



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Conditional Use Authorization

HEARING DATE: DECEMBER 19, 2019

*Record No.:* 2019-006086CUA  
*Project Address:* 40 12<sup>th</sup> Street  
*Zoning:* Moderate Scale Neighborhood Commercial Transit  
(NCT-3) Zoning District  
85-X Height and Bulk District  
*Block/Lot:* 3505/004  
*Project Sponsor:* Kevin Born, Hybrid Organic Design  
40 12<sup>th</sup> St.  
San Francisco, CA 94103  
*Property Owner:* Kevin Born, Hybrid Organic Design  
40 12<sup>th</sup> St.  
San Francisco, CA 94103  
*Staff Contact:* Alex Westhoff – (415) 575-9120  
[alex.westhoff@sfgov.org](mailto:alex.westhoff@sfgov.org)  
*Recommendation:* **Approval with Conditions**

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### PROJECT DESCRIPTION

The Project would establish a Cannabis Retail Use of approximately 5,549 square feet in an existing two-story mixed-use building. The Project includes a request for authorization of on-site cannabis consumption, including the smoking and vaporizing of cannabis. Sales and consumption are proposed for the ground floor and mezzanine, with accessory office plus a trade office at the second story. The project will involve interior tenant improvements with no expansion of the building envelope.

### REQUIRED COMMISSION ACTION

For the Project to proceed, the Commission must grant a Conditional Use Authorization, pursuant to Planning Code Sections 202.2, 303 and 752, to allow the establishment of a Cannabis Retail use in the NCT-3 Zoning District.

### ISSUES AND OTHER CONSIDERATIONS

- **Public Comment & Outreach.**
  - **Support/Opposition:** As of writing this report, staff has not received public comment on the requested Conditional Use Authorization.
  - **Outreach:** The Project Sponsor held a community meeting in the format of a Pre-Application Meeting on March 12<sup>th</sup>, 2019. There were no attendees.

- **Planning Section 202.2(a)(5)(B) Compliance.** The subject parcel is not located within a 600-foot radius of a parcel containing an existing private or public school or within a 600-foot radius of a parcel for which a valid permit from the City’s Office of Cannabis for a Cannabis Retailer or a Medicinal Cannabis Retailer has been issued. However, the following sites are identified as potentially sensitive uses:
  - International High School of San Francisco: 150 Oak St., 681’ from site
  - Mission Montessori: 50 Fell St., 1018’ from site
  - Presidio Knolls School: 250 10<sup>th</sup> St., 1662’ from site
  - San Francisco Friends School: 250 Valencia St., 1743’ from site
  - Millennium School of San Francisco: 245 Valencia St., 1664’ from site
- **On-Site Consumption.** Cannabis may be consumed or smoked on site subject to accessory use limits. Additionally, a project sponsor must obtain a permit from the Department of Public Health (DPH) for the consumption type requested, pursuant to the requirements of [Health Code Article 8A](#):
  - A ‘Type A’ permit authorizes consumption of pre-packaged cannabis products on-site.
  - A ‘Type B’ permit authorizes consumption of pre-packed cannabis products on-site and limited preparation of cannabis products for consumption on-site.
  - A ‘Type C’ permit confers all the benefits of a ‘Type B’ permit and authorizes on-site smoking and vaporizing of cannabis products.

The Planning Commission has discretion to prohibit an establishment from obtaining approval for on-site consumption of cannabis products, either fully or partially by prohibiting approval of a specific Health Code permit type. In determining whether to recommend such a Condition of Approval, the Department considers:

- Whether applicable zoning districts include prohibitions on similar on-site consumption uses, such as bars.
- Whether the site is adjacent to public or publicly accessible open spaces which may be impacted by illegal consumption which may otherwise occur on-site.
- The nature of public and neighborhood group comment on the matter to align the Department’s recommendation with the unique needs of each neighborhood.

Pursuant to these considerations and based on the site conditions of the proposed project, the Department has recommended that onsite consumption be authorized for this project. This recommendation is based on bars being a permitted use in the NCT-3 zoning district, and the absence of public and neighborhood group comment on the matter.

- **Equity Program.** The Project Sponsor has been verified by the City’s Office of Cannabis to meet the Cannabis Equity Program Requirements of [Police Code Section 1604](#).

## **ENVIRONMENTAL REVIEW**

The Project is exempt from the California Environmental Quality Act (“CEQA”) under Class 1 and Class 3 categorical exemptions.

## **BASIS FOR RECOMMENDATION**

The Department finds that the Project is, on balance, consistent with the Market and Octavia Area Plan and the Objectives and Policies of the General Plan. The project activates an existing storage space and supports the City's equity program, administered by the Office of Cannabis. The Department also finds the project to be necessary, desirable, and compatible with the surrounding neighborhood, and not to be detrimental to persons or adjacent properties in the vicinity.

## **ATTACHMENTS:**

Draft Motion – Conditional Use Authorization with Conditions of Approval (Exhibit A)

Exhibit B – Plans and Renderings

Exhibit C – Environmental Determination

Exhibit D – Land Use Data

Exhibit E – Maps and Context Photo

Exhibit F - Project Sponsor Brief



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Motion

HEARING DATE: JUNE 2, 2019

*Record No.:* 2019-006086CUA  
*Project Address:* 40 12<sup>th</sup> Street  
*Zoning:* Moderate Scale Neighborhood Commercial Transit  
(NCT-3) Zoning District  
85-X Height and Bulk District  
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**ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 202.2, 303, AND 752 OF THE PLANNING CODE TO ALLOW THE ESTABLISHMENT OF A CANNABIS RETAIL USE MEASURING APPROXIMATELY 5,549 SQUARE FEET IN AN EXISTING TWO-STORY MIXED USE BUILDING AT 40 12<sup>TH</sup> STREET (ASSESSOR'S BLOCK 3505 LOT 004) WITHIN THE NEIGHBORHOOD COMMERCIAL MODERATE SCALE ZONING DISTRICT AN A 85-X HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

### **PREAMBLE**

On April 30, 2019, Kevin Born of Hybrid Organic Design (hereinafter "Project Sponsor") filed Application No. 2019-006086CUA (hereinafter "Application") with the Planning Department (hereinafter "Department") for a Conditional Use Authorization to establish a Cannabis Retail use (hereinafter "Project") at 40 12<sup>th</sup> Street, Block 3505, Lot 004 (hereinafter "Project Site").

The Project is exempt from the California Environmental Quality Act ("CEQA") under Class 1 and Class 3 categorical exemptions.

On December 19, 2019, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application No. 2019-006086CUA.

The Planning Department Commission Secretary is the custodian of records; the File for Record No. 2019-006086CUA is located at 1650 Mission Street, Suite 400, San Francisco, California.

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 Authorization as requested in Application No. 2019-006086CUA, 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. **Project Description.** The project includes the establishment a Cannabis Retail Use measuring approximately 5,549 square feet at the ground level of a two-story mixed-use building. The proposal will involve interior tenant improvements with no expansion of the existing tenant space or building envelope.
3. **Site Description and Present Use.** The Project is located on the southwest side of 12<sup>th</sup> Street at the intersection of Stevenson Street. The site is developed with a two-story building with storage on the first floor and mezzanine and architectural offices on the second floor.
4. **Surrounding Properties and Neighborhood.** The Project Site is located within the NCT-3 Zoning District in the Market and Octavia Area Plan. The immediate context is mixed in character with residential, retail, and office uses. The immediate neighborhood includes a one-story auto service building immediately southeast, a parking lot immediately southwest, the five story Civic Center hotel to the northwest, and the two-story former automotive use building to northeast across 12<sup>th</sup> St.
5. **Public Outreach and Comments.** As of writing this report, staff has not received public comment on the Conditional Use Authorization.
6. **Planning Code Compliance.** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
  - A. **Use.** Cannabis Retail requires a Conditional Use Authorization to establish in the NC-3 Zoning District.

*The Project Sponsor is requesting Conditional Use Authorization to establish a Cannabis Retail use in the NC-3 Zoning District.*

- B. **600-Foot Buffer Rule:** Planning Code Section 202.2(a)(5)(B) states that the parcel containing the Cannabis Retail Use shall not be located within a 600-foot radius of a parcel containing an existing public or private School or within a 600-foot radius of a parcel for which a valid permit from the City's Office of Cannabis for a Cannabis Retailer or a Medicinal Cannabis Retailer has been issued. There shall be no minimum radius from a Cannabis Retail Use to an existing day care center or youth center unless a State licensing authority specifies a minimum radius.

*The subject parcel is not located within a 600-foot radius of a parcel containing an existing private or public school or within a 600-foot radius of a parcel for which a valid permit from the City's Office of Cannabis for a Cannabis Retailer or a Medicinal Cannabis Retailer has been issued.*

- C. **On-Site Consumption.** Planning Code Section 202.2 allows for on-site consumption of cannabis as an accessory use, if approved by the Department of Public Health.

*The Project Sponsor has proposed an on-site consumption area as part of this request.*

- D. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that within NC Districts, space for active uses shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. In addition, the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Frontages with active uses that must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or grillwork, other than wire mesh, which is placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular view. Rolling or sliding security gates shall consist of open grillwork rather than solid material, so as to provide visual interest to pedestrians when the gates are closed, and to permit light to pass through mostly unobstructed. Gates, when both open and folded or rolled as well as the gate mechanism, shall be recessed within, or laid flush with, the building facade.

*The subject commercial space is in compliance with this requirement and shall be maintained in compliance with this Section. On the ground floor active uses are provided for the first 25 feet of building depth and on the second floor they are provided for the first 15 feet of building depth. On the ground story the floor of the street-fronting interior space is level with the adjacent sidewalk at the principal entrance. Ground story windows are being restored thus bringing the project into greater compliance and at least 60% of the ground level and second story building frontage facing 12<sup>th</sup> Street is fenestrated with transparent windows and doorways.*

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

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

*The size of the proposed use is in keeping with other storefronts on the block face. The project will restore a deco-style building which has existed in the neighborhood since the 1930s. This will complement the mix of goods and services currently available in the district and contribute to the economic vitality of the neighborhood through providing a retail use for a site which is currently used for storage. Façade improvements will include restoration of ground floor windows which can provide 'eyes on the street' thus helping with street activation and crime reduction.*

*The impact of increased access and visibility of cannabis to youth is a paramount concern for the City. While there are no sensitive uses (as defined in Planning Code Section 202.2) within 600 feet of the proposed site, the retail storefront has been specifically designed to have a reception at the main entryway to prevent the entrance of minors. Display cases and sales areas are setback from the front façade to limit the visibility of products. Additionally passerbys will see the reception and waiting area at the front entrance, and the proposed consumption lounge is at the rear of the site and not visible from the street. With this configuration, the visibility of products and potential impact to youth passing by is minimal.*

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

- (1) Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*The height and bulk of the existing building will remain the same and will not alter the existing appearance or character of the project vicinity.*

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

*The Planning Code does not require parking or loading for any use. The proposed use is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide. The project is easily accessible to patrons and employees throughout the city due to its close proximity to several major transit lines.*

- (3) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*While on-site consumption of cannabis is proposed, the San Francisco Health Code requires installation of HVAC systems to prevent odors and emissions from the space from impacting persons or property in the vicinity. The Department of Public Health will not issue a permit for on-site consumption if such odors and emissions are not controlled. As such, the project has safeguards to prevent noxious or offensive emissions such as odor, and plans identify the HVAC location.*

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

*The Project site has no parking, open spaces or loading area and there will be no addition of parking spaces, loading facilities, open space or service areas. While lighting and signage were not proposed with these plans, any future lighting and signage proposed must be consistent with the controls of the Planning Code.*

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

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

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

*The proposed project is consistent with the stated purposes of the NC-3 District in that the intended retail use will provide diversity to the retail corridor and a compatible retail service to the public in the immediately surrounding neighborhoods and to a larger market area during daytime hours.*

8. **Additional Conditional Use Findings for Cannabis Retail.** Planning Code Section 303(w) outlines additional findings for the Commission when reviewing proposals for new Cannabis Retail establishments. The Commission shall consider “the geographic distribution of Cannabis Retail Uses throughout the City, the concentration of Cannabis Retail and Medical Cannabis Dispensary Uses within the general proximity of the proposed Cannabis Retail Use, the balance of other goods and services available within the general proximity of the proposed Cannabis Retail Use, any increase in youth access and exposure to cannabis at nearby facilities that primarily serve youth, and any proposed measures to counterbalance any such increase.”

*Cannabis Retail is a newly created land use definition, and as such the distribution of sites that are permitted as Cannabis Retail is limited. However, it is expected that most or all existing Medical Cannabis Dispensaries will convert to Cannabis Retail uses once authorized by the Office of Cannabis to do so, likely in 2020.*



*Currently, most sites are operating as Medical Cannabis Dispensaries with temporary authorization from the Department of Public Health to sell cannabis products to adult-use consumers.*

*The distribution of such outlets can be reviewed using the City's [Cannabis Retail Map](#). Currently there are no services of this kind in the nearby vicinity. The proposed project falls within the Market and Octavia neighborhood. Nearby retailers include the Ketama Collective on Valencia St. near Market St., SF Foundation on Going Green on 12<sup>th</sup> St. and Howard, and Urban Pham on 10<sup>th</sup> Street between Mission and Minna Streets. The proposed project is also nearby the SOMA neighborhood, as well as the Mission neighborhoods, which is identified as having an over-concentration of cannabis outlets compared to other districts in the City. Accessing these from the subject property requires crossing busy streets however, including Van Ness, Mission, or others. Currently there are no planned or proposed dispensaries in the area bounded by Market St., Van Ness St. and the Central Freeway.*

*In terms of the diversity and balance of goods and services within the general vicinity, the immediate area is characterized by existing and planned residential development, office buildings, auto services and more. While restaurants and retail are more prominent along Market Street just to the north, there are empty storefronts and blank facades in the nearby vicinity. The proposed use would activate an existing storage space with a use that will provide goods that are desirable for the neighborhood and may serve as an anchor to other adjacent businesses by increasing customer traffic. As such, the use is supportive of creating a thriving business community on the corridor.*

*The impact of increased access and visibility of cannabis to youth is a paramount concern for the City. The retail storefront has been specifically designed to have a reception at the main entryway to prevent the entrance of minors. Additionally, display cases and sales areas are setback from the front façade to limit the visibility of products and the proposed consumption lounge is at the rear of the site and not visible from the street. With this configuration, the visibility of products and potential impact to youth passing by is minimal.*

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

## **COMMERCE AND INDUSTRY ELEMENT**

### **Objectives and Policies**

#### **OBJECTIVE 2:**

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

#### **OBJECTIVE 3:**

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

**Policy 3.1:**

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

**Policy 3.2:**

Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

**OBJECTIVE 4:**

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

**Policy 4.8:**

Provide for the adequate security of employees and property.

**OBJECTIVE 6:**

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

**Policy 6.2:**

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

**MARKET AND OCTAVIA AREA PLAN**

**LAND USE**

**Objectives and Policies**

**OBJECTIVE 1.1**

CREATE A LAND USE PLAN THAT EMBRACES THE MARKET AND OCTAVIA NEIGHBORHOOD'S POTENTIAL AS A MIXED-USE URBAN NEIGHBORHOOD.

**OBJECTIVE 5.3**

ELIMINATE OR REDUCE THE NEGATIVE IMPACT OF PARKING ON THE PHYSICAL CHARACTER AND QUALITY OF THE NEIGHBORHOOD

**POLICY 5.3.1**

Encourage the fronts of buildings to be lined with active uses and, where parking is provided, require that it be setback and screened from the street.

*This proposed cannabis retailer proposes to adaptively reuse an existing building in the Market and Octavia neighborhood, and can contribute to the local economy while serving current and future resident needs. Cannabis is one of the fastest growing job categories in the country and one of the few retail uses that is burgeoning even in the face of e-commerce. The proposed business is owned by local residents and plans to hire over forty employees. A number of new near-by developments are currently underway and project sponsors project nearly 3,000 new units are being developed within a block of the site. This retailer can serve the neighborhood's growing residential population.*

*Cannabis retailers are proven to improve security for the entire neighborhood they serve. A UCLA study funded by the National Institutes of Health demonstrated that neighborhoods with cannabis stores have no more crime than other neighborhoods and that "measures dispensaries take to reduce crime (i.e., doormen, video cameras), may increase guardianship" of the area. This project includes the installation of exterior security camera's on the building façade.*

*Regulated cannabis is a burgeoning industry specifically because it is at the innovative edge, not just of technology but of government regulation and laws. This is a field that can create small business ownership and employment opportunities for San Francisco residents, renewed vitality on commercial corridors, and destination locations for tourists. Additionally, the Project is not a Formula Retail use.*

*No parking is proposed with this project. The project is less than two blocks from the intersection of Market Street and Van Ness Avenue, the location of the Van Ness MUNI station and a hub for numerous transit lines including the F, K, L, M, N, T, 6, 7, 47, 49 and KLM. Thus the proposed project is accessible by transit to residents throughout much of the City and it is unlikely the project will have significant impact on parking.*

*Active uses are proposed for the ground floor. Restoration of ground level plate glass windows are proposed, which can foster street activation and encourage "eyes on the street", thus helping to foster a safer environment.*

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

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

*The project site does not currently possess any neighborhood-serving retail uses. As a cannabis retailer, the project has the potential to provide future opportunities for resident employment.*

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

*The project site does not possess any existing housing. The project proposes a viable re-use for an existing building which has existed in the neighborhood since 1938. Façade improvements proposed through this project will restore the subject property to more closely resemble its original art deco style, while*

*remaining compatible with surrounding properties. For these reasons, the Project would protect and preserve the cultural and economic diversity of the neighborhood.*

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

*The Project has no effect on housing and does not convert housing to a non-residential use.*

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

*The Project Site is served by nearby public transportation options. The Van Ness MUNI station is within walking distance at Market and Van Ness Streets. It is presumable that the employees would commute by transit thereby mitigating possible effects on street parking. The Project also proposes two new class 2 bicycle parking spaces.*

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

*No additional commercial office is proposed through this project. The Project incorporates new retail use, thus helping with job creation and diversifying the local economic base.*

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

*The building is in compliance with all existing earthquake preparedness building codes to achieve the greatest possible readiness to protect against injury or loss of life.*

- G. That landmarks and historic buildings be preserved.

*Currently, the Project Site does not contain any City Landmarks. The proposal will restore the building's façade to more closely match its 1938 art deco character, thus maintaining a unique architectural style.*

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

*The Project will have no negative impact on existing parks and open spaces.*

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.

12. The Commission hereby finds that approval of the Conditional Use Authorization would promote the health, safety and welfare of the City.

## DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Authorization Application No. 2019-006086CUA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated March 11, 2019, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion. 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 December 19, 2019.

Jonas P. Ionin  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: December 19, 2019

## EXHIBIT A

### AUTHORIZATION

This authorization is for a conditional use to allow Cannabis Retail use measuring approximately 5,197 square feet square feet located at 40 12<sup>th</sup> Street pursuant to Planning Code Sections 202.2 and 752 within the NC-3 Zoning District and a 85-X Height and Bulk District; in general conformance with plans, dated March 11, 2019, and stamped "EXHIBIT B" included in the docket for Record No. 2019-006086CUA and subject to conditions of approval reviewed and approved by the Commission on December 19, 2019 under Motion No XXXXXX. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on December 19, 2019 under Motion No XXXXXX.

### PRINTING OF CONDITIONS OF APPROVAL ON PLANS

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

### SEVERABILITY

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

### CHANGES AND MODIFICATIONS

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

## Conditions of Approval, Compliance, Monitoring, and Reporting

### PERFORMANCE

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

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

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

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

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

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

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

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

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

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*



6. **Additional Project Authorization.** The Project Sponsor shall obtain operating licenses from the City's Office of Cannabis and the State of California prior to commencing any cannabis sales or other activities per Planning Code Section 202.2(a)(5).  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
7. **Transparency and Fenestration.** Pursuant to Planning Code Section 145.1, the site shall be maintained with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or grillwork, other than wire mesh, which is placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular view. Rolling or sliding security gates shall consist of open grillwork rather than solid material, so as to provide visual interest to pedestrians when the gates are closed, and to permit light to pass through mostly unobstructed. Gates, when both open and folded or rolled as well as the gate mechanism, shall be recessed within, or laid flush with, the building facade.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## MONITORING - AFTER ENTITLEMENT

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

## OPERATION

10. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the

issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator and all registered neighborhood groups for the area with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator and registered neighborhood groups shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## PARKING AND TRAFFIC

11. **Bicycle Parking.** Pursuant to Planning Code Sections 155.2, the Project shall provide no fewer than two Class 2 bicycle parking spaces. SFMTA has final authority on the type, placement and number of Class 2 bicycle racks within the public ROW. Prior to issuance of first architectural addenda, the project sponsor shall contact the SFMTA Bike Parking Program at [bikeparking@sfmta.com](mailto:bikeparking@sfmta.com) to coordinate the installation of on-street bicycle racks and ensure that the proposed bicycle racks meet the SFMTA's bicycle parking guidelines. Depending on local site conditions and anticipated demand, SFMTA may request the project sponsor pay an in-lieu fee for Class II bike racks required by the Planning Code.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## PROVISIONS

12. **Transportation Sustainability Fee.** The Project is subject to the Transportation Sustainability Fee (TSF), as applicable, pursuant to Planning Code Section 411A.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## OPERATION

13. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>*



# SAN FRANCISCO PLANNING DEPARTMENT

## CEQA Categorical Exemption Determination

### PROPERTY INFORMATION/PROJECT DESCRIPTION

<b>Project Address</b>		<b>Block/Lot(s)</b>
40 12TH ST		3505004
<b>Case No.</b>		<b>Permit No.</b>
2019-006086PRJ		
<input checked="" type="checkbox"/> <b>Addition/ Alteration</b>	<input type="checkbox"/> <b>Demolition (requires HRE for Category B Building)</b>	<input type="checkbox"/> <b>New Construction</b>
<p><b>Project description for Planning Department approval.</b>          Conditional Use Authorization for change of use from an existing vacant warehouse/storage area to retail, medical and recreational cannabis use.</p>		

### STEP 1: EXEMPTION CLASS

<b>The project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA).</b>	
<input checked="" type="checkbox"/>	<b>Class 1 - Existing Facilities.</b> Interior and exterior alterations; additions under 10,000 sq. ft.
<input type="checkbox"/>	<b>Class 3 - New Construction.</b> Up to three new single-family residences or six dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.
<input type="checkbox"/>	<p><b>Class 32 - In-Fill Development.</b> New Construction of seven or more units or additions greater than 10,000 sq. ft. and meets the conditions described below:</p> <p>(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.</p> <p>(b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses.</p> <p>(c) The project site has no value as habitat for endangered rare or threatened species.</p> <p>(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.</p> <p>(e) The site can be adequately served by all required utilities and public services.</p> <p><b>FOR ENVIRONMENTAL PLANNING USE ONLY</b></p>
<input type="checkbox"/>	<b>Class ____</b>

## STEP 2: CEQA IMPACTS

### TO BE COMPLETED BY PROJECT PLANNER

<input type="checkbox"/>	<p><b>Air Quality:</b> Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g., backup diesel generators, heavy industry, diesel trucks, etc.)? (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Air Pollution Exposure Zone)</p>
<input type="checkbox"/>	<p><b>Hazardous Materials:</b> If the project site is located on the Maher map or is suspected of containing hazardous materials (based on a previous use such as gas station, auto repair, dry cleaners, or heavy manufacturing, or a site with underground storage tanks): Would the project involve 50 cubic yards or more of soil disturbance - or a change of use from industrial to residential?</p> <p><i>if the applicant presents documentation of enrollment in the San Francisco Department of Public Health (DPH) Maher program, a DPH waiver from the Maher program, or other documentation from Environmental Planning staff that hazardous material effects would be less than significant (refer to EP_ArcMap &gt; Maher layer).</i></p>
<input type="checkbox"/>	<p><b>Transportation:</b> Does the project involve a child care facility or school with 30 or more students, or a location 1,500 sq. ft. or greater? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities?</p>
<input type="checkbox"/>	<p><b>Archeological Resources:</b> Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non -archeological sensitive area? If yes, archeo review is required (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Archeological Sensitive Area)</p>
<input type="checkbox"/>	<p><b>Subdivision/Lot Line Adjustment:</b> Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Topography). If yes, Environmental Planning must issue the exemption.</p>
<input type="checkbox"/>	<p><b>Slope = or &gt; 25%:</b> Does the project involve any of the following: (1) square footage expansion greater than 500 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Topography) <b>If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</b></p>
<input type="checkbox"/>	<p><b>Seismic: Landslide Zone:</b> Does the project involve any of the following: (1) square footage expansion greater than 500 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Seismic Hazard Zones) <b>If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</b></p>
<input type="checkbox"/>	<p><b>Seismic: Liquefaction Zone:</b> Does the project involve any of the following: (1) square footage expansion greater than 500 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Seismic Hazard Zones) <b>If box is checked, a geotechnical report will likely be required and Environmental Planning must issue the exemption.</b></p>
<p><b>Comments and Planner Signature (optional):</b> Alex Westhoff</p>	

**STEP 3: PROPERTY STATUS - HISTORIC RESOURCE  
TO BE COMPLETED BY PROJECT PLANNER**

<b>PROPERTY IS ONE OF THE FOLLOWING:</b> (refer to Property Information Map)	
<input checked="" type="checkbox"/>	<b>Category A:</b> Known Historical Resource. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	<b>Category B:</b> Potential Historical Resource (over 45 years of age). <b>GO TO STEP 4.</b>
<input type="checkbox"/>	<b>Category C:</b> Not a Historical Resource or Not Age Eligible (under 45 years of age). <b>GO TO STEP 6.</b>

**STEP 4: PROPOSED WORK CHECKLIST  
TO BE COMPLETED BY PROJECT PLANNER**

<b>Check all that apply to the project.</b>	
<input type="checkbox"/>	1. <b>Change of use and new construction.</b> Tenant improvements not included.
<input type="checkbox"/>	2. <b>Regular maintenance or repair</b> to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	3. <b>Window replacement</b> that meets the Department's <i>Window Replacement Standards</i> . Does not include storefront window alterations.
<input type="checkbox"/>	4. <b>Garage work.</b> A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , and/or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input type="checkbox"/>	5. <b>Deck, terrace construction, or fences</b> not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	6. <b>Mechanical equipment installation</b> that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	7. <b>Dormer installation</b> that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input type="checkbox"/>	8. <b>Addition(s)</b> that are not visible from any immediately adjacent public right-of-way for 150 feet in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features.
<b>Note: Project Planner must check box below before proceeding.</b>	
<input type="checkbox"/>	Project is not listed. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project <b>does not conform</b> to the scopes of work. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project involves <b>four or more</b> work descriptions. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project involves <b>less than four</b> work descriptions. <b>GO TO STEP 6.</b>

**STEP 5: CEQA IMPACTS - ADVANCED HISTORICAL REVIEW  
TO BE COMPLETED BY PROJECT PLANNER**

<b>Check all that apply to the project.</b>	
<input type="checkbox"/>	1. Project involves a <b>known historical resource (CEQA Category A)</b> as determined by Step 3 and conforms entirely to proposed work checklist in Step 4.
<input type="checkbox"/>	2. <b>Interior alterations to publicly accessible spaces.</b>
<input type="checkbox"/>	3. <b>Window replacement</b> of original/historic windows that are not "in-kind" but are consistent with existing historic character.
<input type="checkbox"/>	4. <b>Façade/storefront alterations</b> that do not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	5. <b>Raising the building</b> in a manner that does not remove, alter, or obscure character-defining features.
<input checked="" type="checkbox"/>	6. <b>Restoration</b> based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.

<input type="checkbox"/>	7. <b>Addition(s)</b> , including mechanical equipment that are minimally visible from a public right-of-way and meet the <i>Secretary of the Interior's Standards for Rehabilitation</i> .
<input type="checkbox"/>	8. <b>Other work consistent</b> with the <i>Secretary of the Interior Standards for the Treatment of Historic Properties</i> (specify or add comments):
<input type="checkbox"/>	9. <b>Other work</b> that would not materially impair a historic district (specify or add comments):  (Requires approval by Senior Preservation Planner/Preservation Coordinator)
<input type="checkbox"/>	10. <b>Reclassification of property status.</b> (Requires approval by Senior Preservation Planner/Preservation <input type="checkbox"/> Reclassify to Category A a. Per HRER or PTR dated <input type="checkbox"/> Reclassify to Category C (attach HRER or PTR) b. Other (specify):
<b>Note: If ANY box in STEP 5 above is checked, a Preservation Planner MUST sign below.</b>	
<input checked="" type="checkbox"/>	<b>Project can proceed with categorical exemption review.</b> The project has been reviewed by the Preservation Planner and can proceed with categorical exemption review. <b>GO TO STEP 6.</b>
<b>Comments (optional):</b>	
<b>Preservation Planner Signature:</b> Alex Westhoff	

**STEP 6: CATEGORICAL EXEMPTION DETERMINATION  
TO BE COMPLETED BY PROJECT PLANNER**

<input checked="" type="checkbox"/>	<b>No further environmental review is required. The project is categorically exempt under CEQA. There are no unusual circumstances that would result in a reasonable possibility of a significant effect.</b>	
	<b>Project Approval Action:</b> Building Permit	<b>Signature:</b> Alex Westhoff
	If Discretionary Review before the Planning Commission is requested, the Discretionary Review hearing is the Approval Action for the project.	11/19/2019
Once signed or stamped and dated, this document constitutes a categorical exemption pursuant to CEQA Guidelines and Chapter 31 of the Administrative Code. In accordance with Chapter 31 of the San Francisco Administrative Code, an appeal of an exemption determination can only be filed within 30 days of the project receiving the approval action. Please note that other approval actions may be required for the project. Please contact the assigned planner for these approvals.		

## STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT

### TO BE COMPLETED BY PROJECT PLANNER

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a "substantial modification" and, therefore, be subject to additional environmental review pursuant to CEQA.

### PROPERTY INFORMATION/PROJECT DESCRIPTION

Project Address (If different than front page)		Block/Lot(s) (If different than front page)
40 12TH ST		3505/004
Case No.	Previous Building Permit No.	New Building Permit No.
2019-006086PRJ		
Plans Dated	Previous Approval Action	New Approval Action
	Building Permit	
Modified Project Description:		

### DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION

Compared to the approved project, would the modified project:	
<input type="checkbox"/>	Result in expansion of the building envelope, as defined in the Planning Code;
<input type="checkbox"/>	Result in the change of use that would require public notice under Planning Code Sections 311 or 312;
<input type="checkbox"/>	Result in demolition as defined under Planning Code Section 317 or 19005(f)?
<input type="checkbox"/>	Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption?
<b>If at least one of the above boxes is checked, further environmental review is required.</b>	

### DETERMINATION OF NO SUBSTANTIAL MODIFICATION

<input type="checkbox"/>	The proposed modification would not result in any of the above changes.
If this box is checked, the proposed modifications are categorically exempt under CEQA, in accordance with prior project approval and no additional environmental review is required. This determination shall be posted on the Planning Department website and office and mailed to the applicant, City approving entities, and anyone requesting written notice. In accordance with Chapter 31, Sec 31.08j of the San Francisco Administrative Code, an appeal of this determination can be filed within 10 days of posting of this determination.	
Planner Name:	Date: