. In so concluding, the Board makes no findings as to whether Appellants or the other nearby businesses serving children in the neighborhood qualify as schools, community facilities or recreational facilities within the meaning of Planning Code 790.141(b), and declines to speculate as to the meaning of that section's reference to a non-existent Section 790.50(f). The Board notes, however, that its discretionary denial of this permit is consistent with the intent of Section 790.141(b), which is to prevent MCDs from being located in close proximity to facilities that primarily serve children under 18 years of age.

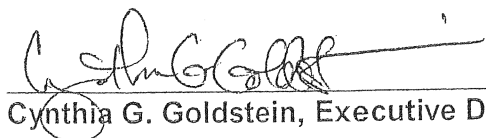
DETERMINATION

Based on the above Findings, this Board grants the Appeal and denies the Permit.

The undersigned hereby certify that the Board of Appeals has adopted the findings above at its regular meeting on February 9, 2011.



Kendall Goh, President



Cynthia G. Goldstein, Executive Director



AFFIDAVIT OF SERVICE

Chinese Gospel Church, Appellant
c/o Russell Davis, Attorney for Appellant
825 Van Ness Ave. #304
SF, CA 94109

I, Cecilia S. Huang, Sr. Clerk Typist for the Board of Appeals, hereby certify that on this 18th day of March, 2011, I served the attached Notice(s) of Decision & Order for Appeal No(s). 10-106, Chinese Gospel Church vs. DBI, PDA, subject property at 2139 Taraval St, on the appellant(s) by mailing a copy via U.S. mail, first class, to the address above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Francisco, California.

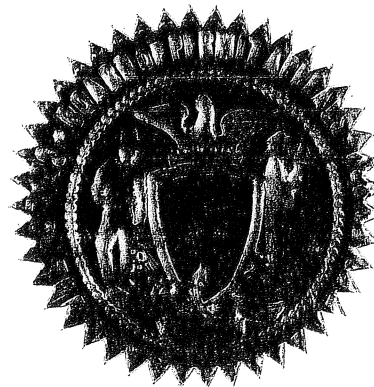
3/18/11
Date

Cecilia S. Huang
Cecilia S. Huang

cc: DPW BSM, DBI BID (if applicable), DBI CPB (if applicable), Planning Dept. (if applicable), and Redevelopment Agency (if applicable)

OTHER PARTIES
OR CONCERNED CITIZENS:

Greg Schoepp, Permit Holder
3619 Balboa Street
SF, CA 94121



BOARD OF APPEALS
CITY AND COUNTY OF SAN FRANCISCO

Appeal Nos. 10-105 and 10-106

<u>CANNAN TUTORING CENTER SERVICE & CHINESE GOSPEL CHURCH,</u>)	
	Appellants)
)	
vs.)	
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<u>DEPARTMENT OF BUILDING INSPECTION,</u>)	
PLANNING DEPARTMENT APPROVAL		

On October 17, 2010 February 9, 2011, and March 16, 2011, these Appeals, filed by Canaan Tutoring Center Service (No. 10-105) and Chinese Gospel Church (No. 10-106), of the issuance of Building Permit Application No. 2009/12/03/2572, came before duly noticed hearings of the Board of Appeals. The permit is for the construction of a medical cannabis dispensary ("MCD") at the property located at 2139 Taraval Street (the "Property").

Having heard all the public testimony and reviewed all the documents in the record on this matter, the Board of Appeals hereby grants the Appeal and denies the permit.

The Decision of this Board is based on the following Findings:

1. According to the Record, on or about December 3, 2009, Greg Schoepp filed Building Permit Application No. 2009/12/03/2572 (the "Permit") with the San Francisco Department of Building Inspection ("DBI") for construction work to authorize a new medical cannabis dispensary ("MCD") at a vacant chiropractor's office located at 2139 Taraval Street. The permit holder, Greg Schoepp, is the lessee of the Property and proposes to operate an MCD at the Property under the name Bay Area Compassion Health Centers. The MCD was the subject of a Mandatory Discretionary Review Hearing (Case No. 2010.0018D) at the Planning Commission, which approved the project as proposed on May 20, 2010. DBI issued the Permit on September 15, 2010 and Appellants timely appealed.
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4. Under the Board's discretionary authority pursuant to Charter Section 4.106 and Section 26(a) of the Business & Tax Regulations Code, the Board finds that under the unique facts presented by these Appeals, the establishment of an MCD at this location would adversely effect the surrounding property and its residents and would not be in the best interests of the community for the following reasons:
 - a. The Board finds that there are legitimate community needs to provide for children's safety and to limit access to marijuana for a vulnerable population. These needs are uniquely prevalent in the Taraval Street corridor where the Property is located because of the density of schools, programs and services for children under age 18 in the surrounding area.
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 - d. The Board further finds that the Property sits in a densely populated commercial corridor that is serviced by the L Taraval MUNI streetcar line and serves as a main transportation route for students from several area middle and high schools at which there are many students under the age of 18. These include Independence High School, Saint Ignatius College Preparatory, and Lincoln High School, of which the latter two sit just outside the 1,000 feet threshold. (See letters in the record from Patrick Ruff, Principal of St. Ignatius College Preparatory, dated October 29, 2010; San Francisco Unified School District ("SFUSD") Superintendent Carlos Garcia, dated November 2, 2010; and State Senator Leland Yee, dated November 17, 2010.)

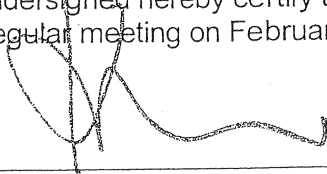
- e. The approximately 2300 students at Lincoln High School, located just 8 blocks from the Property, have an open campus for lunch and students routinely patronize the local merchants on Taraval Street where the Property is located. The 7-Eleven store located diagonally across from the Property has a regular stream of customers comprised of students walking or riding public transit to and from area schools. These activities create a teenage population in the area vulnerable to an MCD in this location.
- f. Based upon extensive testimony at the hearing from neighbors and long-time residents of the neighborhood, the Board finds there is widespread neighborhood opposition to opening an MCD at the Property because of concerns for the safety of neighborhood children.
- g. The Board also takes notice of the fact that the City and County of San Francisco has the highest concentration of licensed MCDs per square mile in the State, and that two MCDs are already located on the Ocean Avenue corridor in the Taraval District (per evidence submitted in the case). In addition, the Board notes evidence in the record that home delivery services for medical cannabis are available in San Francisco, and therefore residents of the Taraval district have alternative means of obtaining medical cannabis without having to travel to other parts of the City.

For the reasons set out above, the Board finds and concludes that the establishment of an MCD at this location would not be in the best interests of the community, and denies the Permit pursuant to its discretionary authority under the Charter and the Business and Tax Regulations Code. In so concluding, the Board makes no findings as to whether Appellants or the other nearby businesses serving children in the neighborhood qualify as schools, community facilities or recreational facilities within the meaning of Planning Code 790.141(b), and declines to speculate as to the meaning of that section's reference to a non-existent Section 790.50(f). The Board notes, however, that its discretionary denial of this permit is consistent with the intent of Section 790.141(b), which is to prevent MCDs from being located in close proximity to facilities that primarily serve children under 18 years of age.

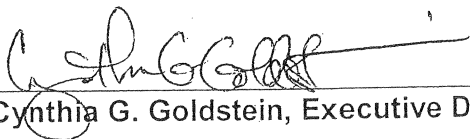
DETERMINATION

Based on the above Findings, this Board grants the Appeal and denies the Permit.

The undersigned hereby certify that the Board of Appeals has adopted the findings above at its regular meeting on February 9, 2011.



Kendall Goh, President



Cynthia G. Goldstein, Executive Director

DECLARATION OF CHRISTINE WAGNER

1. I declare that my name is Christine Wagner, an attorney licensed to practice law in the State of California, serving as counsel for Petitioner Greg Schoepp, dba Bay Area Compassion Health Care Center, in the instant action.
2. On May 25, 2011, I filed a written request with the San Francisco Board of Appeals (Board) for the preparation of the complete record of the administrative proceedings conducted by the Board in joint Appeal Case Nos. 10-105 and 10-106, pursuant to CCP Section 1094.6(c), a true and correct copy of which is attached hereto.
3. In preparing the underlying Petition for Writ of Mandate pursuant to CCP Section 1094.5, and prior to availability and receipt of the complete administrative record requested above, I made an in person request to Cynthia Goldstein, Executive Director to the Board, for copies of the files for Board of Appeal Case Nos. 10-105 and 10-106, on or about June 1, 2011.
4. I thereafter received a telephone message from Executive Director Goldstein on or about June 2, 2011, indicating that the requested copies of both files amounted to a total of 244 pages, that the cost of duplication was .10 cents per page for a total of \$24.40, and that the requested documents were available for pick up from the administrative office of the Board at 1650 Mission Street.
5. On June 3, 2011, I paid for and received copies of the files for Board of

1 Appeal Case Nos. 10-105 and 10-106, as prepared by the Board staff,
2 and received a receipt No. 922199 as proof of such payment.

- 3 6. On June 3, 2011, I received a telephone message from Francesca
4 Gessner, an attorney with the San Francisco City Attorney's office and,
5 based upon information and belief, counsel to the Board, indicating that
6 the complete administrative record was being prepared pursuant to the
7 May 25, 2011 request.
8
- 9 7. On June 8, 2011, I telephoned and spoke with Attorney Gessner about the
10 anticipated contents and timeframe for delivery of the complete
11 administrative record per my May 25, 2011 request.
12
- 13 8. During this telephone conversation on June 8, 2011, Attorney Gessner
14 indicated that Board staff was scanning the files of Appeal Case Nos. 10-
15 105 and 10-106 so that the complete administrative record could be
16 prepared, and that the Board had 190 days from the date of the request to
17 deliver the complete administrative record, pursuant to CCP Section
18 1094.6(c). I was not provided with an earlier timeframe for estimated
19 delivery.
20
- 21 9. During this telephone conversation on June 8, 2011, Attorney Gessner
22 indicated that it was the practice of the City Attorney to give persons
23 requesting documents under California Code of Civil Procedure Section
24 1094.6(c) the option of having the transcripts of proceedings prepared by
25 a certified court reporter of the Requester's choosing, to which the City
26 Attorney would stipulate as the official transcripts of the proceedings.
27
28

1 10. On June 8, 2011, Attorney Gessner provided me with the names of two
2 transcription vendors for purposes of getting estimates on pricing and
3 timeframes for having the proceedings transcribed. Telephone calls to
4 these vendors provided me with quotes of between 3-5 business days,
5 given the estimate tape times as stated in paragraph 19 below.
6

7 11. During this telephone conversation on June 8, 2011, I inquired of Attorney
8 Gessner as to whether or not all form of papers, exhibits and the like that
9 were submitted to, considered by and/or prepared as a result of the SF
10 Planning Commission's May 20, 2010 meeting, including any transcription
11 of that proceeding, were to be included in the complete administrative
12 record being prepared by the Board.
13

14 12. Attorney Gessner, not then knowing the answer to the question posed in
15 paragraph 11, suggested that I contact Executive Director Goldstein, for
16 response to this inquiry.
17

18 13. Also on June 8, 2011, and based upon my conversation and inquiry to
19 Attorney Gessner on date of the same, I sent an email to Executive
20 Director Goldstein requesting clarification as to the contents of the
21 complete administrative record being prepared.
22

23 14. On June 8, 2011, I received a response from Executive Director Goldstein
24 indicating that the Board files do not contain the Planning Commission
25 records referenced in my earlier inquiry.
26

27 15. On June 7, 2011 and again on June 8, 2011, I made a request to the
28 City's SFGOVTV for a dvd of the proceedings of the City Planning

Memorandum and notice a hearing on the underlying Petition for Writ of Mandate within 30-45 days, barring any unforeseen circumstances, so as to expedite a decision on this matter for all parties involved.

22. Given that the Board of Appeals staff was able to produce copies of the files on Appeal Case Nos. 10-105 and 10-106 within one business day, as evidenced in paragraphs 3-5 above, and that the Board staff has had since May 25, 2010 to scan and submit the files for bates stamping in preparation of the complete administrative record pursuant to Petitioner's 1094.6(c) request, it is inconceivable that Respondent Board will need 190 days to produce the complete administrative record.

23. If the requested administrative record is not produced by Respondent Board within a reasonable period of time, given its small size, I am prepared to serve and file a Notice of Hearing on the Petition without such administrative record and will prepare it on my own, given that Respondents' wrongdoings that serve as Petitioner's basis for relief are amply presented to the Court by the facts presented in the Writ Petition alone.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 14th day of June, 2011 at San Francisco, California.



Christine Wagner
Attorney for Petitioner
Greg Schoepp

BOARD OF APPEALS

via personal delivery

MAY 25 2011

May 25, 2011

APPEAL # 10-105/106

City and County of San Francisco
Board of Appeals
1650 Mission, Room 304
San Francisco, CA 94103

RE: Request for Preparation and Delivery of Administrative Records
in the matters of:
Canaan Tutoring Service v. DBI, Planning Dept. Approval, Appeal No. 10-105
and
Chinese Gospel Church v. DBI, Planning Dept. Approval, Appeal No. 10-106

To Whom It May Concern:

On behalf of my client, Greg Schoepp, Permit Holder, it is requested that the Board of Appeals prepare, certify and deliver a copy of the administrative records in the above-titled proceedings.

More specifically, it is requested that the Board of Appeals prepare the complete record of the proceedings, including but not limited to the transcript(s) of the proceedings held on November 17, 2010, February 9, 2011 and March 16, 2011, respectively, as well as all pleadings, all notices and orders, any and all proposed decision(s) of the Board of Appeals, the final decision, all admitted exhibits, all rejected exhibits in the possession of the Board of Appeals or its officers or agents, all written evidence, and any other papers in or involving the above-titled proceedings.

In preparing these administrative records, please advise as to the estimated costs of preparation, as well as the estimated timeframe for and manner of delivery.

If you require further information, please contact me at the numbers below.

Thank you for your prompt attention to this matter.

Sincerely,



Christine Wagner
Attorney for Greg Schoepp

cc: Greg Schoepp

Christine Wagner
Attorney at Law

506 Broadway, San Francisco, CA 94133
(p) 707-367-1709 (f) 415-421-1331

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal No. 10-106

Appeal of
CHINESE GOSPEL CHURCH,)
Appellant(s))
vs.)
DEPT. OF BUILDING INSPECTION,)
PLANNING DEPT. APPROVAL Respondent)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on September 28, 2010 the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the issuance on Sept. 15, 2010, to Greg Schoepp, Permit to Alter a Building (new medical cannabis dispensary (MCD) in former chiropractor's office; minor interior alterations) at 2139 Taraval Street.

APPLICATION NO. 2009/12/03/2572

FOR HEARING ON November 17, 2010 ✓

Address & Tel. of Appellant(s):

Chinese Gospel Church, Appellant
c/o Russell Davis, Attorney for Appellant
[REDACTED]
SF, CA 94109

Address & Tel. of Permit Holder(s):

Greg Schoepp, Permit Holder
[REDACTED]
SF, CA 94121

NOTICE OF DECISION & ORDER

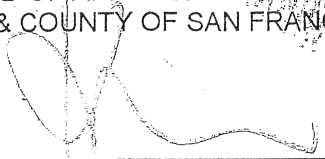
The aforementioned matter came on regularly for hearing before the Board of Appeals of the City & County of San Francisco on February 09, 2011.

PURSUANT TO § 4.106 of the Charter of the City & County of San Francisco and Article 1, § 14 of the Business & Tax Regulations Code of the said City & County, and the action above stated, the Board of Appeals hereby **GRANTS THE APPEAL AND ORDERS**

that the issuance of the subject permit is **OVERRULED**, and the Department of Building Inspection (DBI) is hereby ordered and directed to **DENY** the subject permit, with **FINDINGS**.

SAID FINDINGS WERE ADOPTED BY THE BOARD ON FEBRUARY 09, 2011 AND ARE ATTACHED.

BOARD OF APPEALS
CITY & COUNTY OF SAN FRANCISCO

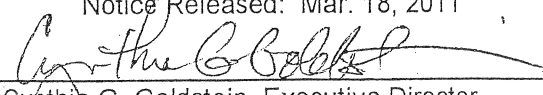

Kendall Goh, President

Last Day to Request Rehearing: Feb. 22, 2011

Request for Rehearing: Mar. 16, 2011 (denied)

Rehearing: None

Notice Released: Mar. 18, 2011


Cynthia G. Goldstein, Executive Director

If this decision is subject to review under Code of Civil Procedure § 1094.5, then the time within which judicial review must be sought is governed by California Code of Civil Procedure § 1094.6.

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal No. 10-105

Appeal of
CANAAN TUTORING CENTER SERVICE,)
Appellant(s))
vs.)
DEPT. OF BUILDING INSPECTION,)
PLANNING DEPT. APPROVAL Respondent)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on September 28, 2010 the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the issuance on Sept. 15, 2010, to Greg Schoepp, Permit to Alter a Building (new medical cannabis dispensary (MCD) in former chiropractor's office; minor interior alterations) at 2139 Taraval Street.

APPLICATION NO. 2009/12/03/2572

FOR HEARING ON November 17, 2010 ✓

Address & Tel. of Appellant(s):

Canaan Tutoring Center Service, Appellant
[REDACTED]
San Francisco, CA 94116

Address & Tel. of Permit Holder(s):

Greg Schoepp, Permit Holder
[REDACTED]

NOTICE OF DECISION & ORDER


The aforementioned matter came on regularly for hearing before the Board of Appeals of the City & County of San Francisco on February 09, 2011.

PURSUANT TO § 4.106 of the Charter of the City & County of San Francisco and Article 1, § 14 of the Business & Tax Regulations Code of the said City & County, and the action above stated, the Board of Appeals hereby **GRANTS THE APPEAL AND ORDERS**

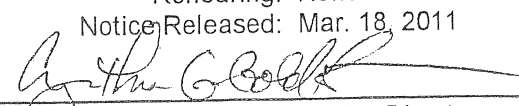
that the issuance of the subject permit is **OVERRULED**, and the Department of Building Inspection (DBI) is hereby ordered and directed to **DENY** the subject permit, with **FINDINGS**.

SAID FINDINGS WERE ADOPTED BY THE BOARD ON FEBRUARY 09, 2011 AND ARE ATTACHED.

BOARD OF APPEALS
CITY & COUNTY OF SAN FRANCISCO


Kendall Goh, President

Last Day to Request Rehearing: Feb. 22, 2011
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Rehearing: None
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Cynthia G. Goldstein, Executive Director

If this decision is subject to review under Code of Civil Procedure § 1094.5, then the time within which judicial review must be sought is governed by California Code of Civil Procedure § 1094.6.



SAN FRANCISCO PLANNING DEPARTMENT

Discretionary Review Analysis Medical Cannabis Dispensary

HEARING DATE MAY 20, 2010

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Date: May 13, 2010
Case No.: 2010.0018D
Project Address: 2139 TARAVAL STREET
Permit Application: 2009.09.21.7273
Zoning: NC-2 (Neighborhood Commercial, Small Scale) RUSD (Taraval
Restaurant and Fast-Food Sub-District)
50-X Height and Bulk District
Block/Lot: 2394/042
Project Sponsor: Gordon Atkinson
[REDACTED]
Staff Contact: Cecilia Jaroslowsky -- (415) 558-6348
Cecilia.Jaroslowsky@sfgov.org
Recommendation: Take DR and approve project with modifications.

PROJECT DESCRIPTION

The project is a change of use for the vacant ground floor space, previously a chiropractors' office to a medical cannabis dispensary (d.b.a. "Bay Area Compassion Health Centers, Inc.") at 2139 Taraval Street. The applicant is The Bay Area Compassion Health Center (BACH) which is registered with the state of California as a Mutual Benefit Non-Profit Corporation. This application requires a Mandatory Discretionary Review action for establishing a medical cannabis dispensary per Planning Code Section 790.141.

The structure would contain a 200-square-foot lobby at the entrance, an administrative office, two consultation rooms a small storage area and a bathroom for employees and customers. The site does not contain on-site parking and none is proposed and the maximum number of employees would be 12.

The project sponsor is requesting to operate Monday through Saturday from 9 a.m. to 10 p.m. Business hours on Sunday would be limited to 3 p.m. to 9 p.m. to address concerns expressed by the Pastor of the adjacent church, the Chinese Gospel Church. Hours may be reduced, to suit the needs and patterns of patients and their caregivers and employees. The consumption, ingestion, or smoking of Medical Cannabis inside or around the facility would not be permitted and loitering would not be tolerated. BACH cultivates and processes their own medicine by and for members at their facilities that are inspected and legally operated outside of San Francisco. BACH has their product tested for mold, fungus, bacteria, pesticides as well as the levels of cannabinoids (THC, CBD etc.) to insure purity and inform the patient of the dosage they need and continues to work with their researchers and other researchers to explore and develop new medicines, uses, and methods of delivery. Additional items for

TRAN. CODE	INDEX CODE	SUB. OBJ.
HLTH	BMED	INFT

74020

CITY & COUNTY OF SAN FRANCISCO
DEPT. OF PUBLIC HEALTH

RECEIVED Dec 1 2009

From Group 9 Schenck
2729 Buchanan St. SFCA 94122

Application and zoning	8459-	
Fee for a Health		
License Dispensary		
2139 Taraval St		
DIA: Bay Area Compassion		
Health Care Center, Inc.		
This application fee is		
non-refundable		
PAID	8459-	

☐ CASH 1395 **DEPARTMENT OF PUBLIC HEALTH**
☒ CHECK # 1395

By Larry Krossbar
 PUBLIC HEALTH-RETAIN FILE CUSTOMER BILLING DISTRICT #

APPLICATION SUBMITTAL

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APPLICATION FOR Conditional Use Authorization

1. Owner/Applicant Information

PROPERTY OWNER'S NAME:

JACK CHAN

PROPERTY OWNER'S ADDRESS:

201 SAN FENITO WAY
SAN FRANCISCO, CA 94127

TELEPHONE:

(415) 350-3299

EMAIL:

APPLICANT'S NAME:

A. GORDON ATKINSON, ARCHITECT

Same as Above ☐

APPLICANT'S ADDRESS:

735 A TARAVAL ST
SAN FRANCISCO, 34107

TELEPHONE:

(415) 731-9927

EMAIL:

gordonatkinson@sbcglobal.net

CONTACT FOR PROJECT INFORMATION:

Same as Above ☒

ADDRESS:

TELEPHONE:

()

EMAIL:

COMMUNITY LIAISON FOR PROJECT (PLEASE REPORT CHANGES TO THE ZONING ADMINISTRATOR):

CHRISTINA CJAJEH

Same as Above ☐

ADDRESS:

TELEPHONE:

(415) 613-6931

EMAIL:

2. Location and Classification

STREET ADDRESS OF PROJECT:

2139 TARAVAL ST.

ZIP CODE:

94116

CROSS STREETS:

32ND AVE

ASSESSORS BLOCK/LOT:

2394 / 042

LOT DIMENSIONS:

25X100

LOT AREA (SQ FT):

2500

ZONING DISTRICT:

TARAVAL NCD

HEIGHT/BULK DISTRICT:

50X

3. Project Description

(Please check all that apply)		PRESENT OR PREVIOUS USE:	
<input checked="" type="checkbox"/> Change of Use	<input type="checkbox"/> Rear	CHIROPRACTOR'S OFFICE	
<input checked="" type="checkbox"/> Change of Hours	<input type="checkbox"/> Front	PROPOSED USE:	
<input type="checkbox"/> New Construction	<input type="checkbox"/> Height	MEDICAL CANNIBIS DISPENSARY	
<input checked="" type="checkbox"/> Alterations	<input type="checkbox"/> Side Yard	BUILDING APPLICATION PERMIT NO.:	DATE FILED:
<input type="checkbox"/> Demolition		2013-0723-2598	7/23/2013
<input type="checkbox"/> Other Please clarify:			

4. Project Summary Table

If you are not sure of the eventual size of the project, provide the maximum estimates.

	EXISTING USES:	EXISTING USES TO BE RETAINED:	NET NEW CONSTRUCTION AND/OR ADDITION:	PROJECT TOTALS:
PROJECT FEATURES				
Dwelling Units	0	0	0	0
Hotel Rooms	0	0	0	0
Parking Spaces	2	2	0	2
Loading Spaces	0	0	0	0
Number of Buildings	1	1	0	1
Height of Building(s)	16FT	16FT	0	16FT
Number of Stories	1	1	0	1
Bicycle Spaces	0	0	2	2
GROSS SQUARE FOOTAGE (GSF)				
Residential	0	0	0	0
Retail	0	0	800	800
Office	800	0	0	0
Industrial/PDR <small>Production, Distribution, & Repair</small>	0	0	0	0
Parking	0	0	0	0
Other (Specify Use)	0	0	0	0
TOTAL GSF	800	0	800	800

Please describe any additional project features that are not included in this table:
(Attach a separate sheet if more space is needed)

5. Action(s) Requested (Include Planning Code Section which authorizes action)

Conditional Use Findings

Pursuant to Planning Code Section 303(c), before approving a conditional use authorization, the Planning Commission needs to find that the facts presented are such to establish the findings stated below. In the space below and on separate paper, if necessary, please present facts sufficient to establish each finding.

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 Master Plan.

1. SEE ATTACHED

2. SEE ATTACHED

3. The proposed use is specifically permitted in Section 741.84 of the Planning Code and is shown as a potential MCD location on the Department's website. There is nothing in the Master Plan that conflicts with this project, as proposed.

Priority General Plan Policies Findings

Proposition M was adopted by the voters on November 4, 1986. It requires that the City shall find that proposed projects and demolitions are consistent with eight priority policies set forth in Section 101.1 of the City Planning Code. These eight policies are listed below. Please state how the project is consistent or inconsistent with each policy. Each statement should refer to specific circumstances or conditions applicable to the property. Each policy must have a response. IF A GIVEN POLICY DOES NOT APPLY TO YOUR PROJECT, EXPLAIN WHY IT DOES NOT.

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

The proposed facility will replace an existing professional office and provide approximately fifteen new jobs for community residents.

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

The existing residence at this site will not be altered

3. That the City's supply of affordable housing be preserved and enhanced;

This project will have no change in residential occupancies.

4. That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking;

See Attachment. Parking plan

5. 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;

As this project entails replacing a chiropractor's office with a medical dispensary it will have no impact on the industrial sector. However, the chiropractor's service, being replaced with retail, not commercial office use, serves to enhance priority number one, as noted above

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

These are no structural changes being proposed as part of this project, so this priority is not applicable.

7. That landmarks and historic buildings be preserved; and

The subject property has no historic building or landmarks located on it.

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

The subject property has no adjacency to parks or open space.

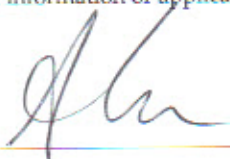
Estimated Construction Costs

TYPE OF APPLICATION:	
3 additions, alterations or repairs	
OCCUPANCY CLASSIFICATION:	
M	
BUILDING TYPE:	
V-B	
TOTAL GROSS SQUARE FEET OF CONSTRUCTION:	BY PROPOSED USES:
800	MEDICAL CANNIBIS DISPENSARY
ESTIMATED CONSTRUCTION COST:	
\$8,700	
ESTIMATE PREPARED BY:	
SCHOEPP CONSTRUCTION	
FEE ESTABLISHED:	

Applicant's Affidavit

Under penalty of perjury the following declarations are made:

- a: The undersigned is the owner or authorized agent of the owner of this property.
- b: The information presented is true and correct to the best of my knowledge.
- c: The other information or applications may be required.

Signature: 

Date: 5-6-15

Print name, and indicate whether owner, or authorized agent:

A. GORDON ATKINSON
☒ Owner ☐ Authorized Agent (circle one)

ATTACHMENT 1

1. We believe that this Medical Cannabis Dispensary is a necessary and desirable addition to the Outer Sunset neighborhood and will provide measurable benefits and enhancements to the community for a variety of reasons.
 - A. In 2010 we acquired 1,508 signatures to a petition in support of this facility and have 343 letters of support, most from local residents. We believe that the signators continue to be committed to supporting this project and are currently in the process of obtaining additional signatures for the currently scheduled hearing. While there is no accurate way of determining the exact number of Medical Cannabis Patients that reside in the Sunset District there are reasonable estimates that have been produced. Research by ProCon.org indicates that the average number of medical marijuana patients in the State of California is 14.9 per thousand. With a population of approximately 85,000 in the Sunset District, we can expect a potential client base of 1200 to 1300 patients in the immediate area. Many patients are too sick or otherwise unable to grow their own medical marijuana, and must join medical marijuana collectives to obtain their medicine without the stigma and risks of buying marijuana on the streets. The nearest MCD to the proposed location, at this time, is 2.3 miles away. For the elderly and infirm, this distance can present a burden to their ability to procure the medicine.
 - B. The Bay Area Compassion Health Center (BACH), when approved, will be the only Medical Cannabis Dispensary of its kind in San Francisco. Our intention is to have our main focus on Cannabis based medicines that are not necessarily psychoactive or less psychoactive by supplying various strains of cannabis with various ratios of cannabinoids which research shows will target specific illnesses. These strains are particularly difficult to grow and produce low yields. We have sought out farmers who are dedicated to cultivating these strains and have taken them as members of our collective in an effort to make sure that the shortages that occurred in Colorado do not happen in San Francisco. There have been waiting lists mostly due to families that uprooted themselves from states that do not have Medical Cannabis Laws so that their children could get this medicine. While other dispensaries do carry some of these types of products they are not always available. We feel that, having this as the main focus, BACH will become a destination for patients throughout the Bay Area as a legitimate source for these medicines and becoming a reliable source for patients that are specifically looking for information and advice on up to date research as well as legal issues. This would make BACH a “destination” and as such should improve foot traffic which would, in turn, benefit the other area businesses. With the prospect of the legalization of recreational use of Cannabis in the State of California being put on the ballot in 2016, (and the polls predict it will pass and become legal) we feel that it is important for the patient base in the Sunset as well as nearby points beyond, that there be a reliable source for these particular medicines. **We intend to fill that need.** Although there is much more to do, the research on medical benefits of cannabis is staggering. Some notable examples of promising successes are quoted below:
 - (a) “While the sample size is small, high concentration CBD extract (Realm Oil) appears to reduce seizures in a highly refractory pediatric epilepsy population. Despite its being a whole plant extract, no psychotropic effects were reported, in keeping with previous clinical studies

involving CBD”. (American Epilepsy Society, Margaret Gedde MD, PhD , 67th Annual Meeting, December 6-10, 2013).

- (b) “evidence is emerging that some nonpsychotropic plant cannabinoids, such as cannabidiol, can be employed to retard β -cell damage in type 1 diabetes.” (Endocannabinoid Research Group, Institute of Biomolecular Chemistry, National Research Council)
- (c) “Cannabis preparations have been considered new promising pharmacological tools in view of their anti-inflammatory role in IBD (inflammatory bowel diseases) as well as other gut disturbances.” (Department of Physiology and Pharmacology Vittorio Erspamer, Faculty of Pharmacy and Medicine, Sapienza University of Rome, Italy.)
- (d) “cannabinoids possess anti-proliferative and pro-apoptotic effects and they are known to interfere with tumour neovascularization, cancer cell migration, adhesion, invasion and metastasization.” (Department of Pharmacology, Chemotherapy and Toxicology, University of Milan, Milan, Italy. Department of Pharmacology, Chemotherapy and Toxicology, University of Milan, Milan, Italy.)
- (e) ”cannabinoid-based medicines may be useful for the treatment of most breast tumor subtypes.” (Dept. Biochemistry and Molecular Biology I, School of Biology, Complutense University-CIBERNED-IRYCIS, Madrid, Spain.)

It is also worth mentioning that there is a bipartisan bill that was introduced in the US Senate last week reforming the Medical Cannabis law including the rescheduling and opening the door to more research.

<http://www.washingtonpost.com/blogs/govbeat/wp/2015/03/18/sen-boxer-quietly-backs-bipartisan-medical-marijuana-bill/>

- C. We have done extensive research to find a suitable and permissible location on the west side of the city to provide legal, safe and local access to the patients of the Sunset District, far from the Downtown cluster. While this Commission has been long time advocate for the expansion of the “Green Map” we have found a location that will create access to an un-served portion of San Francisco that complies with the current plan. We believe that our business model positions us to, not only be compatible with the neighborhood commercial district, but to become a vital and contributory partner in the community. Some things that we have already begun/done:

- Volunteer with Friends of the Urban Forrest (10 people) to assist with the planting of 61 trees in the Sunset District.
- Working with the State Board of Equalization to clarify Medical Cannabis Tax laws.
- Establish alliances and collaborations with some of the foremost researchers in the field.
- Working with other jurisdictions to establish procedures and policies clarifying the gray areas of the law.
- Helping some of the first time Sunset patients with their education and getting them the relief that they need.

Some things we have planned:

- Helping with donations to the community (Merchant Associations, Charities, patients and people in need etc.).
- Laboratory testing our medicine for purity and quality.
- Developing more effective medicine strains by understanding their genetics.

- Making available different delivery systems for people that don't want to or can't smoke.
- Developing strains that are not as strong for people that don't like the strong psychoactive effects.
- Holistic Health and nutrition center.

Mr. Schoepp has a proven track record of being a reliable and conscientious businessman. His credits include:

1. Crown Hardware and Lock
2. Schoepp Construction
3. Responsible for cleaning up the Nor-Cal Dispensary on Ocean Ave. (now Waterfall Wellness) by establishing ethical business practices and developing an extensive compassion program serving seniors, veterans, and low income patients. Mr. Schoepp made the decision to leave this endeavor when conflicts arose with other members of management regarding the practices that he was responsible for putting into place.
4. Established a successful, licensed MCD in Vallejo Ca. until the recent moratorium was declared.

D. Bay Area Compassion Health is a nonprofit medical cannabis collective formed so that qualified patients and caregivers may associate with one another to cultivate, distribute and obtain marijuana for palliative and medicinal use as recommended by their doctors. All our medicine is obtained from and distributed exclusively to members of our collective. All applicants for membership are required to have a written recommendation from a physician licensed to practice in California. We test all our medical cannabis strains prior to distribution to ensure the medicine our patients receive is organically grown, free from pesticides, chemical fertilizers, mold and other contaminants, and to provide a cannabinoid profile of its content. The collective has a once-a-day patient visit rule, and limits the amount of medicine a patient can purchase at one time. When a person applies for membership, staff will verify his or her doctor's recommendation as well as the doctor's medical license to ensure the applicant is a qualified patient and the doctor's license is in good standing with the California Medical Board or Osteopathic Medical board. Staff records the results of the verification process where it is maintained in the patient's file. The expiration date of the patient's written recommendation is tracked in the collective's database. Patient members whose recommendations have expired may not obtain medicine unless and until the recommendation is renewed and staff has verified the renewed recommendation and status of the doctor's medical license.

All members must agree to follow our "good neighbor policy" and comply with state medical marijuana laws and City ordinances and regulations governing MCD's, including not providing marijuana to any person who is not a qualified patient and member of the collective, not smoking or loitering in the vicinity of the MCD or surrounding neighborhood, never driving while impeded or smoking in a car (even as a passenger), not smoking or possessing marijuana within 1,000' of a school (except in the patient's home), securing medicine where it cannot be accessed by children or adults, obeying traffic and parking regulations when visiting the MCD, etc. The original signed patient collective membership agreement and good neighbor policy are maintained in the patient's confidential file and secured against unauthorized access. Intake staff provide new members with a comprehensive orientation on the rules set forth to our collective

membership agreement and good neighbor policy, and explain the importance of being respectful to the neighbors and the consequences of violating the rules. Staff are trained to remind returning patients of the significant legal requirements and rules when they visit the MCD to obtain medicine, which are reinforced by posters and periodic handouts.

Licensed professional security guards will be positioned inside and at the entrance/exit to the MCD. Additional security guards will proactively walk the block and surrounding area to deter loitering, smoking, illegal parking, littering and other potential nuisance activity by members that may affect the neighbors, as well as to deter unrelated crime in the neighborhood. BACH has developed a security and lighting plan for the operation of the proposed MCD that involves the following elements: high resolution security cameras located both on the exterior and interior of the facility; security patrols during operation hours; entry, rear and interior security systems to control access to the facility both during operation and after hours; intrusion monitoring system and alarm; secure storage of medicine; and employee training. The applicant has operated a family business for many years that specializes in security (Crown Lock) who will be responsible for the selection and installation of all security equipment and hardware, design of video surveillance and alarm systems, placement of cameras and sensors, dispensary floor layout, type and location of safe(s), lighting, security procedures and other aspects of the overall security program for the MCD. A key component of the security plan and good neighbor policy is to maintain on-going communications with and solicit feedback from SFPD and community groups on security protocols and dispensary operations to ensure the safety of patients, staff and the general public.

E. BACH 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 MCD has demonstrated a commitment to maintaining public safety by actively engaging with the community prior to applying for the CU, including adequate security measures in its operation of the business, and designating a community liaison to deal effectively with current and future neighborhood concerns.

BACH is committed to community engagement. We have are active community members of the sunset and have contributed by teaming with Friends of Urban Forest to plant over 60 trees district for our neighbors to enjoy. In 2013, 1,508 signatures and 343 letters were collected from local residents in support of the facility. We are currently in the process of attaining an additional petition of neighborhood supporters for 2015.

Greg & Christina, our appointed community liaison have made tremendous efforts to make themselves available for questions and comments through multiple outreach programs. Prior to this CUA we have established a dialogue with our neighbors through holding workshops and weekly open house meetings at 2139 Taraval on Wednesdays 5-7. In addition to the weekly in house meet ups, we have presented the project to "POPS", and the business association members meeting held monthly at the Taraval Police Station.

F. PARKING AND TRANSPORTATION MANAGEMENT PLAN

Located within the Taraval Street Neighborhood Commercial District. Planning code sec. 741.22 provides that "Parking for commercial uses is not required for floor areas less than 5,000 ft." in this district.

Due to the limited area of the site, BACH will not be able to provide off-street parking at the premises for its customers however, the MCD has prepared a parking and transportation management plan sufficient to address the anticipated impacts of patients visiting the MCD.

-BACH is committed to encouraging the use of public transportation by its members. To further this objective, it intends to maintain a policy of applying full credit for public transportation costs towards any purchase at the facility. And will aggressively advertise this fact in its promotional literature.

-BACH hours of operation will be Mon-Sat 11am-8pm, & Sun. 4pm-8pm. We are sensitive to the concerns of our neighbors and will not be open on Sundays during church service and school hours.

-The site supports multiple lines of public transportation which include L-Taraval Muni, 48 Quintara, and 29 Sunset. It is conveniently accessible and by car and foot as well.

-Substantial short-term street parking is available for drivers. During business hours security guards will be patrolling the block preventing patients from double parking & blocking driveways.

-Average service time for established MCD patients is approximately 8-10 min. A relatively short duration reduces the potential disruption to residential neighborhood permit parking. Considering this and the low volume of patients visiting at one time, we anticipate that the facility will have a minimal impact on vehicular congestion in the neighborhood.

2. Some reports have suggested that dispensaries are magnets for criminal activity or other behavior that is a problem for the community, but the experience of those cities with dispensary regulations says otherwise. Crime statistics and the accounts of local officials surveyed by Americans for Safe Access indicate that crime is actually reduced by the presence of a dispensary. Complaints from citizens and surrounding businesses are either negligible or are significantly reduced with the implementation of local regulations.

Kern County, which passed a dispensary ordinance in July 2006, is a case in point. The sheriff there noted in his staff report that "regulatory oversight at the local levels helps prevent crime directly and indirectly related to illegal operations occurring under the pretense and protection of state laws authorizing Medical Marijuana Dispensaries." Although dispensary related crime has not been a problem for the county, the regulations will help law enforcement determine the

legitimacy of dispensaries and their patients. The sheriff specifically pointed out that, "existing dispensaries have not caused noticeable law enforcement of secondary effects and problems for at least one year. (Kern County Staff Report, Proposed Ordinance Regulating Medical Cannabis Dispensaries, July 11, 2006). The presence of a dispensary in the neighborhood can actually improve public safety and reduce crime. Most dispensaries take security for their members and staff more seriously than many businesses. Security cameras are used both inside and outside the premises, and security guards are employed to ensure safety. Both cameras and security guards serve as a deterrent to criminal activity and other problems on the street. Those likely to engage in such activities will tend to move to a less-monitored area, thereby ensuring a safe environment not only for dispensary members and staff but also for neighbors and businesses in the surrounding area.

On 1/16/2010, Los Angeles Police Department Chief Charlie Beck told reporters at the Daily News that medical cannabis collectives do not attract crime, adding that "banks are more likely to get robbed than medical marijuana dispensaries."

Residents in areas surrounding dispensaries have reported improvements to the neighborhood. Kirk C., a long-time San Francisco resident, commented at a city hearing, "I have lived in the same apartment along the Divisadero corridor in San Francisco for the past five years. Each store that has opened in my neighborhood has been nicer, with many new restaurants quickly becoming some of the city's hottest spots. My neighborhood's crime and vandalism seems to be going down year after year. It strikes me that the dispensaries have been a vital part of the improvement that is going on in my neighborhood."

Oakland's city administrator for the ordinance regulating dispensaries, Barbara Killey, notes that "the areas around the dispensaries may be some of the safest areas of Oakland now because of the level of surveillance since the ordinance passed."

Likewise, Santa Rosa Mayor Jane Bender noted that since the city passed its ordinance, there appears to be "a decrease in criminal activity. There certainly has been a decrease in complaints. The city attorney says there have been no complaints either from citizens or from neighboring businesses."

We are confident that the evidence in fact, accumulated since MCD's were approved by the State as a legal use in 2003, clearly shows that any fears of increased crime or drug abuse in areas occupied by these dispensaries are unfounded and, furthermore, that the opposite is true. A well-regulated and responsibly-operated Medical Cannabis Dispensary can actually serve to reduce crime and drug abuse.

- (a) The nature of the proposed site is not to be changed regarding the size, shape or arrangement of the structures.
- (b) The accessibility of the site has already been upgraded to the requirements of the Mayor's Office on Disability and approved by that office. The traffic patterns and type of traffic are not anticipated to change significantly from the previous use. The volume may increase to a small degree as the frequency of patrons' visits would be greater than for a chiropractor but the duration of the visit would be shorter, thus offsetting the impact on parking. No off-street parking will be provided but ample street parking is available and the project sponsor intends to request new, short-term parking spaces adjacent to the proposed facility from DPT. No

loading space will be provided as the relative volume of the medicine to be dispensed is quite small and can be transported by automobile and hand-carried.

- (c) Smoking or otherwise ingesting cannabis at the site will not be permitted and the medicines will be delivered, stored and dispensed in sealed containers thus preventing any odors from being emitted on site.
- (d) No landscaping, outdoor lighting or signage will be provided as part of this project.

3. The MCD has demonstrated a commitment to maintaining public safety by actively engaging with the community prior to applying for the CU, including adequate security measures in its operation of the business, and designating a community liaison to deal effectively with current and future neighborhood concerns.

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