

DOC# 2019-0256037



Jun 28, 2019 11:19 AM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$71.00 (SB2 Atkins: \$0.00)

PAGES: 20

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION
501

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

INTERNAL ORDER NUMBER: 24007605

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE PERMIT NO. 2068128 AND
NEIGHBORHOOD DEVELOPMENT PERMIT NO. 2246456
MPF 3279 NATIONAL AVENUE - PROJECT NO. 585635

Hearing Officer

This Conditional Use Permit No. 2068128 and Neighborhood Development Permit No. 2246456, collectively "Permit", is granted by the Hearing Officer of the City of San Diego to Aaron Magagna, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0305 and 126.0404. The 0.16-acre site is located at 3279 National Avenue, within the Transit Priority Area Overlay Zone, Special Flood Hazard Area (100-year Floodplain), and the San Diego Promise Zone within the Southeastern San Diego Community Plan area. The project site is legally described as: Lots 28 and 29, in Block 287 of Seaman and Choate's Addition, Map No. 223, filed in the Office of the county Recorder of San Diego County, September 10, 1886.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to operate a Marijuana Production Facility within an existing 3,390-square-foot building with requested deviations from the development regulations pertaining to separation requirements, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated February 20, 2019, on file in the Development Services Department.

The project shall include:

- a. Operation of a Marijuana Production Facility within an existing 3,390-square-foot building consisting of 450-square-foot, upper floor, and 2,940-square-foot, lower floor. The operation shall include requirements consistent with State of California statutes and the California Departments of Food and Agriculture, Consumer Affairs and Public Health regulations;
- b. The Marijuana Production Facility operations include cannabis cultivation and distribution;
- c. Approval of the following three deviations:

ORIGINAL

1. Allow the Marijuana Production Facility within approximately 800 feet, measured property line to property line, from a school, Rodriguez Elementary School located at 825 S. 31st Street, where 1,000 feet is required;
 2. Allow the Marijuana Production Facility within approximately 760 feet, measured property line to property line, from a church, Iglesia Puerto Seguro located at 840 S. Gregory, where 1,000 feet is required; and
 3. Allow the Marijuana Production Facility within approximately 15 feet of a residential zone, measured property line to property line, where 100 feet is required.
- d. Off-street parking; and
- e. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36-month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by March 7, 2022.
2. This Conditional Use Permit [CUP] and corresponding use of this site shall expire on March 7, 2024. Upon expiration of this Permit, the facilities and improvements described herein, excluding any public improvements, shall be removed from this site and the property shall be restored to its original condition preceding approval of this Permit.
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. The Owner/Permittee shall secure all necessary construction permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
9. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
10. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.
11. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee

shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

ENGINEERING REQUIREMENTS:

12. Prior to the issuance of the first Marijuana Production Permit pursuant to SDMC Chapter 4, Article 2, Division 15, the Owner/Permittee shall assure, by permit and bond, the construction of a new 30-foot driveway per current City Standards, adjacent to the site on National Avenue, satisfactory to the City Engineer.
13. Prior to the issuance of the first Marijuana Production Permit pursuant to SDMC Chapter 4, Article 2, Division 15, the Owner/Permittee shall assure, by permit and bond, the reconstruction of existing curb and gutter per current City Standards, adjacent to the site on National Avenue, satisfactory to the City Engineer.
14. Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate Construction Best Management Practices (BMPs) necessary to comply with current City of San Diego Storm Water Standards Manual and with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications, satisfactory to the City Engineer.
15. Prior to the issuance of any construction permit, the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Part 2 Construction BMP Standards Chapter 4 of the City's Storm Water Standards.

TRANSPORTATION REQUIREMENTS:

16. Prior to the issuance of the first Marijuana Production Permit pursuant to SDMC Chapter 4, Article 2, Division 15, the Owner/Permittee shall record a joint use driveway/mutual access agreement in favor of the project and the adjacent property (APN 550-161-1100), to the satisfaction of the City Engineer.

PLANNING/DESIGN REQUIREMENTS:

17. All automobile, motorcycle and bicycle parking spaces must be constructed in accordance with the requirements of the SDMC. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the appropriate City decision maker in accordance with the SDMC.
18. A maximum of 5 employees shall be allowed on-site at any given time to correspond to the 5 provided parking spaces for the project.

19. All operations shall be conducted indoors within a secured structure. All equipment and storage shall be also located within a secure structure.
20. Lighting shall be provided to illuminate the immediate surrounding area of the facility, including parking lots and adjoining sidewalks. Lighting shall be hooded or oriented to deflect light away from adjacent properties.
21. Security shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the premises during business hours. The security guard shall only be engaged in activities related to providing security for the facility, except on an incidental basis.
22. The name and emergency contact telephone number of an operator or manager shall be posted outside the marijuana production facility in a location visible to the public from the public right-of-way in character size at least two inches in height. The permittee shall provide this contact information to the San Diego Police Department. The operator or manager shall also be available 24 hours a day to address public nuisance complaints and interact with local, state, and federal law enforcement authorities. Other than the contact information, a marijuana production facility shall limit signage on the exterior of the property visible from the public right-of-way to the address.
23. A permit shall be obtained as required pursuant to SDMC Chapter 4, Article 2, Division 15.
24. The retail sale of marijuana and marijuana products shall only be conducted by a marijuana outlet in accordance with SDMC Section 141.0504. A marijuana production facility is prohibited from providing marijuana and marijuana products to any person other than another marijuana production facility, a testing lab, or a marijuana outlet.
25. The marijuana production facility, adjacent public sidewalks, and areas under the control of the marijuana production facility shall be maintained free of litter and graffiti at all times.
26. The marijuana production facility shall provide daily removal of trash, litter, and debris. Graffiti shall be removed from the premises within 24 hours.
27. The Owner/Permittee shall provide a sufficient odor absorbing ventilation and exhaust system capable of minimizing excessive or offensive odors emanating outside of the permitted facility, to the satisfaction of the Development Services Department.

INFORMATION ONLY:

- The issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on site. Any operation allowed by this discretionary permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.

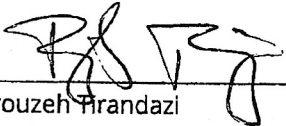
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.
- Cannabis businesses that operate or provide services within the City of San Diego are liable for a monthly gross receipts tax. As referenced in San Diego Municipal Code Section 34.0103 (b), taxable activities include but are not limited to, transporting, manufacturing, cultivating, packaging, or retail sales of cannabis and any ancillary products in the City. For additional information, contact the Office of the City Treasurer at 619-615-1580.

APPROVED by the Hearing Officer of the City of San Diego on February 20, 2019 by Resolution No. HO-7199.

Permit Type/PTS Approval No.: CUP No. 2068128 and NDP No. 2246456

Date of Approval: February 20, 2019

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT



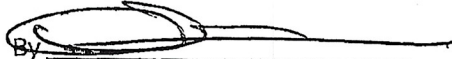
Firouzeh Hirandazi
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

AARON MAGAGNA

Owner / Permittee


By _____
Aaron Magagna
AKA Aaron Jacob Magagna

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)

On June 27, 2019 before me, Stacie L. Maxwell, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared --- Firouzeh Tirandazi ---
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: MPF 3279 National Avenue - Project No. 585635
Document Date: February 20, 2019 Number of Pages: 7
Signer(s) Other Than Named Above: --- Aaron Magagna ---

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

ORIGINAL

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of San Diego)

On 06/26/2019 before me, Amdework Mitiku (Notary Public)

personally appeared Aaron Jacob Megagna,

who proved to me on the basis of satisfactory evidence to be the person(s)

whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to

me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies),

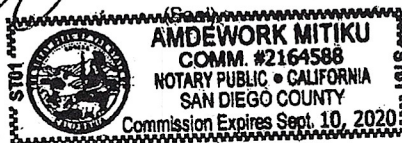
and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity

upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Amdework Mitiku*



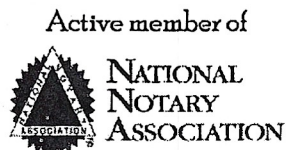
Amdework Mitiku
California Notary Public Since 2002
4535 30th Street #106
San Diego, CA 92116

Phone: **619 255 5530**

Web: www.yebbo.com/notary

Email: amde@yebbo.com

Commission Expires: Sep. 10, 2020



ORIGINAL

HEARING OFFICER RESOLUTION NO. HO-7199
CONDITIONAL USE PERMIT NO. 2068128 AND
NEIGHBORHOOD DEVELOPMENT PERMIT NO. 2246456
MPF 3279 NATIONAL AVENUE - PROJECT NO. 585635

WHEREAS, AARON MAGAGNA, Owner/Permittee, filed an application with the City of San Diego for a permit to operate a Marijuana Production Facility (MPF) within an existing 3,390-square-foot building with requested deviations from the development regulations pertaining to separation requirements (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit Nos. 2068128 and 2246456 on portions of a 0.16-acre site;

WHEREAS, the project site is located at 3279 National Avenue, within the Transit Priority Area Overlay Zone, Special Flood Hazard Area (100-year Floodplain), and the San Diego Promise Zone within the Southeastern San Diego Community Plan area;

WHEREAS, the project site is legally described as Lots 28 and 29, in Block 287 of Seaman and Choate's Addition, Map No. 223, filed in the Office of the county Recorder of San Diego County, September 10, 1886;

WHEREAS, on October 11, 2018, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) under CEQA Guideline Section 15301, Existing Facilities, and the Environmental Determination was appealed to City Council, which appeals were withdrawn on January 7, 2019 and January 8, 2019.

WHEREAS, on February 20, 2019, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 2068128 and Neighborhood Development Permit No. 2246456 pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the Hearing Officer of the City of San Diego that it adopts the following findings with respect to Conditional Use Permit No. 2068128 and Neighborhood Development Permit No. 2246456:

A. CONDITIONAL USE PERMIT [SDMC Section 126.0305]

1. Findings for all Conditional Use Permits:

a. The proposed development will not adversely affect the applicable land use plan.

The project is a request for a Conditional Use Permit and Neighborhood Development Permit to allow the operation of a MPF within an existing 3,390-square-foot building located at 3279 National Avenue. The project also requests deviations from the 100-foot separation requirement from the residential zone, and the 1,000-foot separation requirement from a church and a school, as set forth in San Diego Municipal Code Section 141.1004, pursuant to SDMC Section 143.0920. The 0.16-acre project site is located in the IL-3-1 Zone, the Transit Priority Area Overlay Zone, Special Flood Hazard Area (100-year Floodplain), and the San Diego Promise Zone within the Southeastern San Diego Community Plan area.

The existing building was constructed in 1962. It is currently occupied by a medical marijuana cultivation facility, which has been operating pursuant to Business Tax Certificate and Zoning Use Certificate issued for an "Indoor Medical Marijuana Cultivation Facility" on August 15, 2016; Building Permit No. 1878426 issued on March 1, 2017 for the change of occupancy from "storage use" to "factory" to be used as a Medical Marijuana Cultivation Facility; and Building Permit No. 1928455 issued on April 20, 2017 for the interior remodel of an existing medical marijuana cultivation facility.

Ordinance No. O-20859 adopted by City Council October 17, 2017, effective November 17, 2017, established the MPF use and included a provision that a MPF with an approved Zoning Use Certificate and a Business Tax Certificate, issued before January 31, 2017, shall have 24 months from the date of final passage of this ordinance in which to cease use or obtain required permits. As required by Ordinance No. O-20859, the subject application has been submitted to allow the operation of a MPF at this location, including the cultivation of both medicinal and recreational marijuana. No interior improvements are proposed. All interior improvements necessary to establish the marijuana cultivation use at this location have been permitted in conformance with the California Building Code, Mechanical Code, Electrical Code, and Fire Code.

The project site is designated Industrial Employment by the Land Use and Community Planning Element of the General Plan. The General Plan identifies a citywide shortage of land suitable for manufacturing activities and a need to protect manufacturing land from non-manufacturing uses. The Southeastern San Diego Community Plan Light Industrial designation allows a wide variety of industrial uses, such as light manufacturing,

research and development uses, and other industrial uses such as storage, distribution and transportation terminals, multi-tenant industrial uses and corporate headquarters office uses. The IL Zones are intended to permit a range of uses, including nonindustrial uses in some instances. Specifically, the IL-3-1 Zone allows a mix of light industrial, office, and commercial uses. The proposed MPF, classified as an industrial use, is a compatible use for this location with a Conditional Use Permit and Neighborhood Development Permit, and is consistent with the underlying industrial zone and community plan land use designation, and therefore will not adversely affect the applicable land use plan.

b. The proposed development will not be detrimental to the public health, safety, and welfare.

The proposed development will not be detrimental to the public's health, safety and welfare because the discretionary permit controlling the development and continued use of this site contains specific regulatory conditions of approval to assure the project's compliance with applicable local, regional, state and federal codes and rules. These regulations, which are implemented and enforced through the permit, are specifically intended to reduce, mitigate and/or prevent all adverse impacts to the public and community at large.

The project proposes to operate a MPF within an existing 3,390-square-foot building with requested deviations from the development regulations pertaining to separation requirements. The structure is a two story, flat roof building, consisting of a 450-square-foot upper floor with the main entrance off National Avenue, and a 2,940-square-foot, lower floor, with additional access provided via the alley. Operations will consist of marijuana cultivation and distribution. No interior improvements are proposed. All interior improvements for the marijuana cultivation facility were previously permitted in conformance with the California Building Code, Mechanical Code, Electrical Code, and Fire Code pursuant to Building Permit No. 1878426 issued on March 1, 2017 for the change of occupancy from "storage use" to "factory" to be used as a Medical Marijuana Cultivation Facility; and Building Permit No. 1928455 issued on April 20, 2017 for the interior remodel of an existing medical marijuana cultivation facility.

The project exterior improvements include improvement of project frontage along National Avenue, with curb, gutter, noncontiguous sidewalk, and reconstruction of one driveway consistent with current City Standards to the satisfaction of the City Engineer. Additionally, the project satisfies the required parking for the use by providing five off-street parking spaces, including one American Disabilities Act (ADA) accessible space, and two motorcycle spaces.

MPFs are restricted to forty City-wide, within light and heavy industrial zones. MPFs require compliance with San Diego Municipal Code (SDMC) section 141.1004, which require a 1,000-foot separation, measured between property lines, from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. MPFs also have a minimum distance requirement of 100 feet from a residential zone. Pursuant to SDMC Section 113.0225(c), where a natural topographical barrier or constructed barrier exists,

distance can be measured as the most direct route around the barrier in a manner that establishes direct access. The project is requesting three deviations from the separation requirements from residential zones, churches and schools.

Although the project site is located within 100 feet of residentially zoned parcels, the use on the premises is an industrial use, not a residential use, and the undeveloped portions that are zoned residential are unlikely to be developed due the steep slopes and topographic site constraints. The closest residential zoned property that is developed with a residential use, located at 3250 Newton Avenue, is approximately 125 feet from the MPF, with distance measured property line to property line.

The project site is also located approximately 760 feet from a church located at 840 S. Gregory, and approximately 800 feet from Rodriguez Elementary School located at 825 S. 31st Street. Per the SDMC, measuring distance for marijuana production facilities shall take into consideration natural topographical barriers and constructed barriers that would impede direct physical access between the uses such as freeways or flood control channels. In such cases, the separation of distance shall be measured as the most direct route around the barrier in a manner that establishes direct access. Although not as substantial as a freeway or flood control channel, existing private property, fences, and buildings are barriers that would impede direct physical access and would need to be navigated around to establish direct access between the uses. When measuring distance between the proposed MPF and the subject church, and between the proposed MPF and the subject school, via a path of travel as the most direct route around these existing barriers, the distances between these uses are greater than 1,000 feet. The requested deviations to the aforementioned separation requirements are appropriate at this location and meet the purpose and intent of the regulations by maintaining adequate distance between the MPF relative to the school, church and residential uses.

The proposed MPF is subject to specific operational requirements as set forth in SDMC section 141.1004, including security requirements, such as lighting, security cameras, alarms and a security guard. The security guard must be licensed by the State of California and be present on the premises during business hours. MPFs must also comply with SDMC Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation. The proposed project will be required to comply with the development conditions as described in Conditional Use Permit No. 2068128 and Neighborhood Development Permit No. 2246456. The permit will be valid for five years and may be revoked if the Owner/Permittee violates the terms, conditions, lawful requirements, or provisions of the Permit.

Furthermore, this project has been reviewed pursuant to the California Environmental Quality Act, and the environmental analysis did not find any significant impacts to the public health and safety. Based on the above analysis, the proposed development would not be detrimental to the public health, safety, and welfare.

- c. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.**

The project proposes to operate a MPF within an existing 3,390-square-foot building constructed in 1962. The project site is located in the IL-3-1 Zone, within the Southeastern San Diego Community Plan area. The structure is a two story, flat roof building, consisting of a 450-square-foot upper floor with the main entrance off National Avenue, and a 2,940-square-foot, lower floor, with additional access provided via the alley. The building is currently occupied by a medical marijuana cultivation facility, which has been operating pursuant to Business Tax Certificate and Zoning Use Certificate issued for an "Indoor Medical Marijuana Cultivation Facility" on August 15, 2016; Building Permit No. 1878426 issued on March 1, 2017 for the change of occupancy from "storage use" to "factory" to be used as a Medical Marijuana Cultivation Facility; and Building Permit No. 1928455 issued on April 20, 2017 for the interior remodel of an existing medical marijuana cultivation facility.

Ordinance No. O-20859 adopted by City Council October 17, 2017, effective November 17, 2017, established the MPF use and included a provision that a MPF with an approved Zoning Use Certificate and a Business Tax Certificate, issued before January 31, 2017, shall have 24 months from the date of final passage of this ordinance in which to cease use or obtain required permits. As required by Ordinance No. O-20859, the subject application has been submitted to allow the operation of a MPF at this location, including the cultivation of both medicinal and recreational marijuana. Operations will consist of marijuana cultivation and distribution. No interior improvements are proposed. All interior improvements necessary to establish the marijuana cultivation use at this location have been permitted in conformance with the California Building Code, Mechanical Code, Electrical Code, and Fire Code.

The project exterior improvements include improvement of project frontage along National Avenue, with curb, gutter, noncontiguous sidewalk, and reconstruction of one driveway consistent with current City Standards. Additionally, the project satisfies the required parking for the use by providing five off-street parking spaces, including one American Disabilities Act (ADA) accessible space, and two motorcycle spaces.

MPFs are allowed in the IL-3-1 Zone with a Conditional Use Permit. The proposed use requires compliance with SDMC section 141.1004 and Chapter 4, Article 2, Division 15. Security measures, expressed as conditions in the permit, includes interior and exterior lighting, security cameras, alarms and a security guard. The security guard must be licensed by the State of California and be present on the premises during business hours. Furthermore, SDMC section 141.1004 requires a 1,000-foot separation, measured between property lines, from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone.

The project complies with the regulations of the Land Development Code except where deviations are allowed through the Neighborhood Development Permit pursuant to SDMC Section 143.0920. The project is requesting three deviations from the separation requirements from residential zones, churches, and schools. Although the project site is

located within 100 feet of residentially zoned parcels, the use on the premises is an industrial use, not a residential use, and the undeveloped portions that are zoned residential are unlikely to be developed due the steep slopes and topographic site constraints. The closest residential zoned property that is developed with a residential use, located at 3250 Newton Avenue, is approximately 125 feet from the MPF, with distance measured property line to property line.

The project site is also located approximately 760 feet from a church located at 840 S. Gregory, and approximately 800 feet from Rodriguez Elementary School located at 825 S. 31st Street. Per the SDMC, measuring distance for marijuana production facilities shall take into consideration natural topographical barriers and constructed barriers that would impede direct physical access between the uses such as freeways or flood control channels. In such cases, the separation of distance shall be measured as the most direct route around the barrier in a manner that establishes direct access. Although not as substantial as a freeway or flood control channel, existing private property, fences, and buildings are barriers that would impede direct physical access and would need to be navigated around to establish direct access between the uses. When measuring distance between the proposed MPF and the subject church, and between the proposed MPF and the subject school, via a path of travel as the most direct route around these existing barriers, the distances between these uses are greater than 1,000 feet. The requested deviations to the aforementioned separation requirements meet the purpose and intent of the regulations by maintaining adequate distance between the MPF relative to the school, church and residential zone.

As an in-fill development located within the San Diego Promise Zone, the project meets the criteria for Affordable Housing, In-Fill Projects, and Sustainable Buildings Development Regulations set forth in SDMC Section 143.0915 and contributes towards in-fill development and increasing employment opportunities within the San Diego Promise Zone. The proposed MPF complies with all land development regulations relevant for the site and the use, except where deviations are allowed through the Neighborhood Development Permit pursuant to SDMC Section 143.0920. Therefore, the proposed development will comply with the applicable regulations of the Land Development code, including any allowable deviations pursuant to the Land Development Code.

d. The proposed use is appropriate at the proposed location.

The MPF is proposed within an existing 3,390-square-foot building located at 3279 National Avenue. The building is currently occupied by a medical marijuana cultivation facility, which has been operating pursuant to Business Tax Certificate and Zoning Use Certificate issued for an "Indoor Medical Marijuana Cultivation Facility" on August 15, 2016; Building Permit No. 1878426 issued on March 1, 2017 for the change of occupancy from "storage use" to "factory" to be used as a Medical Marijuana Cultivation Facility; and Building Permit No. 1928455 issued on April 20, 2017 for the interior remodel of an existing medical marijuana cultivation facility.

The project site is in the IL-3-1 Zone of the Southeastern San Diego Community Plan area. The project site is designated Industrial Employment by the Land Use and Community Planning Element of the General Plan. The General Plan identifies a citywide shortage of land suitable for manufacturing activities and a need to protect manufacturing land from non-manufacturing uses. The Southeastern San Diego Community Plan Light Industrial designation allows a wide variety of industrial uses, such as light manufacturing, research and development uses, and other industrial uses such as storage, distribution and transportation terminals, multi-tenant industrial uses and corporate headquarters office uses.

The IL Zones are intended to permit a range of uses, including non-industrial uses in some instances. The purpose and intent of the IL-3-1 Zone is to accommodate a range of industrial and manufacturing activities in designated areas to promote balanced land use and provide flexibility in the design of new and redeveloped industrial projects, while assuring high quality development and protecting land for industrial uses and limiting nonindustrial uses. The development standards of this zone are intended to encourage sound industrial development by providing an attractive environment free from adverse impacts associated with some heavy industrial uses. Specifically, the IL-3-1 Zone allows a mix of light industrial, office, and commercial uses.

MPFs require compliance with San Diego Municipal Code (SDMC) section 141.1004, which require a 1,000-foot separation, measured between property lines, from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. MPFs are also required to maintain a distance of 100 feet from a residential zone. Pursuant to SDMC Section 113.0225(c), where a natural topographical barrier or constructed barrier exists, distance can be measured as the most direct route around the barrier in a manner that establishes direct access. The project is requesting three deviations from the separation requirements from residential zones, churches and schools.

Although the project site is located within 100 feet of residentially zoned parcels, the use on the premises is an industrial use, not a residential use, and the undeveloped portions that are zoned residential are unlikely to be developed due the steep slopes and topographic site constraints. The closest residential zoned property that is developed with a residential use, located at 3250 Newton Avenue, is approximately 125 feet away from the MPF, with distance measured property line to property line.

The project site is also located approximately 760 feet from a church located at 840 S. Gregory, and approximately 800 feet from Rodriguez Elementary School located at 825 S. 31st Street. Per the SDMC, measuring distance for marijuana production facilities shall take into consideration natural topographical barriers and constructed barriers that would impede direct physical access between the uses such as freeways or flood control channels. In such cases, the separation of distance shall be measured as the most direct route around the barrier in a manner that establishes direct access. Although not as substantial as a freeway or flood control channel, existing private property, fences, and buildings are barriers that would impede direct physical access and would need to be navigated around to establish direct access between the uses. When measuring

distance between the proposed MPF and the subject church, and between the proposed MPF and the subject school, via a path of travel as the most direct route around these existing barriers, the distances between these uses are greater than 1,000 feet. The requested deviations to the aforementioned separation requirements meet the purpose and intent of the regulations by maintaining adequate distance between the MPF relative to the school, church and residential zone.

The proposed MPF, classified as an industrial use, is consistent with the Light Industrial designation of the Southeastern San Diego Community Plan, and is a compatible use for this location with a Conditional Use Permit and Neighborhood Development Permit. The proposed MPF complies with all land development regulations relevant for the site and the use, except where deviations are allowed through the Neighborhood Development Permit pursuant to SDMC Section 143.0920. As an in-fill development located within the San Diego Promise Zone, the project meets the criteria for Affordable Housing, In-Fill Projects, and Sustainable Buildings Development Regulations set forth in SDMC Section 143.0915 and contributes towards in-fill development and increasing employment opportunities within the San Diego Promise Zone. Therefore, the proposed MPF is an appropriate use at the proposed location.

B. NEIGHBORHOOD DEVELOPMENT PERMIT [SDMC SECTION 126.0404(a)]

1. Findings for all Neighborhood Development Permits:

- a. The proposed development will not adversely affect the applicable land use plan.**

As outlined in CUP Finding (A)(1)(a) listed above, the proposed development will not adversely affect the applicable land use plan.

- b. The proposed development will not be detrimental to the public health, safety, and welfare.**

As outlined in CUP Finding (A)(1)(b) listed above, the proposed development will not be detrimental to the public health, safety, and welfare.

- c. The proposed development will comply with the applicable regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.**

As outlined in CUP Finding (A)(1)(c) listed above, the requested deviations are appropriate at this location and meet the purpose and intent of the regulations by maintaining adequate distance between the MPF relative to the school, church and residential uses. As an in-fill development located within the San Diego Promise Zone, the project meets the criteria for Affordable Housing, In-Fill Projects, and Sustainable Buildings Development Regulations set forth in SDMC Section 143.0915 and contributes towards in-fill development and increasing employment opportunities within the San Diego Promise Zone. Therefore, the proposed development will comply with the

applicable regulations of the Land Development code, including any allowable deviations pursuant to the Land Development Code.

2. **Supplemental Findings – Affordable Housing, In-Fill Projects, or Sustainable Buildings [SDMC Section 126.0404(f)]**

a. **The development will materially assist in accomplishing the goal of providing affordable, in-fill projects, or sustainable buildings opportunities; and**

The project proposes to operate a MPF within an existing 3,390-square-foot building constructed in 1962. The project site is located in the IL-3-1 Zone, within the Southeastern San Diego Community Plan area and the San Diego Promise Zone. The building is currently occupied by a medical marijuana cultivation facility, which has been operating pursuant to Business Tax Certificate and Zoning Use Certificate issued for an "Indoor Medical Marijuana Cultivation Facility" on August 15, 2016; Building Permit No. 1878426 issued on March 1, 2017 for the change of occupancy from "storage use" to "factory" to be used as a Medical Marijuana Cultivation Facility; and Building Permit No. 1928455 issued on April 20, 2017 for the interior remodel of an existing medical marijuana cultivation facility. As required by Ordinance No. O-20859, the subject application has been submitted to allow the operation of a MPF at this location, including the cultivation of both medicinal and recreational marijuana. Prior to this use, the building had been vacant.

As an in-fill development located within the San Diego Promise Zone, the project meets the criteria for Affordable Housing, In-Fill Projects, and Sustainable Buildings Development Regulations set forth in SDMC Section 143.0915. The development materially assists in accomplishing the goal of providing an in-fill project, preserve and protect valuable manufacturing land from non-manufacturing uses, and increase light industrial employment opportunities in the community consistent with the goals and objectives of the San Diego General Plan and the Southeastern San Diego Community Plan.

b. **Any proposed deviations are appropriate for the proposed location.**

MPFs require compliance with SDMC section 141.1004, which require a 1,000-foot separation, measured between property lines, from resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. MPFs are also required to maintain a distance of 100 feet from a residential zone. Pursuant to SDMC Section 113.0225(c), where a natural topographical barrier or constructed barrier exists, distance can be measured as the most direct route around the barrier in a manner that establishes direct access. The project is requesting three deviations from the separation requirements from residential zones, churches and schools.

Although the project site is located within 100 feet of residentially zoned parcels, the use on the premises is an industrial use, not a residential use, and the undeveloped portions that are zoned residential are unlikely to be developed due the steep slopes and topographic site constraints. The closest residential zoned property that is developed

with a residential use, located at 3250 Newton Avenue, is approximately 125 feet from the MPF, with distance measured property line to property line.

The project site is also located approximately 760 feet from a church located at 840 S. Gregory, and approximately 800 feet from Rodriguez Elementary School located at 825 S. 31st Street. Per the SDMC, measuring distance for marijuana production facilities shall take into consideration natural topographical barriers and constructed barriers that would impede direct physical access between the uses such as freeways or flood control channels. In such cases, the separation of distance shall be measured as the most direct route around the barrier in a manner that establishes direct access. Although not as substantial as a freeway or flood control channel, existing private property, fences, and buildings are barriers that would impede direct physical access and would need to be navigated around to establish direct access between the uses. When measuring distance between the proposed MPF and the subject church, and between the proposed MPF and the subject school, via a path of travel as the most direct route around these existing barriers, the distances between these uses are greater than 1,000 feet. The requested deviations to the aforementioned separation requirements meet the purpose and intent of the regulations by maintaining adequate distance between the MPF relative to the school, church and residential zone.

The requested deviations to the aforementioned separation requirements are appropriate at this location to allow an in-fill development and increase employment opportunities within the San Diego Promise Zone, while maintaining adequate distance between the MPF relative to the school, church and residential use consistent with the purpose and intent of the SDMC.

C. SITE DEVELOPMENT PERMIT [SDMC SECTION 126.0504]

1. Findings for all Site Development Permits:

- a. The proposed development will not adversely affect the applicable land use plan.**

As outlined in CUP Finding (A)(1)(a) listed above, the proposed development will not adversely affect the applicable land use plan.

- b. The proposed development will not be detrimental to the public health, safety, and welfare.**

As outlined in CUP Finding (A)(1)(b) listed above, the proposed development will not be detrimental to the public health, safety, and welfare.

- c. The proposed development will comply with the applicable regulations of the Land Development Code, including any allowable deviations pursuant to the Land Development Code.**

As outlined in CUP Finding (A)(1)(c) listed above, the requested deviations are appropriate at this location and meet the purpose and intent of the regulations by

maintaining adequate distance between the MPF relative to the school, church and residential uses. As an in-fill development located within the San Diego Promise Zone, the project meets the criteria for Affordable Housing, In-Fill Projects, and Sustainable Buildings Development Regulations set forth in SDMC Section 143.0915 and contributes towards in-fill development and increasing employment opportunities within the San Diego Promise Zone. Therefore, the proposed development will comply with the applicable regulations of the Land Development code, including any allowable deviations pursuant to the Land Development Code.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Conditional Use Permit No. 2068128 and Neighborhood Development Permit No. 2246456 is hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit Nos. 2068128 and 2246456, a copy of which is attached hereto and made a part hereof.



Firouzeh Tirandazi
Development Project Manager
Development Services

Adopted on: February 20, 2019

IO#: 24007605