

**BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO**

Appeal of  
CHRIS CALLAWAY, )  
Appellant(s) )  
vs. )  
ZONING ADMINISTRATOR, )  
Respondent )

Appeal No. **24-053**

**NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN THAT** on September 5, 2024, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on August 26, 2024, of a Letter of Determination (LOD) (the Zoning Administrator determined that the Planning Department may not accept a Conditional Use Authorization (CUA) application for a Cannabis Retail Use (CRU) unless a Cannabis Permit application is referred by the Office of Cannabis (OOC); Section 6(f) of the OOC Rules states that only a single active Cannabis Retail permit application will be referred to the Planning Department and any subsequent applications within 600 feet will be held in abeyance; the CUA for Cannabis Retail at 500 Laguna Street is currently active, but requires either extension or revocation by the Planning Commission; and the Planning Department has not received a referral from the OOC for the requestor’s alternative Cannabis Retail location that is within 600 feet of 500 Laguna Street).

**RECORD NO. 2023-011713ZAD**

**FOR HEARING ON October 23, 2024**

Address of Appellant(s):

Address of Other Parties:

Chris Callaway, Appellant(s) c/o Melinda Sarjapur, Attorney for Appellant(s) Reuben, Junius & Rose LLP One Bush Street, Suite 600 San Francisco, CA 94104	N/A
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Date Filed: September 5, 2024

**CITY & COUNTY OF SAN FRANCISCO  
BOARD OF APPEALS**

**PRELIMINARY STATEMENT FOR APPEAL NO. 24-053**

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I / We, **Chris Callaway**, hereby appeal the following departmental action: **ISSUANCE** of **Letter of Determination No. Record No. 2023-011713ZAD** by the **Zoning Administrator** which was issued or became effective on: **August 26, 2024**, to: , for the property located at: **500 Laguna Street**.

**BRIEFING SCHEDULE:**

Appellant's Brief is due on or before: 4:30 p.m. on **October 3, 2024, (no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org), [corey.teague@sfgov.org](mailto:corey.teague@sfgov.org), [tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **October 17, 2024, (no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org) and [ksheber@reubenlaw.com](mailto:ksheber@reubenlaw.com)

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, October 23, 2024, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org). Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

**Please note** that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at [www.sfgov.org/boa](http://www.sfgov.org/boa). You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

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**The reasons for this appeal are as follows:**

We appeal the LOD on the basis that the determination is in error.

**Appellant or Agent:**

Signature: Via Email

Print Name: Kaitlin Sheber, appellant's attorney



## LETTER OF DETERMINATION

August 26, 2024

Andrew Junius  
1 Bush Street, Suite 600  
San Francisco, CA 94104

Record No.: **2023-011713ZAD**  
Site Address: **500 Laguna Street**  
Zoning: Hayes-Gough NCT  
Staff Contact: Corey Teague – (628) 652-7328 or [corey.teague@sfgov.org](mailto:corey.teague@sfgov.org)

Dear Andrew Junius:

This letter is in response to your request for a Letter of Determination to confirm a Cannabis Retail Use (CRU) may be established within a 600-foot radius of a lot for which the Planning Commission has approved a Conditional Use Authorization (CUA) for a Cannabis Retail Use, but where the City's Office of Cannabis (OOC) has not issued a valid cannabis retailer permit (Cannabis Permit) for that location. More specifically, this request is related to the desire of your client, Chris Callaway, to obtain the required authorizations to establish a CRU within 600 feet of 500 Laguna Street.

### **Cannabis Retail Use Background**

In late 2017, the Board of Supervisors adopted Ordinance No. 229-17 to add regulations for CRU and other cannabis-related uses to the Planning Code (effective January 5, 2018). The Board also adopted amendments to the Health Code and the Police Code at the same time, which established the Office of Cannabis (OOC) and a required permitting process through the OOC. While the Planning Code regulations for CRU have been amended since 2017, the original limitation on multiple CRUs within a 600-foot buffer remains. Planning Code Section 202.2(a)(5)(B) currently reads as follows:

*“The parcel containing the Cannabis Retail Use shall not be located within a 600-foot radius of a parcel containing an existing School, public or private, unless a State licensing authority specifies a different radius, in which case that different radius shall apply. In addition, the parcel containing the Cannabis Retail Use shall not be located 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, except that a Cannabis Retail Use may be located in the same place of business as one or more other*

*establishments holding valid permits from the City's Office of Cannabis to operate as Cannabis Retailers or Medicinal Cannabis Retailers, where the place of business contains a minimum of 350 square feet per Cannabis Retail or Medical Cannabis Dispensary Use, provided that such locations are permitted by state law. 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, in which case that minimum radius shall apply."*

Please note that Police Code Section 1614, provided below, requires the OOC to refer Cannabis Permit applications to other relevant agencies:

*"The Director shall send the application to all appropriate Referring Departments. Those departments shall complete all necessary review and inspections and report their determinations to the Office of Cannabis."*

Planning Code Section 202.2(a)(5)(A), provided below, requires that an application must first be filed with the OOC prior to any application to the Planning Department for a CRU:

*"A Cannabis Retail establishment must apply for a permit from the Office of Cannabis pursuant to Article 16 of the Police Code prior to submitting an application to the Planning Department."*

Police Code Section 1601(a), provided below, gives the Director of OOC broad discretion to adopt rules and guidelines to ensure the Cannabis Permitting program is implemented reasonably and consistent with the underlying policy intent:

*"This Article 16 shall be administered and enforced by the Office of Cannabis. The Director may adopt rules, regulations, and guidelines to carry out the provisions and purposes of this Article, including, but not limited to: operating guidelines designed to further the goals of reducing the illegal market for Cannabis and Cannabis Products, protecting and promoting the health of all San Franciscans, limiting youth access and exposure to Cannabis and Cannabis Products, ensuring safe consumption of Cannabis and Cannabis Products, and creating equitable access to opportunities within the Cannabis industry; hearing procedures; and standards for the imposition of administrative penalties, permit suspensions and permit revocations. The Director shall adopt rules, regulations, and guidelines to ensure that Storefront Cannabis Retailers and Delivery-Only Cannabis Retailers maintain and Sell an inventory of Medicinal Cannabis and Medicinal Cannabis Products that is sufficient in volume and variety to meet the diverse medical needs of qualified patients, including but not limited to guidelines addressing the availability of Cannabis flowers, and other specific forms of Cannabis or Cannabis Products."*

As you note in your request letter, the specific Code language limits a new CRU within 600 feet 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." During adoption and first implementation of this Code provision, it became clear that allowing multiple locations within the 600-foot radius to move through the CUA process in parallel would create an impractical, chaotic permitting environment because such an order of operation would create a high level of uncertainty and potential cost for CRU applicants.

More specifically, any applicants applying for a location within 600 feet of each other would have to compete against each other in the second phase (build out) of the permit application process for a single permit. The second phase of the process to establish a CRU is costly and incredibly time-consuming. Such an unclear process would be detrimental to applicants, especially Equity Program<sup>1</sup> applicants, who would spend unnecessary time and resources on a project that would not have a clear pathway to be realized.

In response to these issues, and pursuant to Police Code Sections 1606(c) and 1601(a), the OOC underwent a public rule-making process to address the undesirable permitting outcome described above. This process included Planning Department coordination, stakeholder outreach, and a public review and comment period for the final permit processing rules. The first set of these application processing rules (“OOC Rules”) were adopted in January 2020, and then updated in December 2023. The current OOC Rules are provided as Exhibit A to this letter.

More specifically, Section 6(f) of the OOC Rules (provided below) has the very purposeful effect that only a single active Cannabis Retail permit application will be referred to the Planning Department and any subsequent applications with 600 feet will be held in abeyance (i.e., inactive):

*Section 6(f): If two or more Applicants within the same priority category apply for Medicinal Cannabis Retailer or Cannabis Retailer permits within 600 feet of each other, the **Office of Cannabis shall process the first-received set of application materials** (including, but not limited to, **referring those materials to the Department of Building Inspection and the Planning Department**) first, and shall **hold any later-received application materials in abeyance, to ensure consistency with Section 202.2(a)(5) of the Planning Code**. Any application materials held in abeyance pursuant to this rule shall not lose their place in line under the criteria set forth in this rule. In the event that the Applicant who submitted an earlier-received set of application materials becomes unable to proceed with their permit application for any reason (including, but not limited to, an adverse determination by the Department of Building Inspection or the Planning Department), the Office of Cannabis shall proceed the next-received set of application materials according to that set of applicant materials’ place in line under the criteria set forth in this rule [**emphasis added**].*

## 500 Laguna Street Background

Chris Callaway submitted an application to the OOC for a Cannabis Permit at 500 Laguna Street on July 29, 2018. The OOC began processing the 500 Laguna Street application in May 2019. OOC referred the project to the Planning Department in September of 2019, and the Planning Commission granted a CUA on January 23, 2020 (Motion No. 20627). After the CUA approval, Building Permit No. 201907024948 was issued on January 11, 2021, to establish the CRU. The CUA for 500 Laguna Street is no longer associated with Chris Callaway because the CUA runs with the land and there is no longer an active lease agreement between Chris Callaway and the 500 Laguna Street property owner. At the time of your request through the date of issuance of this determination, the Planning Department has not received a referral from OOC for any other applications associated with Chris Callaway.

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<sup>1</sup> The Equity Program is codified in Police Code Section 1604 and is intended to provide assistance to communities unfairly burdened by the War on Drugs, and is designed to ensure full and equal access to resources and opportunities made available as a result of Proposition 64.

Planning Commission Motion No. 20627 for the CRU at 500 Laguna Street included the two following conditions of approval related to validity and renewal of the CUA:

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.
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.

While Building Permit No. 201907024948 was issued on January 11, 2021, to establish the CRU at 500 Laguna Street, that permit expired on December 6, 2023. Therefore, any new permit filed to establish a CRU at this location either would have needed to be issued by January 20, 2024 (the extended CUA performance period due to COVID) or would require the Planning Commission to grant an CUA renewal/extension per Condition No. 2 of Motion No. 20627. The property owner filed a CUA renewal/extension application on November 11, 2023. However, the Planning Department has not scheduled that application for a hearing so that this determination may be issued.

Once this determination is final, that CUA renewal/extension application may move forward, and the Planning Commission will have the discretion to fully consider this situation and either grant a renewal and extended performance period or revoke the CUA.

### **Determination**

Based on the information provided above, the OOC developed reasonable and purposeful rules related to multiple Cannabis Retail permit applications within a 600-foot radius, such that only one such application will be active and referred to the Planning Department, and any others will be held in abeyance. These rules were adopted under the authority of Police Code Section 1601(a) and included a public process that called for stakeholder input. A Cannabis Retail permit referral is required by the Police Code and is the official manner in which the OOC confirms to the Planning Department that such an application has been submitted. Per Planning Code Section 202.2(a)(5)(A), such an application is necessary for any CUA application to be submitted to the Planning Department.

Therefore, **it is my determination** that the requirement of Planning Code Section 202.2(a)(5)(A) that an application must be submitted to the OOC before an application is submitted to the Planning Department is interpreted to mean that the Planning Department may only accept a CUA application for a location where a referral from the OOC has been received. At the time of this letter, the Planning Department has not received a referral from the OOC for your client's newly proposed location.

As such, unless and until the OOC refers your client's Cannabis Retail permit application to the Planning Department, a CUA application from your client may not be accepted by the Planning Department. Allowing multiple CUA applications to advance in tandem within a 600-foot radius is the exact scenario meant to be avoided by the OOC Rules and Planning Code Section 202.2(a)(5)(A).

**Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.**

**APPEAL:** An appeal may be filed with the Board of Appeals within 15 days of the date of this letter if you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator. Please contact the Board of Appeals in person at 49 South Van Ness Ave, Suite 1475, call (628) 652-1150, or visit [www.sfgov.org/bdappeal](http://www.sfgov.org/bdappeal).

Sincerely,



Corey A. Teague, AICP  
Zoning Administrator

cc: Property Owner  
Ray Law (Office of Cannabis)  
Neighborhood Groups

Enclosure: Exhibit A – Office of Cannabis 1606(c) Permit Application Processing Rules

## EXHIBIT A - Office of Cannabis 1606(c) Permit Application Processing Rules

### 1606(c) Permit Application Processing

December 19, 2023

1. Applicants for permits under Article 16 of the Police Code are responsible for submitting all application materials requested by the Office of Cannabis at the time that the Office requests those materials.
2. If, at any time, the Office determines that additional information is required to provide the Office with sufficient information to process those application materials in a manner consistent with Article 16, the Office will notify the applicant in writing and the applicant shall supply the requested information or documentation within five business days.
3. If, after an application is received, a competing storefront retail application (*i.e.*, an application with a business address within 600 feet of the applicant's business address) is submitted, the Office will notify the applicant in writing of the existence of the competing application and, in some cases, of the need to submit additional information. The applicant shall supply any requested information or documentation within ten business days.
4. If the Office requests additional information from an applicant 90 days or more after the Director has notified an Applicant that their application is incomplete as set forth in Section 1615(1) of the Police Code, and the applicant fails to provide the requested information to the Office by the applicable five-day or ten-day deadline, then the application will be deemed abandoned and will not receive further consideration, except as specified in item 5, below. The consequences of abandoning an application are set forth in Section 1615 of the Police Code.
5. If the applicant withdraws an application prior to the expiration of the five-day or ten-day deadline, then that application will not be deemed abandoned. If an applicant cannot meet a five-day or ten-day deadline due to circumstances beyond their control, they may request an extension (for a defined period of time) from the Office of Cannabis. The Office shall have discretion to grant or deny the extension, or to take other appropriate action (including, but not limited to, granting an extension for a shorter period of time).



## EXHIBIT A - Office of Cannabis 1606(c) Permit Application Processing Rules

6. Subject to the foregoing, the Office of Cannabis shall apply the following procedures to determine the order in which application materials are processed:

a. The Office of Cannabis shall process application materials according to the priority categories set forth in Section 1606(c) of the Police Code.

b. Within the “Equity Applicant” priority category, any change in the manner in which an Applicant satisfies the criteria set forth in Section 1604(b)(3)(A)–(E) shall not affect the order in which the Applicant’s application materials are processed, as long as the identity of the Equity Applicant does not change.

c. Within each priority category set forth in Section 1606(c) of the Police Code, the Office of Cannabis shall review, consider, and process all complete applications, revisions, corrections and other permit-related material application materials in the order in which they are received, except that the Office of Cannabis may depart from this procedure:

(i) if the Office determines, in writing, that good cause (including, but not limited to, the need to remedy an earlier error in the process of related application materials) exists for such a departure, or

(ii) if the Office determines, in writing that an applicant has not supplied requested information or documentation within ten business days of being notified of the existence of a competing storefront retail application, as specified in item 3, then the original application will be placed "on hold," and the competing application will be processed, provided the competing applicant supplies any requested information or documentation within ten business days of such request, as specified in item 3.

(iii) as otherwise provided by applicable law.

d. To have an application be considered received:

(i) **All applicants** must complete all applicable fields in the online application, and must submit documentation substantiating that the applicant is a legitimate business entity, and that the applicant is authorized to operate a cannabis business at the address provided in the application. In general, to substantiate that the applicant is a legitimate business entity, an applicant will be required to submit their business account number and corresponding location identification number for the subject property. In general, to demonstrate authorization to operate a cannabis business at a particular address, an applicant will be required to submit documentation of legitimate occupancy (such as a lease agreement) and documentation of a landlord’s explicit authorization of the intended cannabis business use on the property.

## **EXHIBIT A - Office of Cannabis 1606(c) Permit Application Processing Rules**

(ii) **Equity Incubator applicants only** must submit an Incubator Agreement that meets all Equity Incubator requirements, including naming the form of incubation, outlining the specific benefits of the incubation, and identifying at least one verified Equity Applicant partner at the time of application.

(iii) **Verify Equity Applicants only** must submit documentation showing how the applicant meets the ownership requirements outlined in Police Code Section 1604(b)(3)(A-E), and all other material agreements associated with the business for which the applicant is seeking a cannabis business permit at the time of application.

e. The Office of Cannabis will refer application materials related to a proposed Medicinal Cannabis Retailer or Cannabis Retailer to the Department of Building Inspection for acceptance of a Building Permit Application or to the Planning Department for acceptance of a Conditional Use Authorization Application, except as provided below.

f. If two or more Applicants within the same priority category apply for Medicinal Cannabis Retailer or Cannabis Retailer permits within 600 feet of each other, the Office of Cannabis shall process the first-received set of application materials (including, but not limited to, referring those materials to the Department of Building Inspection and the Planning Department) first, and shall hold any later-received application materials in abeyance, to ensure consistency with Section 202.2(a)(5) of the Planning Code. Any application materials held in abeyance pursuant to this rule shall not lose their place in line under the criteria set forth in this rule. In the event that the Applicant who submitted an earlier-received set of application materials becomes unable to proceed with their permit application for any reason (including, but not limited to, an adverse determination by the Department of Building Inspection or the Planning Department), the Office of Cannabis shall proceed the next-received set of application materials according to that set of applicant materials' place in line under the criteria set forth in this rule.

7. Within the "Equity Applicant" priority category, after an Applicant has submitted all application materials requested by the Office of Cannabis, the Office of Cannabis in its discretion may allow the Applicant to have one opportunity to apply for approval of a new location while maintaining their place in line under the criteria set forth in this rule, provided there are no material changes in the application other than the location, and the new location proposed is not within 600 ft. of an existing Medical Cannabis Retailer or a Cannabis Retailer Applicant with a pending application. A request for approval of a new location will not be approved unless the Applicant demonstrates that the original location is no longer viable due to circumstances out of the Applicant's control. The Applicant shall have six months from the time that the Office of Cannabis grants this opportunity to apply for approval of a new location. The Office shall have discretion to grant or deny an addition

## **EXHIBIT A - Office of Cannabis 1606(c) Permit Application Processing Rules**

six month extension, or to take other appropriate action (including, but not limited to, granting an extension for a shorter period of time).

# BRIEF SUBMITTED BY THE APPELLANT(S)

# REUBEN, JUNIUS & ROSE, LLP

October 3, 2024

## Delivered Via E-Mail and Hand Delivery

President Jose Lopez  
San Francisco Board of Appeals  
49 South Van Ness, Suite 1475 (14<sup>th</sup> Floor)  
San Francisco, CA 94103

**Re: Appellant Brief in Support of Appeal No: 24-053  
Letter of Determination re: Cannabis Retail (500 Laguna Street)  
BOA Hearing Date: October 23, 2024**

Dear President Lopez and Commissioners:

Our office represents Chris Callaway (“**Appellant**”), an equity applicant of a business seeking to establish Cannabis Retail Use in Hayes Valley.

Appellant appeals the San Francisco Zoning Administrator’s August 26<sup>th</sup>, 2024, Letter of Determination regarding the Planning Department’s processing of applications to establish cannabis retail use under the Planning Code (the “**LOD**,” **Exhibit A**).

Appellant respectfully requests that this Board overrule the LOD for the following reasons:

- It errs by failing to respond the question presented;
- It errs in finding that Appellants’ application for Cannabis Retail use at 597 Hayes was not referred by the Office of Cannabis to the Planning Department;  
and
- It abuses discretion by opining on Office of Cannabis policies outside of the Planning Code and thus the Zoning Administrator’s jurisdiction

**A. STANDARD OF REVIEW**

San Francisco Planning Code (“PC”) Sec. 307(a) authorizes the Zoning Administrator (“ZA”) to issue interpretations of existing Planning Code provisions, if such interpretations both “consistent with the expressed standards, purposes and intent of [the Planning Code] and pursuant to its objectives,” and “necessary to administer” them.

San Francisco Charter Section 4.106 authorizes this Board to overturn ZA interpretations on the basis of error or abuse of discretion.

**B. ARGUMENT**

**1. *The LOD Fails to Respond to the Question Presented***

Appellant is an equity applicant of a business seeking to establish Cannabis Retail Use in Hayes Valley. In San Francisco, Cannabis Retail uses require both a Cannabis Retail permit issued by the City’s Office of Cannabis (“OOC”) and a Cannabis Retail Conditional Use (“CU”) Authorization approved by the Planning Commission. Four years ago, Appellant secured the first Cannabis Retail CU approval from the Planning Commission in the Hayes Valley neighborhood, at 500 Laguna Street. However, an OOC Cannabis Permit was never issued for that Property and due to insurmountable challenges, and Appellant was forced to relocate from the 500 Laguna Street site and file new cannabis permit applications for a nearby location at 597 Hayes Street.

Appellant’s 597 Hayes Street location is within 600 feet of the site formerly approved for a Cannabis Retail CU but at which an OOC Cannabis Permit was never issued. Appellant withdrew his OOC Cannabis Permit application for 500 Laguna – it cannot be revived. However, the proximity of Appellant’s current OOC and Planning Department applications to the previously-approved CU has led to conflicting feedback from OOC and Planning regarding eligibility of the 597 Hayes Street

site for Cannabis Retail, and has now delayed Appellant’s application by nearly a year.

On December 27, 2023, Appellant submitted a Request for Letter of Determination (“**LOD Request**”, **Exhibit B**”) to address a specific aspect of the conflicting feedback received from the Planning Department. The LOD Request sought “to confirm if a Cannabis Retail Use may be established within a 600-foot radius of a parcel for which the Planning Commission has approved a Conditional Use Authorization for a Cannabis Retail Use, but where the City’s Office of Cannabis has not issued a valid cannabis retailer permit for that location.”

The LOD Request sought the ZA’s interpretation of a specific Planning Code issue – whether the language of PC Sec. 202.2(a)(5)(B) prevents the Planning Department from processing a Cannabis Retail CU application for a property located within 600 feet of another site that was previously issued a Cannabis Retail CU.

Planning Code Section 202.2(a)(5)(B) reads as follows in relevant part. It does not reference proximity to sites with prior CU approvals, only to sites with validly issued OOC permits:

(B) . . . the parcel containing the Cannabis Retail Use shall not be located 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 . . .”

The LOD Request took eight months to issue and the resulting LOD errs by failing to respond to Appellant’s question. Instead, it opines on procedural requirements precedent to Planning’s processing of a Cannabis Retail CU, and ultimately finds “the requirement in Planning Code Section 202.2(a)(5)(A) that an application must be submitted to the OOC before an application is submitted to the Planning Department is interpreted to mean that the Planning Department may only accept a CUA application for a location where referral from the OOC has been received . . .” and that Planning had never received an OOC referral for Appellant’s application.

*The LOD does not respond to the question asked, and in failing to do so has placed Appellant and his pending Cannabis Retail application in limbo for nearly a year.*

Appellant did not ask whether OOC must refer his application to Planning before the Department can process it, or the form of referral required. He asked whether the Planning Code prevents the Department from processing his application due to proximity to the previously issued 500 Laguna Street CU.

Due to this error, the LOD should be overruled and a request issued to the ZA for reissuance and response to the question posed.

***2. The LOD Erroneously States that the OOC Never Referred Appellant's Application***

The LOD's determination is narrow in scope. It provides that Planning can only accept a Cannabis Retail CU application after referral by the OOC, and that the OOC never referred Appellant's 597 Hayes Street application to Planning.

This is inaccurate.

As reflected in Appellant's email correspondence with the OOC (**Exhibit C**), on December 1, 2023, OOC advised Appellant that his 597 Hayes Street OOC Cannabis Permit had been "updated from "On-Hold" to "Submitted - Pending Initial Review." The OOC stated that as the next step in the application process, the Planning Department would conduct an informal zoning review of Appellant's 597 Hayes Street location, and "Once this review is complete, our office will contact you with further information."

Subsequently, on December 6, 2023, OOC emailed Appellant again, stating that "The Planning Department has completed its informal zoning review of your application at 597 Hayes Street and determined that the proposed location is within 600-ft of a location with an existing



In response to this Planning Department feedback, OOC reverted Appellant’s OOC to indefinite hold status.

When Appellant questioned this process, OOC responded that “For any questions you have relating to the Planning Department’s processes and determinations, please reach out to Matthew Chandler for clarifications or to schedule a meeting.”

This correspondence establishes that Appellant’s 597 Hayes application was referred by OOC to the Planning Department in December 2023. At that time, Planning staff told OOC that 597 Hayes Street was located within 600 feet of an existing Cannabis Retail use - apparently due to proximity to a previously issued CU. 597 Hayes Street is not located within 600 feet of an existing or previously-issued OOC Cannabis Retail Permit, so Planning’s feedback was clearly based on proximity to the prior Cannabis Retail CU approval.

It was this Planning determination, responding to OOC’s December 2023 referral, that halted processing of Appellant’s OOC Cannabis Permit and stopped it from progressing.

To resolve the issue, Appellant filed the underlying LOD Request with the ZA on December 27, 2023 (**Exhibit B**) seeking interpretation of the Planning Code. Instead, Appellant waited eight months to receive the LOD at issue, which doesn’t address the question asked.

The LOD should be overturned, as it errs in finding that OOC did not previously refer Appellant’s 597 Hayes Street application to Planning.

### ***3. The LOD Abuses ZA Discretion by Seeking to Interpret OOC Policy***

Planning Code Section 307 grants the ZA authority to issue interpretations of the Planning Code only.

The question presented in Appellant’s LOD Request sought exactly that – a confirmation of whether PC Sec. 202.2(a)(5)(A) prevented the Planning Department from processing a Cannabis Retail CU application for site located within 600 feet of another site that was previously issued a Cannabis Retail CU, but at which there is no validly issued OOC Cannabis Permit. As discussed in the LOD Request, the plain language of the Planning Code does not prevent this.

In addition to the above-described factual error and failing to respond to Appellant’s question, the LOD abuses ZA discretion by seeking to interpret and apply OOC policies outside of the Planning Code.

Instead of responding to the question at hand, much of the content of the LOD is devoted to interpreting the history and intent of OOC policies adopted in December 2023 (“**OOC Policies,**” **Exhibit D**). The LOD states that OOC Policies were adopted in part to keep multiple Cannabis Retail applications within 600 feet of one another from moving forward simultaneously, in order to prevent competition in the second (build out) phase. It concludes that ‘Allowing multiple CUA applications to advance in tandem within a 600-foot radius is the exact scenario meant to be avoided by the OOC Rules ...[and Planning Code].’”

However, neither the Police Code nor OOC Policies discuss Planning’s processing of Cannabis retail CU applications. As appropriate, the OOC Policies focus solely on OOC’s procedures for accepting and processing OOC cannabis permits. While the OOC Policies state that the OOC will not concurrently refer active cannabis permit applications within 600 feet of one another to other city agencies, that is not the scenario at issue or presented in the LOD Request. As discussed above, there is no active OOC Cannabis Retail Permit at 500 Laguna Street.

Regardless, OOC Policies and intent are outside of the Planning Code and thus the ZA’s

President Jose Lopez  
San Francisco Board of Permit Appeals  
October 3, 2024  
Page 7

jurisdiction to interpret. The LOD should be overruled on this basis.

### **C. Conclusion**

Appellant respectfully requests that this Board overturn the LOD because it errs in failing to respond to the question presented; inaccurately states that Appellant's 597 Hayes application was never referred by OOC to the Planning Department; and abuses discretion by seeking to interpret OOC Policy Guidelines.

Very truly yours,

**REUBEN, JUNIUS & ROSE, LLP**



Melinda A. Sarjapur

Enclosures:

cc: Jose Lopez, Vice President  
Rick Swig, Commissioner  
John Trasvina, Commissioner  
J.R. Eppler, Commissioner  
Julie Rosenberg, Executive Director

**EXHIBIT A**



## LETTER OF DETERMINATION

August 26, 2024

Andrew Junius  
1 Bush Street, Suite 600  
San Francisco, CA 94104

Record No.: **2023-011713ZAD**  
Site Address: **500 Laguna Street**  
Zoning: Hayes-Gough NCT  
Staff Contact: Corey Teague – (628) 652-7328 or [corey.teague@sfgov.org](mailto:corey.teague@sfgov.org)

Dear Andrew Junius:

This letter is in response to your request for a Letter of Determination to confirm a Cannabis Retail Use (CRU) may be established within a 600-foot radius of a lot for which the Planning Commission has approved a Conditional Use Authorization (CUA) for a Cannabis Retail Use, but where the City's Office of Cannabis (OOC) has not issued a valid cannabis retailer permit (Cannabis Permit) for that location. More specifically, this request is related to the desire of your client, Chris Callaway, to obtain the required authorizations to establish a CRU within 600 feet of 500 Laguna Street.

### **Cannabis Retail Use Background**

In late 2017, the Board of Supervisors adopted Ordinance No. 229-17 to add regulations for CRU and other cannabis-related uses to the Planning Code (effective January 5, 2018). The Board also adopted amendments to the Health Code and the Police Code at the same time, which established the Office of Cannabis (OOC) and a required permitting process through the OOC. While the Planning Code regulations for CRU have been amended since 2017, the original limitation on multiple CRUs within a 600-foot buffer remains. Planning Code Section 202.2(a)(5)(B) currently reads as follows:

*“The parcel containing the Cannabis Retail Use shall not be located within a 600-foot radius of a parcel containing an existing School, public or private, unless a State licensing authority specifies a different radius, in which case that different radius shall apply. In addition, the parcel containing the Cannabis Retail Use shall not be located 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, except that a Cannabis Retail Use may be located in the same place of business as one or more other*

*establishments holding valid permits from the City's Office of Cannabis to operate as Cannabis Retailers or Medicinal Cannabis Retailers, where the place of business contains a minimum of 350 square feet per Cannabis Retail or Medical Cannabis Dispensary Use, provided that such locations are permitted by state law. 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, in which case that minimum radius shall apply."*

Please note that Police Code Section 1614, provided below, requires the OOC to refer Cannabis Permit applications to other relevant agencies:

*"The Director shall send the application to all appropriate Referring Departments. Those departments shall complete all necessary review and inspections and report their determinations to the Office of Cannabis."*

Planning Code Section 202.2(a)(5)(A), provided below, requires that an application must first be filed with the OOC prior to any application to the Planning Department for a CRU:

*"A Cannabis Retail establishment must apply for a permit from the Office of Cannabis pursuant to Article 16 of the Police Code prior to submitting an application to the Planning Department."*

Police Code Section 1601(a), provided below, gives the Director of OOC broad discretion to adopt rules and guidelines to ensure the Cannabis Permitting program is implemented reasonably and consistent with the underlying policy intent:

*"This Article 16 shall be administered and enforced by the Office of Cannabis. The Director may adopt rules, regulations, and guidelines to carry out the provisions and purposes of this Article, including, but not limited to: operating guidelines designed to further the goals of reducing the illegal market for Cannabis and Cannabis Products, protecting and promoting the health of all San Franciscans, limiting youth access and exposure to Cannabis and Cannabis Products, ensuring safe consumption of Cannabis and Cannabis Products, and creating equitable access to opportunities within the Cannabis industry; hearing procedures; and standards for the imposition of administrative penalties, permit suspensions and permit revocations. The Director shall adopt rules, regulations, and guidelines to ensure that Storefront Cannabis Retailers and Delivery-Only Cannabis Retailers maintain and Sell an inventory of Medicinal Cannabis and Medicinal Cannabis Products that is sufficient in volume and variety to meet the diverse medical needs of qualified patients, including but not limited to guidelines addressing the availability of Cannabis flowers, and other specific forms of Cannabis or Cannabis Products."*

As you note in your request letter, the specific Code language limits a new CRU within 600 feet 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." During adoption and first implementation of this Code provision, it became clear that allowing multiple locations within the 600-foot radius to move through the CUA process in parallel would create an impractical, chaotic permitting environment because such an order of operation would create a high level of uncertainty and potential cost for CRU applicants.

More specifically, any applicants applying for a location within 600 feet of each other would have to compete against each other in the second phase (build out) of the permit application process for a single permit. The second phase of the process to establish a CRU is costly and incredibly time-consuming. Such an unclear process would be detrimental to applicants, especially Equity Program<sup>1</sup> applicants, who would spend unnecessary time and resources on a project that would not have a clear pathway to be realized.

In response to these issues, and pursuant to Police Code Sections 1606(c) and 1601(a), the OOC underwent a public rule-making process to address the undesirable permitting outcome described above. This process included Planning Department coordination, stakeholder outreach, and a public review and comment period for the final permit processing rules. The first set of these application processing rules (“OOC Rules”) were adopted in January 2020, and then updated in December 2023. The current OOC Rules are provided as Exhibit A to this letter.

More specifically, Section 6(f) of the OOC Rules (provided below) has the very purposeful effect that only a single active Cannabis Retail permit application will be referred to the Planning Department and any subsequent applications with 600 feet will be held in abeyance (i.e., inactive):

*Section 6(f): If two or more Applicants within the same priority category apply for Medicinal Cannabis Retailer or Cannabis Retailer permits within 600 feet of each other, the **Office of Cannabis shall process the first-received set of application materials** (including, but not limited to, **referring those materials to the Department of Building Inspection and the Planning Department**) first, and shall **hold any later-received application materials in abeyance, to ensure consistency with Section 202.2(a)(5) of the Planning Code**. Any application materials held in abeyance pursuant to this rule shall not lose their place in line under the criteria set forth in this rule. In the event that the Applicant who submitted an earlier-received set of application materials becomes unable to proceed with their permit application for any reason (including, but not limited to, an adverse determination by the Department of Building Inspection or the Planning Department), the Office of Cannabis shall proceed the next-received set of application materials according to that set of applicant materials’ place in line under the criteria set forth in this rule [**emphasis added**].*

## 500 Laguna Street Background

Chris Callaway submitted an application to the OOC for a Cannabis Permit at 500 Laguna Street on July 29, 2018. The OOC began processing the 500 Laguna Street application in May 2019. OOC referred the project to the Planning Department in September of 2019, and the Planning Commission granted a CUA on January 23, 2020 (Motion No. 20627). After the CUA approval, Building Permit No. 201907024948 was issued on January 11, 2021, to establish the CRU. The CUA for 500 Laguna Street is no longer associated with Chris Callaway because the CUA runs with the land and there is no longer an active lease agreement between Chris Callaway and the 500 Laguna Street property owner. At the time of your request through the date of issuance of this determination, the Planning Department has not received a referral from OOC for any other applications associated with Chris Callaway.

---

<sup>1</sup> The Equity Program is codified in Police Code Section 1604 and is intended to provide assistance to communities unfairly burdened by the War on Drugs, and is designed to ensure full and equal access to resources and opportunities made available as a result of Proposition 64.

Planning Commission Motion No. 20627 for the CRU at 500 Laguna Street included the two following conditions of approval related to validity and renewal of the CUA:

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.
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.

While Building Permit No. 201907024948 was issued on January 11, 2021, to establish the CRU at 500 Laguna Street, that permit expired on December 6, 2023. Therefore, any new permit filed to establish a CRU at this location either would have needed to be issued by January 20, 2024 (the extended CUA performance period due to COVID) or would require the Planning Commission to grant an CUA renewal/extension per Condition No. 2 of Motion No. 20627. The property owner filed a CUA renewal/extension application on November 11, 2023. However, the Planning Department has not scheduled that application for a hearing so that this determination may be issued.

Once this determination is final, that CUA renewal/extension application may move forward, and the Planning Commission will have the discretion to fully consider this situation and either grant a renewal and extended performance period or revoke the CUA.

### **Determination**

Based on the information provided above, the OOC developed reasonable and purposeful rules related to multiple Cannabis Retail permit applications within a 600-foot radius, such that only one such application will be active and referred to the Planning Department, and any others will be held in abeyance. These rules were adopted under the authority of Police Code Section 1601(a) and included a public process that called for stakeholder input. A Cannabis Retail permit referral is required by the Police Code and is the official manner in which the OOC confirms to the Planning Department that such an application has been submitted. Per Planning Code Section 202.2(a)(5)(A), such an application is necessary for any CUA application to be submitted to the Planning Department.

Therefore, **it is my determination** that the requirement of Planning Code Section 202.2(a)(5)(A) that an application must be submitted to the OOC before an application is submitted to the Planning Department is interpreted to mean that the Planning Department may only accept a CUA application for a location where a referral from the OOC has been received. At the time of this letter, the Planning Department has not received a referral from the OOC for your client's newly proposed location.




As such, unless and until the OOC refers your client's Cannabis Retail permit application to the Planning Department, a CUA application from your client may not be accepted by the Planning Department. Allowing multiple CUA applications to advance in tandem within a 600-foot radius is the exact scenario meant to be avoided by the OOC Rules and Planning Code Section 202.2(a)(5)(A).

**Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.**

**APPEAL:** An appeal may be filed with the Board of Appeals within 15 days of the date of this letter if you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator. Please contact the Board of Appeals in person at 49 South Van Ness Ave, Suite 1475, call (628) 652-1150, or visit [www.sfgov.org/bdappeal](http://www.sfgov.org/bdappeal).

Sincerely,



Corey A. Teague, AICP  
Zoning Administrator

cc: Property Owner  
Ray Law (Office of Cannabis)  
Neighborhood Groups

Enclosure: Exhibit A – Office of Cannabis 1606(c) Permit Application Processing Rules

## **EXHIBIT A - Office of Cannabis 1606(c) Permit Application Processing Rules**

### **1606(c) Permit Application Processing**

December 19, 2023

1. Applicants for permits under Article 16 of the Police Code are responsible for submitting all application materials requested by the Office of Cannabis at the time that the Office requests those materials.
  
2. If, at any time, the Office determines that additional information is required to provide the Office with sufficient information to process those application materials in a manner consistent with Article 16, the Office will notify the applicant in writing and the applicant shall supply the requested information or documentation within five business days.
  
3. If, after an application is received, a competing storefront retail application (*i.e.*, an application with a business address within 600 feet of the applicant's business address) is submitted, the Office will notify the applicant in writing of the existence of the competing application and, in some cases, of the need to submit additional information. The applicant shall supply any requested information or documentation within ten business days.
  
4. If the Office requests additional information from an applicant 90 days or more after the Director has notified an Applicant that their application is incomplete as set forth in Section 1615(1) of the Police Code, and the applicant fails to provide the requested information to the Office by the applicable five-day or ten-day deadline, then the application will be deemed abandoned and will not receive further consideration, except as specified in item 5, below. The consequences of abandoning an application are set forth in Section 1615 of the Police Code.
  
5. If the applicant withdraws an application prior to the expiration of the five-day or ten-day deadline, then that application will not be deemed abandoned. If an applicant cannot meet a five-day or ten-day deadline due to circumstances beyond their control, they may request an extension (for a defined period of time) from the Office of Cannabis. The Office shall have discretion to grant or deny the extension, or to take other appropriate action (including, but not limited to, granting an extension for a shorter period of time).

## EXHIBIT A - Office of Cannabis 1606(c) Permit Application Processing Rules

6. Subject to the foregoing, the Office of Cannabis shall apply the following procedures to determine the order in which application materials are processed:

a. The Office of Cannabis shall process application materials according to the priority categories set forth in Section 1606(c) of the Police Code.

b. Within the “Equity Applicant” priority category, any change in the manner in which an Applicant satisfies the criteria set forth in Section 1604(b)(3)(A)–(E) shall not affect the order in which the Applicant’s application materials are processed, as long as the identity of the Equity Applicant does not change.

c. Within each priority category set forth in Section 1606(c) of the Police Code, the Office of Cannabis shall review, consider, and process all complete applications, revisions, corrections and other permit-related material application materials in the order in which they are received, except that the Office of Cannabis may depart from this procedure:

(i) if the Office determines, in writing, that good cause (including, but not limited to, the need to remedy an earlier error in the process of related application materials) exists for such a departure, or

(ii) if the Office determines, in writing that an applicant has not supplied requested information or documentation within ten business days of being notified of the existence of a competing storefront retail application, as specified in item 3, then the original application will be placed "on hold," and the competing application will be processed, provided the competing applicant supplies any requested information or documentation within ten business days of such request, as specified in item 3.

(iii) as otherwise provided by applicable law.

d. To have an application be considered received:

(i) **All applicants** must complete all applicable fields in the online application, and must submit documentation substantiating that the applicant is a legitimate business entity, and that the applicant is authorized to operate a cannabis business at the address provided in the application. In general, to substantiate that the applicant is a legitimate business entity, an applicant will be required to submit their business account number and corresponding location identification number for the subject property. In general, to demonstrate authorization to operate a cannabis business at a particular address, an applicant will be required to submit documentation of legitimate occupancy (such as a lease agreement) and documentation of a landlord’s explicit authorization of the intended cannabis business use on the property.

## EXHIBIT A - Office of Cannabis 1606(c) Permit Application Processing Rules

(ii) **Equity Incubator applicants only** must submit an Incubator Agreement that meets all Equity Incubator requirements, including naming the form of incubation, outlining the specific benefits of the incubation, and identifying at least one verified Equity Applicant partner at the time of application.

(iii) **Verify Equity Applicants only** must submit documentation showing how the applicant meets the ownership requirements outlined in Police Code Section 1604(b)(3)(A-E), and all other material agreements associated with the business for which the applicant is seeking a cannabis business permit at the time of application.

e. The Office of Cannabis will refer application materials related to a proposed Medicinal Cannabis Retailer or Cannabis Retailer to the Department of Building Inspection for acceptance of a Building Permit Application or to the Planning Department for acceptance of a Conditional Use Authorization Application, except as provided below.

f. If two or more Applicants within the same priority category apply for Medicinal Cannabis Retailer or Cannabis Retailer permits within 600 feet of each other, the Office of Cannabis shall process the first-received set of application materials (including, but not limited to, referring those materials to the Department of Building Inspection and the Planning Department) first, and shall hold any later-received application materials in abeyance, to ensure consistency with Section 202.2(a)(5) of the Planning Code. Any application materials held in abeyance pursuant to this rule shall not lose their place in line under the criteria set forth in this rule. In the event that the Applicant who submitted an earlier-received set of application materials becomes unable to proceed with their permit application for any reason (including, but not limited to, an adverse determination by the Department of Building Inspection or the Planning Department), the Office of Cannabis shall proceed the next-received set of application materials according to that set of applicant materials' place in line under the criteria set forth in this rule.

7. Within the "Equity Applicant" priority category, after an Applicant has submitted all application materials requested by the Office of Cannabis, the Office of Cannabis in its discretion may allow the Applicant to have one opportunity to apply for approval of a new location while maintaining their place in line under the criteria set forth in this rule, provided there are no material changes in the application other than the location, and the new location proposed is not within 600 ft. of an existing Medical Cannabis Retailer or a Cannabis Retailer Applicant with a pending application. A request for approval of a new location will not be approved unless the Applicant demonstrates that the original location is no longer viable due to circumstances out of the Applicant's control. The Applicant shall have six months from the time that the Office of Cannabis grants this opportunity to apply for approval of a new location. The Office shall have discretion to grant or deny an addition

## **EXHIBIT A - Office of Cannabis 1606(c) Permit Application Processing Rules**

six month extension, or to take other appropriate action (including, but not limited to, granting an extension for a shorter period of time).

**EXHIBIT B**

# REUBEN, JUNIUS & ROSE, LLP

Andrew Junius  
ajunius@reubenlaw.com

December 27, 2023

## Submitted Via Public Portal

Corey Teague  
San Francisco Planning Department  
Office of the Zoning Administrator  
49 South Van Ness Ave, Suite 1400  
San Francisco, CA 94103

**Re: Cannabis 600 Feet Rule: Request for Letter of Determination  
500 Laguna Street  
Our File No.: 11383.02**

Dear Mr. Teague:

Our office represents Chris Callaway, the owner and equity applicant of a business seeking to establish a Cannabis Retail Use in Hayes Valley. The purpose of this Letter of Determination request is to confirm a Cannabis Retail Use may be established within a 600-foot radius of a parcel for which the Planning Commission has approved a Conditional Use (“**CU**”) Authorization for a Cannabis Retail Use, but where the City’s Office of Cannabis (“**OOC**”) has not issued a valid cannabis retailer permit (“**Cannabis Permit**”) for that location.

As discussed below, the “trigger” that brings into play the Planning Code’s 600-foot radius rule is the issuance of the Cannabis Permit, nothing else. For the Planning Department to find otherwise would directly contradict the clear language of the code.

The original CU Authorization at 500 Laguna Street (the “**Property**”) (obtained by Mr. Callaway) *expired in January 2023*. Mr. Callaway is no longer pursuing his OOC application for a Cannabis Permit for the Property and has made written request to the Planning Department that the CU be revoked. Under these circumstances – when added to the absolutely clear language of the Planning Code and Police Code itself – what could possibly be the legal or equitable justification for preventing Mr. Callaway from pursuing a Cannabis Retail Use at another nearby location?

Pursuant to the provisions of San Francisco Planning Code Section 307(a), we respectfully request a Letter of Determination confirming the above.

San Francisco Office  
One Bush Street, Suite 600, San Francisco, CA 94104  
tel: 415-567-9000 | fax: 415-399-9480

Oakland Office  
492 9<sup>th</sup> Street, Suite 200, Oakland, CA 94607  
tel: 510-527-5589

[www.reubenlaw.com](http://www.reubenlaw.com)

## **A. Background**

Mr. Callaway first began efforts to establish a Cannabis Retail Use at the Property in 2018, which required he sign a lease to begin the Cannabis Retail permitting process. After negotiations with the owner, Kaushik Dattani (the “**Owner**”), of the Property, Mr. Callaway eventually signed a lease in December 2018 under which he was responsible for rent beginning in August 2018.

Despite a variety of building code and related issues at the Property, including the need for a seismic retrofit, Mr. Callaway continued to move forward with the Cannabis Retail application for the Property. On January 23, 2020, the Planning Commission approved a Conditional Use Authorization for a Cannabis Retail Use at the Property under Planning Commission Motion No. 20627 (the “**Approval**”). The Approval included a three-year time limit to exercise the CU Authorization as a condition of approval. That three-year time limit ran in January 2023.

Other permitting issues, including electrical issues and an incomplete ADA restroom, made the Property unusable for extended periods. The Department of Building Inspection (“**DBI**”) issued a Notice of Violation on December 28, 2022 under Complaint Number 202200677 in connection with the Property’s seismic retrofit, based on failure to complete all work necessary as a part of the Mandatory Soft Story Program. The NOV is still outstanding. Mr. Callaway and the Owner are currently in litigation.

Notwithstanding the above issues with the Property, Mr. Callaway remains committed to opening a Cannabis Retail location in the neighborhood. Mr. Callaway entered into several other leases in the neighborhood during the COVID-19 pandemic in an effort to find an alternative space for a future Cannabis Retail business. He has worked to ensure the spaces remain activated as he pursues the necessary permits to open a Cannabis Retail business. Mr. Callaway received guidance from the City that if he did not open a Cannabis Retail store at the Property, the Approval would expire, and he would be able to pursue an entitlement for another Cannabis Retail Use within 600 feet of the Property. Acting on such guidance, Mr. Callaway submitted applications to begin the Cannabis Retail permitting process for other spaces in Hayes Valley and withdrew his Cannabis Permit application with the OOC for the Property. Mr. Callaway has also surrendered his state cannabis license for the Property.

## **B. The Equities**

In considering Mr. Callaway’s request, it is important that the Planning Department acknowledge the particular facts of this case - and the absurd results that follow if his request is not granted:

- Mr. Callaway was the applicant for the January 2020 Approval that is the basis for any cannabis retailer at the Property.



- Because of the falling out between Mr. Callaway and the Owner, there will never be a Cannabis Retailer Use operated by Mr. Callaway at the Property.
- Mr. Callaway has requested in writing that the Approval be revoked.
- There is every indication that the property at 500 Laguna is itself mired in its own permitting problems unrelated to Mr. Callaway and is not likely to become available for any retailer, much less a cannabis retailer, in the coming years.
- The original CU Authorization granted by the Planning Commission in 2020 expired almost one year ago. *This January, it will be four years since the Planning Commission granted that approval - and there is no sign that a cannabis retailer will ever be established at the Property.* Yet, the Planning Department acts as if there is a cannabis retailer there.
- And finally, given all these facts that make it impossible for a cannabis retailer to establish itself at the Property as originally proposed, the Planning Department has adopted an erroneous interpretation of the Planning Code that makes it impossible for Mr. Callaway to establish an otherwise legal Cannabis Retail Use down the street.

The Planning Department must reconsider its position and issue the interpretation Mr. Callaway is requesting in this letter.

### **C. Cannabis Permit 600-Foot Radius Rule**

#### *1. The City's Municipal Code does not Prevent Conditional Use Authorization of Two Cannabis Retail Uses within 600 Feet of One Another*

Under Planning Code Section 202.2(a)(5)(B), a parcel containing a “Cannabis Retail Use shall not be located 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. . . .” The OOC administers and enforces Article 16 of the Police Code, under which the Director of the OOC (“**Director**”) is authorized to issue a Cannabis Permit<sup>1</sup>. All businesses that engage in commercial cannabis activity in the City, including the “sale of Cannabis or Cannabis Products for compensation” must obtain a permit from the OOC.<sup>2</sup> As such, a Cannabis Permit is required for a Cannabis Retail Use to operate in the City, and when the Director issues a Cannabis Permit, in accordance with Planning Code Section 202.2(a)(5)(B), a Cannabis Retail Use cannot be established within a 600-foot radius of the parcel for which the Director issued the Cannabis Permit.

However, Planning Code Section 202.2(a)(5)(B) does not prohibit a Cannabis Retail Use from being located within a 600-foot radius of a parcel *that has only received a CU Authorization*

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<sup>1</sup> Police Code Section 1607.

<sup>2</sup> Police Code Secs. 1602 & 1603(a)(1).

*to establish a Cannabis Retail Use* and has yet to (and may never) obtain a Cannabis Permit. This is the case here. The Approval at the Property does not prevent any other cannabis retailer at any location – per the express language of the code.

**The “trigger” that brings into play the 600-foot radius rule is the issuance of the Cannabis Permit, nothing else. For the Planning Department to find otherwise directly contradicts the clear language of the code.**

The Planning Department’s current interpretation treats a CU Authorization as if it were a Cannabis Permit. They are not the same thing. Only the issuance of a Cannabis Permit raises the 600-foot radius issue.

*2. Preventing Conditional Use Authorization of Two Cannabis Retail Uses within 600 Feet of One Another is Contrary to the Equity Program*

Further, any interpretation preventing CU Authorization for a Cannabis Retail Use within 600 feet of a property that has only received CU Authorization for a Cannabis Retail Use fails to uphold the central purpose of the City’s Equity Program. Codified under Police Code Section 1604, the Equity Program must be designed and implemented “to foster equitable access to participation in the cannabis industry, including equitable access to promotional and ownership opportunities in the industry.” Further, the Equity Program must be “designed to ensure full and equal access to resources and opportunities made available as a result of Proposition 64” and must “create strategies to uplift communities where those inequities have been concentrated.” The Equity Program must offer priority permit processing to individuals that have been verified as equity applicants.<sup>3</sup>

To prevent an equity applicant from opening a Cannabis Retail business simply because a property owner holds an expired right to establish a Cannabis Retail Use, while no Cannabis Permit application is pending for the Property with the OOC, is directly contrary to the Equity Program established by the City. Mr. Callaway is a verified equity applicant in accordance with Section 1604 of the Police Code and was unable to continue his lease with the Owner. Given the circumstances, Mr. Callaway should not be prevented by such Owner from activating a nearby retail space with a Cannabis Retail business that will serve the area, especially in light of the purpose of the Equity Program.

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<sup>3</sup> Police Code Section 1604(b).

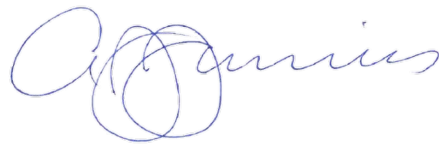
Corey Teague  
San Francisco Planning Department  
December 27, 2023  
Page 5

**D. Conclusion**

We respectfully request a written determination confirming the above application of the Planning Code. Please call me if you have any questions or need additional information.

Very truly yours,

**REUBEN, JUNIUS & ROSE, LLP**



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Andrew Junius  
Managing Partner

Cc: Chris Callaway  
Kaitlin Sheber

**EXHIBIT C**

**From:** Dennis, Scott (ADM)  
**Sent:** Monday, December 11, 2023 9:08 AM  
**To:** 'Chris Callaway' <[chris1callaway@gmail.com](mailto:chris1callaway@gmail.com)>; Office of Cannabis (ADM) <[officeofcannabis@sfgov.org](mailto:officeofcannabis@sfgov.org)>  
**Cc:** Law, Ray (ADM) <[ray.law@sfgov.org](mailto:ray.law@sfgov.org)>  
**Subject:** RE: 597 Hayes: Application Status Updated

Hi Chris,

Thank you for reaching out. A variety of team members from the OCC have met with you on numerous occasions and additionally corresponded with you via email. We have done so in an effort to communicate the information under our purview as transparently as possible. We believe we have directly addressed many of your questions. That being said, we are happy to follow up again during our already scheduled call for Thursday, 12/14.

Please provide your questions in writing in advance of the meeting so that we can prepare the necessary information.

For any questions you have relating to the Planning Department's processes and determinations, please reach out to Mathew Chandler for clarifications or to schedule a meeting.

Best,

Scott Dennis (He/Him)

Administrative Permit Analyst

*Office of Cannabis, City & County of San Francisco*

---

**From:** Chris Callaway <[chris1callaway@gmail.com](mailto:chris1callaway@gmail.com)>  
**Sent:** Wednesday, December 6, 2023 4:34 PM  
**To:** Office of Cannabis (ADM) <[officeofcannabis@sfgov.org](mailto:officeofcannabis@sfgov.org)>

**Cc:** Dennis, Scott (ADM) <[scott.dennis@sfgov.org](mailto:scott.dennis@sfgov.org)>; Law, Ray (ADM) <[ray.law@sfgov.org](mailto:ray.law@sfgov.org)>  
**Subject:** Re: 597 Hayes: Application Status Updated

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Scott and Ray,

I have plenty of questions which have not been answered by the OOC or the planning department. I will now be seeking a letter of determination from planning department prior to the planning commission hearing to revoke or extend the land use entitlement for 500 Laguna.

I request an urgent meeting asap to address my questions with both the planning department and OOC which my land use attorney will need to attend as well.

If I have to seek an injunction from the courts to prevent these applications from being dismissed so quickly, I will. Please take into consideration it took a year for the OOC to send my application for 500 Laguna to planning for informal review initially. My backup application have also been waiting since 2021 as well.

I formally request my application at 597 Hayes be given time to pursue all of its legal options before being summarily dismissed.

To remind the OOC and the planning department the current code language around the 600ft rule, a valid permit from the OOC has not been issued within 600ft of 597 Hayes, therefore it should not impact my ability to move this application forward.

I look forward to speaking with you all on this matter again very soon.

Best,

Chris Callaway

On Wed, Dec 6, 2023 at 2:20 PM Office of Cannabis (ADM) <[officeofcannabis@sfgov.org](mailto:officeofcannabis@sfgov.org)> wrote:

Dear Chris,

The Planning Department has completed its informal zoning review of your application at 597 Hayes Street and determined that this proposed location is within 600-ft of a location with an existing authorization for Cannabis Retail use.

Should you have any questions about this process, please don't hesitate to contact us.

Sincerely,

Office of Cannabis  
City and County of San Francisco

---

**From:** Office of Cannabis (ADM)

**Sent:** Friday, December 1, 2023 10:42 PM

**To:** Chris Callaway <[chris1callaway@gmail.com](mailto:chris1callaway@gmail.com)>

**Cc:** Dennis, Scott (ADM) <[scott.dennis@sfgov.org](mailto:scott.dennis@sfgov.org)>; Law, Ray (ADM) <[ray.law@sfgov.org](mailto:ray.law@sfgov.org)>

**Subject:** 597 Hayes: Application Status Updated

Dear Chris,

This message is to notify you that the status of your application at 597 Hayes Street for storefront retail has been updated from "On-Hold" to "Submitted - Pending Initial Review." As the next step in the application process, the Planning Department will conduct an informal zoning review of your proposed location. Once this review is complete, our office will contact you with further information.

Please let us know if you have any questions and have a great weekend.

Sincerely,





**BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)**



# BOARD OF APPEALS BRIEF

**HEARING DATE: October 23, 2024**

October 17, 2024

**Appeal Nos.:** 24-053  
**Project Address:** 500 Laguna Street  
**Block/Lot:** 0818/016  
**Zoning District:** Hayes Street NCT District  
**Height District:** 40-X  
**Staff Contact:** Corey A. Teague, Zoning Administrator – (628) 652-7328  
[corey.teague@sfgov.org](mailto:corey.teague@sfgov.org)

## Introduction

The City's regulatory framework for Cannabis uses is still fairly young, involves various City codes, and requires coordination between various City departments. The Appellant's request for a Zoning Administrator determination, while specific to their situation, has significant implications for all projects going forward within that framework. As such, I worked directly with the Office of Cannabis (OoC) to ensure the final determination was as coordinated and well-informed as possible to ensure that it specifically addressed the situation at hand while also considering the potential implications for the regulatory program overall.

It's important to note that while the subject letter references the property at 500 Laguna Street, the property owner of 500 Laguna Street did not make this request and was not involved with the final determination.

## Arguments

The determination letter itself provides the specific information, arguments, and rationale for the determination. And so those will not be repeated in this brief. However, it is important to emphasize that it is the City's very clear intent to avoid multiple Cannabis permit applications within a 600-foot radius from moving forward at the same time in order to prevent a zero-sum race by applicants that could result in significant expenses and losses for Cannabis permit applicants.

It's also important to respond to some of the Appellant's claims and arguments in their brief. The Appellant claims that the Zoning Administrator's determination does not actually answer the requestor's question(s). However, their request (Exhibit A) consists of several pages laying out their interpretation of the Planning Code in relation to situation described. They only specific request is for "a written determination confirming the above application of the Planning Code." The determination issued by the Zoning Administrator (Exhibit B) represents and explains a different interpretation of the Planning Code than the that submitted by the requestor. Therefore, it is my position that the issued determination adequately and appropriately responds to the Appellant's request.

The Appellant states that their client's Cannabis application in fact was referred to the Planning Department. However, that is in reference to the process between the OoC and Planning whereby the OoC is informed if there is an active Cannabis project within 600 feet of a Cannabis permit application. Obtaining such information from Planning is the only way the OoC can obtain information necessary to implement their own processing rules related to the 600-foot buffer. But importantly, this process is not the formal referral of a Cannabis permit application from the OoC to Planning that is required in the Police Code and is used by Planning to determine that a Conditional Use Authorization application may then be accepted.

The Appellant states that the determination letter goes beyond the Zoning Administrator's authority by interpreting the Police Code and the OoC's rules. However, the determination does not make any such

interpretations. Instead, the determination letter provides relevant information from the Police Code and the OoC's rules so that the Planning Code interpretation is provided within the context and understanding of the larger Cannabis regulatory framework.

Finally, the Appellant is aware that, regardless of this determination, ultimately the property owner of 500 Laguna Street must request an extension of their active Conditional Use Authorization for Cannabis Retail use from the Planning Commission in order for that use to be formally established. That application was filed in November of 2023 and is awaiting the outcome of this determination before being scheduled on a Planning Commission agenda. The Planning Commission will have the discretion to either 1) extend that CUA to allow the property owner of 500 Laguna Street to move forward with a new Cannabis permit applicant, or 2) revoke that CUA so that a different property owner and Cannabis permit applicant may move forward with a new application within that area.

## **Conclusion**

To conclude, it is my position that I did not err or abuse my discretion as Zoning Administrator when issuing the determination in question. That determination was made very deliberately and in coordination with the Office of Cannabis to ensure the determination represented the letter and intent of the Planning Code and the City's overall Cannabis uses regulatory framework. As such, I request that the Board deny the appeal and uphold the determination.

cc: Melinda Sarjapur - Appellant  
Nikesh Patel – Office of Cannabis  
Ray Law – Office of Cannabis

500 Laguna Street - Board of Appeals Brief  
Appeal No. 24-053  
Hearing Date: October 23, 2024

Enclosure:     Exhibit A – Request for Determination  
                  Exhibit B – Letter of Determination Issued by the Zoning Administrator

## EXHIBIT A

# REUBEN, JUNIUS & ROSE, LLP

Andrew Junius

ajunius@reubenlaw.com

December 27, 2023

R#2023-011713ZAD

Assigned to: E.G. Jonckheer

## Submitted Via Public Portal

Corey Teague  
San Francisco Planning Department  
Office of the Zoning Administrator  
49 South Van Ness Ave, Suite 1400  
San Francisco, CA 94103

**Re: Cannabis 600 Feet Rule: Request for Letter of Determination  
500 Laguna Street  
Our File No.: 11383.02**

Dear Mr. Teague:

Our office represents Chris Callaway, the owner and equity applicant of a business seeking to establish a Cannabis Retail Use in Hayes Valley. The purpose of this Letter of Determination request is to confirm a Cannabis Retail Use may be established within a 600-foot radius of a parcel for which the Planning Commission has approved a Conditional Use (“**CU**”) Authorization for a Cannabis Retail Use, but where the City’s Office of Cannabis (“**OOC**”) has not issued a valid cannabis retailer permit (“**Cannabis Permit**”) for that location.

As discussed below, the “trigger” that brings into play the Planning Code’s 600-foot radius rule is the issuance of the Cannabis Permit, nothing else. For the Planning Department to find otherwise would directly contradict the clear language of the code.

The original CU Authorization at 500 Laguna Street (the “**Property**”) (obtained by Mr. Callaway) *expired in January 2023*. Mr. Callaway is no longer pursuing his OOC application for a Cannabis Permit for the Property and has made written request to the Planning Department that the CU be revoked. Under these circumstances – when added to the absolutely clear language of the Planning Code and Police Code itself – what could possibly be the legal or equitable justification for preventing Mr. Callaway from pursuing a Cannabis Retail Use at another nearby location?

Pursuant to the provisions of San Francisco Planning Code Section 307(a), we respectfully request a Letter of Determination confirming the above.

San Francisco Office  
One Bush Street, Suite 600, San Francisco, CA 94104  
tel: 415-567-9000 | fax: 415-399-9480

Oakland Office  
492 9<sup>th</sup> Street, Suite 200, Oakland, CA 94607  
tel: 510-527-5589

www.reubenlaw.com

## A. Background

Mr. Callaway first began efforts to establish a Cannabis Retail Use at the Property in 2018, which required he sign a lease to begin the Cannabis Retail permitting process. After negotiations with the owner, Kaushik Dattani (the “**Owner**”), of the Property, Mr. Callaway eventually signed a lease in December 2018 under which he was responsible for rent beginning in August 2018.

Despite a variety of building code and related issues at the Property, including the need for a seismic retrofit, Mr. Callaway continued to move forward with the Cannabis Retail application for the Property. On January 23, 2020, the Planning Commission approved a Conditional Use Authorization for a Cannabis Retail Use at the Property under Planning Commission Motion No. 20627 (the “**Approval**”). The Approval included a three-year time limit to exercise the CU Authorization as a condition of approval. That three-year time limit ran in January 2023.

Other permitting issues, including electrical issues and an incomplete ADA restroom, made the Property unusable for extended periods. The Department of Building Inspection (“**DBI**”) issued a Notice of Violation on December 28, 2022 under Complaint Number 202200677 in connection with the Property’s seismic retrofit, based on failure to complete all work necessary as a part of the Mandatory Soft Story Program. The NOV is still outstanding. Mr. Callaway and the Owner are currently in litigation.

Notwithstanding the above issues with the Property, Mr. Callaway remains committed to opening a Cannabis Retail location in the neighborhood. Mr. Callaway entered into several other leases in the neighborhood during the COVID-19 pandemic in an effort to find an alternative space for a future Cannabis Retail business. He has worked to ensure the spaces remain activated as he pursues the necessary permits to open a Cannabis Retail business. Mr. Callaway received guidance from the City that if he did not open a Cannabis Retail store at the Property, the Approval would expire, and he would be able to pursue an entitlement for another Cannabis Retail Use within 600 feet of the Property. Acting on such guidance, Mr. Callaway submitted applications to begin the Cannabis Retail permitting process for other spaces in Hayes Valley and withdrew his Cannabis Permit application with the OOC for the Property. Mr. Callaway has also surrendered his state cannabis license for the Property.

## B. The Equities

In considering Mr. Callaway’s request, it is important that the Planning Department acknowledge the particular facts of this case - and the absurd results that follow if his request is not granted:

- Mr. Callaway was the applicant for the January 2020 Approval that is the basis for any cannabis retailer at the Property.



- Because of the falling out between Mr. Callaway and the Owner, there will never be a Cannabis Retailer Use operated by Mr. Callaway at the Property.
- Mr. Callaway has requested in writing that the Approval be revoked.
- There is every indication that the property at 500 Laguna is itself mired in its own permitting problems unrelated to Mr. Callaway and is not likely to become available for any retailer, much less a cannabis retailer, in the coming years.
- The original CU Authorization granted by the Planning Commission in 2020 expired almost one year ago. *This January, it will be four years since the Planning Commission granted that approval - and there is no sign that a cannabis retailer will ever be established at the Property.* Yet, the Planning Department acts as if there is a cannabis retailer there.
- And finally, given all these facts that make it impossible for a cannabis retailer to establish itself at the Property as originally proposed, the Planning Department has adopted an erroneous interpretation of the Planning Code that makes it impossible for Mr. Callaway to establish an otherwise legal Cannabis Retail Use down the street.

The Planning Department must reconsider its position and issue the interpretation Mr. Callaway is requesting in this letter.

### **C. Cannabis Permit 600-Foot Radius Rule**

#### *1. The City's Municipal Code does not Prevent Conditional Use Authorization of Two Cannabis Retail Uses within 600 Feet of One Another*

Under Planning Code Section 202.2(a)(5)(B), a parcel containing a “Cannabis Retail Use shall not be located 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. . . .” The OOC administers and enforces Article 16 of the Police Code, under which the Director of the OOC (“**Director**”) is authorized to issue a Cannabis Permit<sup>1</sup>. All businesses that engage in commercial cannabis activity in the City, including the “sale of Cannabis or Cannabis Products for compensation” must obtain a permit from the OOC.<sup>2</sup> As such, a Cannabis Permit is required for a Cannabis Retail Use to operate in the City, and when the Director issues a Cannabis Permit, in accordance with Planning Code Section 202.2(a)(5)(B), a Cannabis Retail Use cannot be established within a 600-foot radius of the parcel for which the Director issued the Cannabis Permit.

However, Planning Code Section 202.2(a)(5)(B) does not prohibit a Cannabis Retail Use from being located within a 600-foot radius of a parcel *that has only received a CU Authorization*

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<sup>1</sup> Police Code Section 1607.

<sup>2</sup> Police Code Secs. 1602 & 1603(a)(1).

*to establish a Cannabis Retail Use* and has yet to (and may never) obtain a Cannabis Permit. This is the case here. The Approval at the Property does not prevent any other cannabis retailer at any location – per the express language of the code.

**The “trigger” that brings into play the 600-foot radius rule is the issuance of the Cannabis Permit, nothing else. For the Planning Department to find otherwise directly contradicts the clear language of the code.**

The Planning Department’s current interpretation treats a CU Authorization as if it were a Cannabis Permit. They are not the same thing. Only the issuance of a Cannabis Permit raises the 600-foot radius issue.

*2. Preventing Conditional Use Authorization of Two Cannabis Retail Uses within 600 Feet of One Another is Contrary to the Equity Program*

Further, any interpretation preventing CU Authorization for a Cannabis Retail Use within 600 feet of a property that has only received CU Authorization for a Cannabis Retail Use fails to uphold the central purpose of the City’s Equity Program. Codified under Police Code Section 1604, the Equity Program must be designed and implemented “to foster equitable access to participation in the cannabis industry, including equitable access to promotional and ownership opportunities in the industry.” Further, the Equity Program must be “designed to ensure full and equal access to resources and opportunities made available as a result of Proposition 64” and must “create strategies to uplift communities where those inequities have been concentrated.” The Equity Program must offer priority permit processing to individuals that have been verified as equity applicants.<sup>3</sup>

To prevent an equity applicant from opening a Cannabis Retail business simply because a property owner holds an expired right to establish a Cannabis Retail Use, while no Cannabis Permit application is pending for the Property with the OOC, is directly contrary to the Equity Program established by the City. Mr. Callaway is a verified equity applicant in accordance with Section 1604 of the Police Code and was unable to continue his lease with the Owner. Given the circumstances, Mr. Callaway should not be prevented by such Owner from activating a nearby retail space with a Cannabis Retail business that will serve the area, especially in light of the purpose of the Equity Program.

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<sup>3</sup> Police Code Section 1604(b).

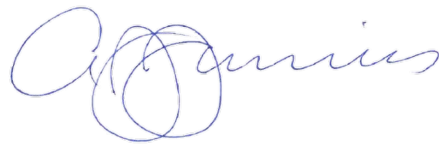
Corey Teague  
San Francisco Planning Department  
December 27, 2023  
Page 5

**D. Conclusion**

We respectfully request a written determination confirming the above application of the Planning Code. Please call me if you have any questions or need additional information.

Very truly yours,

**REUBEN, JUNIUS & ROSE, LLP**



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Andrew Junius  
Managing Partner

Cc: Chris Callaway  
Kaitlin Sheber

## EXHIBIT B



## LETTER OF DETERMINATION

August 26, 2024

Andrew Junius  
1 Bush Street, Suite 600  
San Francisco, CA 94104

Record No.: **2023-011713ZAD**  
Site Address: **500 Laguna Street**  
Zoning: Hayes-Gough NCT  
Staff Contact: Corey Teague – (628) 652-7328 or [corey.teague@sfgov.org](mailto:corey.teague@sfgov.org)

Dear Andrew Junius:

This letter is in response to your request for a Letter of Determination to confirm a Cannabis Retail Use (CRU) may be established within a 600-foot radius of a lot for which the Planning Commission has approved a Conditional Use Authorization (CUA) for a Cannabis Retail Use, but where the City's Office of Cannabis (OOC) has not issued a valid cannabis retailer permit (Cannabis Permit) for that location. More specifically, this request is related to the desire of your client, Chris Callaway, to obtain the required authorizations to establish a CRU within 600 feet of 500 Laguna Street.

### **Cannabis Retail Use Background**

In late 2017, the Board of Supervisors adopted Ordinance No. 229-17 to add regulations for CRU and other cannabis-related uses to the Planning Code (effective January 5, 2018). The Board also adopted amendments to the Health Code and the Police Code at the same time, which established the Office of Cannabis (OOC) and a required permitting process through the OOC. While the Planning Code regulations for CRU have been amended since 2017, the original limitation on multiple CRUs within a 600-foot buffer remains. Planning Code Section 202.2(a)(5)(B) currently reads as follows:

*“The parcel containing the Cannabis Retail Use shall not be located within a 600-foot radius of a parcel containing an existing School, public or private, unless a State licensing authority specifies a different radius, in which case that different radius shall apply. In addition, the parcel containing the Cannabis Retail Use shall not be located 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, except that a Cannabis Retail Use may be located in the same place of business as one or more other*

*establishments holding valid permits from the City's Office of Cannabis to operate as Cannabis Retailers or Medicinal Cannabis Retailers, where the place of business contains a minimum of 350 square feet per Cannabis Retail or Medical Cannabis Dispensary Use, provided that such locations are permitted by state law. 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, in which case that minimum radius shall apply."*

Please note that Police Code Section 1614, provided below, requires the OOC to refer Cannabis Permit applications to other relevant agencies:

*"The Director shall send the application to all appropriate Referring Departments. Those departments shall complete all necessary review and inspections and report their determinations to the Office of Cannabis."*

Planning Code Section 202.2(a)(5)(A), provided below, requires that an application must first be filed with the OOC prior to any application to the Planning Department for a CRU:

*"A Cannabis Retail establishment must apply for a permit from the Office of Cannabis pursuant to Article 16 of the Police Code prior to submitting an application to the Planning Department."*

Police Code Section 1601(a), provided below, gives the Director of OOC broad discretion to adopt rules and guidelines to ensure the Cannabis Permitting program is implemented reasonably and consistent with the underlying policy intent:

*"This Article 16 shall be administered and enforced by the Office of Cannabis. The Director may adopt rules, regulations, and guidelines to carry out the provisions and purposes of this Article, including, but not limited to: operating guidelines designed to further the goals of reducing the illegal market for Cannabis and Cannabis Products, protecting and promoting the health of all San Franciscans, limiting youth access and exposure to Cannabis and Cannabis Products, ensuring safe consumption of Cannabis and Cannabis Products, and creating equitable access to opportunities within the Cannabis industry; hearing procedures; and standards for the imposition of administrative penalties, permit suspensions and permit revocations. The Director shall adopt rules, regulations, and guidelines to ensure that Storefront Cannabis Retailers and Delivery-Only Cannabis Retailers maintain and Sell an inventory of Medicinal Cannabis and Medicinal Cannabis Products that is sufficient in volume and variety to meet the diverse medical needs of qualified patients, including but not limited to guidelines addressing the availability of Cannabis flowers, and other specific forms of Cannabis or Cannabis Products."*

As you note in your request letter, the specific Code language limits a new CRU within 600 feet 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." During adoption and first implementation of this Code provision, it became clear that allowing multiple locations within the 600-foot radius to move through the CUA process in parallel would create an impractical, chaotic permitting environment because such an order of operation would create a high level of uncertainty and potential cost for CRU applicants.

More specifically, any applicants applying for a location within 600 feet of each other would have to compete against each other in the second phase (build out) of the permit application process for a single permit. The second phase of the process to establish a CRU is costly and incredibly time-consuming. Such an unclear process would be detrimental to applicants, especially Equity Program<sup>1</sup> applicants, who would spend unnecessary time and resources on a project that would not have a clear pathway to be realized.

In response to these issues, and pursuant to Police Code Sections 1606(c) and 1601(a), the OOC underwent a public rule-making process to address the undesirable permitting outcome described above. This process included Planning Department coordination, stakeholder outreach, and a public review and comment period for the final permit processing rules. The first set of these application processing rules (“OOC Rules”) were adopted in January 2020, and then updated in December 2023. The current OOC Rules are provided as Exhibit A to this letter.

More specifically, Section 6(f) of the OOC Rules (provided below) has the very purposeful effect that only a single active Cannabis Retail permit application will be referred to the Planning Department and any subsequent applications with 600 feet will be held in abeyance (i.e., inactive):

*Section 6(f): If two or more Applicants within the same priority category apply for Medicinal Cannabis Retailer or Cannabis Retailer permits within 600 feet of each other, the **Office of Cannabis shall process the first-received set of application materials** (including, but not limited to, **referring those materials to the Department of Building Inspection and the Planning Department**) first, and shall **hold any later-received application materials in abeyance, to ensure consistency with Section 202.2(a)(5) of the Planning Code**. Any application materials held in abeyance pursuant to this rule shall not lose their place in line under the criteria set forth in this rule. In the event that the Applicant who submitted an earlier-received set of application materials becomes unable to proceed with their permit application for any reason (including, but not limited to, an adverse determination by the Department of Building Inspection or the Planning Department), the Office of Cannabis shall proceed the next-received set of application materials according to that set of applicant materials’ place in line under the criteria set forth in this rule [**emphasis added**].*

## 500 Laguna Street Background

Chris Callaway submitted an application to the OOC for a Cannabis Permit at 500 Laguna Street on July 29, 2018. The OOC began processing the 500 Laguna Street application in May 2019. OOC referred the project to the Planning Department in September of 2019, and the Planning Commission granted a CUA on January 23, 2020 (Motion No. 20627). After the CUA approval, Building Permit No. 201907024948 was issued on January 11, 2021, to establish the CRU. The CUA for 500 Laguna Street is no longer associated with Chris Callaway because the CUA runs with the land and there is no longer an active lease agreement between Chris Callaway and the 500 Laguna Street property owner. At the time of your request through the date of issuance of this determination, the Planning Department has not received a referral from OOC for any other applications associated with Chris Callaway.

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<sup>1</sup> The Equity Program is codified in Police Code Section 1604 and is intended to provide assistance to communities unfairly burdened by the War on Drugs, and is designed to ensure full and equal access to resources and opportunities made available as a result of Proposition 64.

Planning Commission Motion No. 20627 for the CRU at 500 Laguna Street included the two following conditions of approval related to validity and renewal of the CUA:

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.
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.

While Building Permit No. 201907024948 was issued on January 11, 2021, to establish the CRU at 500 Laguna Street, that permit expired on December 6, 2023. Therefore, any new permit filed to establish a CRU at this location either would have needed to be issued by January 20, 2024 (the extended CUA performance period due to COVID) or would require the Planning Commission to grant an CUA renewal/extension per Condition No. 2 of Motion No. 20627. The property owner filed a CUA renewal/extension application on November 11, 2023. However, the Planning Department has not scheduled that application for a hearing so that this determination may be issued.

Once this determination is final, that CUA renewal/extension application may move forward, and the Planning Commission will have the discretion to fully consider this situation and either grant a renewal and extended performance period or revoke the CUA.

### **Determination**

Based on the information provided above, the OOC developed reasonable and purposeful rules related to multiple Cannabis Retail permit applications within a 600-foot radius, such that only one such application will be active and referred to the Planning Department, and any others will be held in abeyance. These rules were adopted under the authority of Police Code Section 1601(a) and included a public process that called for stakeholder input. A Cannabis Retail permit referral is required by the Police Code and is the official manner in which the OOC confirms to the Planning Department that such an application has been submitted. Per Planning Code Section 202.2(a)(5)(A), such an application is necessary for any CUA application to be submitted to the Planning Department.

Therefore, **it is my determination** that the requirement of Planning Code Section 202.2(a)(5)(A) that an application must be submitted to the OOC before an application is submitted to the Planning Department is interpreted to mean that the Planning Department may only accept a CUA application for a location where a referral from the OOC has been received. At the time of this letter, the Planning Department has not received a referral from the OOC for your client's newly proposed location.




As such, unless and until the OOC refers your client's Cannabis Retail permit application to the Planning Department, a CUA application from your client may not be accepted by the Planning Department. Allowing multiple CUA applications to advance in tandem within a 600-foot radius is the exact scenario meant to be avoided by the OOC Rules and Planning Code Section 202.2(a)(5)(A).

**Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.**

**APPEAL:** An appeal may be filed with the Board of Appeals within 15 days of the date of this letter if you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator. Please contact the Board of Appeals in person at 49 South Van Ness Ave, Suite 1475, call (628) 652-1150, or visit [www.sfgov.org/bdappeal](http://www.sfgov.org/bdappeal).

Sincerely,



Corey A. Teague, AICP  
Zoning Administrator

cc: Property Owner  
Ray Law (Office of Cannabis)  
Neighborhood Groups

Enclosure: Exhibit A – Office of Cannabis 1606(c) Permit Application Processing Rules

## EXHIBIT A - Office of Cannabis 1606(c) Permit Application Processing Rules

### 1606(c) Permit Application Processing

December 19, 2023

1. Applicants for permits under Article 16 of the Police Code are responsible for submitting all application materials requested by the Office of Cannabis at the time that the Office requests those materials.
  
2. If, at any time, the Office determines that additional information is required to provide the Office with sufficient information to process those application materials in a manner consistent with Article 16, the Office will notify the applicant in writing and the applicant shall supply the requested information or documentation within five business days.
  
3. If, after an application is received, a competing storefront retail application (*i.e.*, an application with a business address within 600 feet of the applicant's business address) is submitted, the Office will notify the applicant in writing of the existence of the competing application and, in some cases, of the need to submit additional information. The applicant shall supply any requested information or documentation within ten business days.
  
4. If the Office requests additional information from an applicant 90 days or more after the Director has notified an Applicant that their application is incomplete as set forth in Section 1615(1) of the Police Code, and the applicant fails to provide the requested information to the Office by the applicable five-day or ten-day deadline, then the application will be deemed abandoned and will not receive further consideration, except as specified in item 5, below. The consequences of abandoning an application are set forth in Section 1615 of the Police Code.
  
5. If the applicant withdraws an application prior to the expiration of the five-day or ten-day deadline, then that application will not be deemed abandoned. If an applicant cannot meet a five-day or ten-day deadline due to circumstances beyond their control, they may request an extension (for a defined period of time) from the Office of Cannabis. The Office shall have discretion to grant or deny the extension, or to take other appropriate action (including, but not limited to, granting an extension for a shorter period of time).

## EXHIBIT A - Office of Cannabis 1606(c) Permit Application Processing Rules

6. Subject to the foregoing, the Office of Cannabis shall apply the following procedures to determine the order in which application materials are processed:

a. The Office of Cannabis shall process application materials according to the priority categories set forth in Section 1606(c) of the Police Code.

b. Within the “Equity Applicant” priority category, any change in the manner in which an Applicant satisfies the criteria set forth in Section 1604(b)(3)(A)–(E) shall not affect the order in which the Applicant’s application materials are processed, as long as the identity of the Equity Applicant does not change.

c. Within each priority category set forth in Section 1606(c) of the Police Code, the Office of Cannabis shall review, consider, and process all complete applications, revisions, corrections and other permit-related material application materials in the order in which they are received, except that the Office of Cannabis may depart from this procedure:

(i) if the Office determines, in writing, that good cause (including, but not limited to, the need to remedy an earlier error in the process of related application materials) exists for such a departure, or

(ii) if the Office determines, in writing that an applicant has not supplied requested information or documentation within ten business days of being notified of the existence of a competing storefront retail application, as specified in item 3, then the original application will be placed "on hold," and the competing application will be processed, provided the competing applicant supplies any requested information or documentation within ten business days of such request, as specified in item 3.

(iii) as otherwise provided by applicable law.

d. To have an application be considered received:

(i) **All applicants** must complete all applicable fields in the online application, and must submit documentation substantiating that the applicant is a legitimate business entity, and that the applicant is authorized to operate a cannabis business at the address provided in the application. In general, to substantiate that the applicant is a legitimate business entity, an applicant will be required to submit their business account number and corresponding location identification number for the subject property. In general, to demonstrate authorization to operate a cannabis business at a particular address, an applicant will be required to submit documentation of legitimate occupancy (such as a lease agreement) and documentation of a landlord’s explicit authorization of the intended cannabis business use on the property.

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(ii) **Equity Incubator applicants only** must submit an Incubator Agreement that meets all Equity Incubator requirements, including naming the form of incubation, outlining the specific benefits of the incubation, and identifying at least one verified Equity Applicant partner at the time of application.

(iii) **Verify Equity Applicants only** must submit documentation showing how the applicant meets the ownership requirements outlined in Police Code Section 1604(b)(3)(A-E), and all other material agreements associated with the business for which the applicant is seeking a cannabis business permit at the time of application.

e. The Office of Cannabis will refer application materials related to a proposed Medicinal Cannabis Retailer or Cannabis Retailer to the Department of Building Inspection for acceptance of a Building Permit Application or to the Planning Department for acceptance of a Conditional Use Authorization Application, except as provided below.

f. If two or more Applicants within the same priority category apply for Medicinal Cannabis Retailer or Cannabis Retailer permits within 600 feet of each other, the Office of Cannabis shall process the first-received set of application materials (including, but not limited to, referring those materials to the Department of Building Inspection and the Planning Department) first, and shall hold any later-received application materials in abeyance, to ensure consistency with Section 202.2(a)(5) of the Planning Code. Any application materials held in abeyance pursuant to this rule shall not lose their place in line under the criteria set forth in this rule. In the event that the Applicant who submitted an earlier-received set of application materials becomes unable to proceed with their permit application for any reason (including, but not limited to, an adverse determination by the Department of Building Inspection or the Planning Department), the Office of Cannabis shall proceed the next-received set of application materials according to that set of applicant materials' place in line under the criteria set forth in this rule.

7. Within the "Equity Applicant" priority category, after an Applicant has submitted all application materials requested by the Office of Cannabis, the Office of Cannabis in its discretion may allow the Applicant to have one opportunity to apply for approval of a new location while maintaining their place in line under the criteria set forth in this rule, provided there are no material changes in the application other than the location, and the new location proposed is not within 600 ft. of an existing Medical Cannabis Retailer or a Cannabis Retailer Applicant with a pending application. A request for approval of a new location will not be approved unless the Applicant demonstrates that the original location is no longer viable due to circumstances out of the Applicant's control. The Applicant shall have six months from the time that the Office of Cannabis grants this opportunity to apply for approval of a new location. The Office shall have discretion to grant or deny an addition

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six month extension, or to take other appropriate action (including, but not limited to, granting an extension for a shorter period of time).