



PJI

August 10, 2023

**SENT VIA E-MAIL & REGULAR MAIL**

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DETROIT  
MICHIGAN

**Re: Proposed Marijuana Dispensary at 2607 & 2621 Decoto Road  
Protecting Children & Seniors From Drug Trafficking**

HOUSTON  
TEXAS

Dear Mayor Dutra-Vernaci et al.:

MIAMI  
FLORIDA

The Pacific Justice Institute (“PJI”) is a non-profit law firm that has successfully advocated against the placement of marijuana dispensaries in locations close in proximity to places where children congregate. PJI represents a group of concerned citizens (the “Citizens”) of the City of Union City (“Union City” or the “City”). Kindly direct all communications related to this matter to the undersigned at [rhacke@pji.org](mailto:rhacke@pji.org).

MILWAUKEE  
WISCONSIN

NEW YORK  
NEW YORK

PHILADELPHIA  
PENNSYLVANIA

The purpose of this letter is to register the Citizens’ opposition to proposed plans for a marijuana dispensary (the “Dispensary”) to operate in the adjoining storefronts at 2621 and 2607 Decoto Road, Union City, CA 94587 (collectively the “Property”). The Dispensary’s proposed location presents a danger to sensitive populations – children in particular, but also the elderly – that the City has unwisely failed to consider. The Property is located near the Vintage Court Senior Apartments (“Vintage Court”), the Ruggeri Senior Center, a Church of Jesus Christ of Latter-day Saints (the “LDS Church”), Noble Education (a children's art school), a 7-11 store where students from James Logan High School (“JLHS”) frequently congregate after school, and residences that house families with children directly behind the Property.

RENO  
NEVADA

SACRAMENTO  
CALIFORNIA

SALEM  
OREGON

SAN FRANCISCO  
CALIFORNIA

For the reasons stated below, PJI strongly recommends that the Union City Council (the “Council”) reconsider its decision approving a business license for the Dispensary to operate at the Property because it is inconsistent with public policy aimed at protecting sensitive populations from the evils of drug trafficking.

SANTA ANA  
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SALEM  
NORTH  
CAROLINA

## **I. Allowing the Dispensary to Operate at the Property Would Violate Public Policy Shielding Sensitive Populations From the Evils of Drug Trafficking.**

Section 11362.768(f) of California’s Health & Safety Code grants cities wide latitude to restrict the locations or establishments of marijuana dispensaries. Union City should thus exercise that latitude in a manner consistent with state and federal governments’ longstanding public policy of shielding children from the evils of drug trafficking:

[W]here children congregate in large numbers before, during, and after school sessions, they are readily subject to the illicit activities of those who ply narcotics to the victims of drug abuse and addiction. The sale and distribution of drugs to youngsters for their use may subject them to the evils of addiction, a hazard to them not only physically and psychologically but financially, with the prospect that their need for drugs, once they are addicted, will lead them into a life of crime to obtain funds to support their habit. They may be drawn into drug rings as participants themselves, aiding the sale and distribution of narcotics to others, including their schoolmates. Indeed, judicial notice may be taken of the destructive results of drug addiction, the source of which Congress clearly intended to keep out of the easy reach of school-age children.

*People v. Williams*, 10 Cal. App. 4<sup>th</sup> 1389, 1395 (Cal. App. 3<sup>rd</sup> Dist. 1992) (*Williams*) [quoting *U.S. v. Nieves*, 608 F. Supp. 1147, 1149 (S.D.N.Y. 1985)]; *see also People v. Marzet*, 57 Cal. App. 4<sup>th</sup> 329, 338 (2<sup>nd</sup> Dist. 1997) (*Marzet*) [noting California’s intent to protect school-aged children “from drug sellers, drug buyers, and the hazards presented in drug trafficking”] and *In re Alexis E.*, 171 Cal. App. 4<sup>th</sup> 438, 452 (Cal. App. 2<sup>nd</sup> Dist. 2009) [stating that “a reasonable inference to be drawn from” Cal. Health & Safety Code § 11362.79, which generally prohibits the use of medical marijuana within 1,000 feet of a school, recreation center, or youth center, is that “use of marijuana near others” – children in particular – “can have a negative effect on them”].

Make no mistake: Under federal law, all marijuana dispensaries in Union City – whether they sell marijuana for medical or recreational use – are engaging in illegal drug trafficking. *City of Garden Grove v. Super. Ct.*, 157 Cal. App. 4<sup>th</sup> 355, 377 (Cal. App. 4<sup>th</sup> Dist. 2007). Although the Dispensary seeks to engage in drug trafficking of the state-approved, regulated, and arguably most benevolent variety, under federal law, the Dispensary is no different from a seedy street-corner crack dealer. *Id.* Furthermore, under the federal Racketeering Influenced and Corrupt Organizations Act (“RICO”), marijuana dispensaries face civil liability for any injury to neighbors’ business or property resulting from the “felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical ... [which is] punishable under any law of the United States.” *See Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865, 881-82 (10<sup>th</sup> Cir. 2017) (*Safe Streets Alliance*) [quoting *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2096 (2016) and 18 U.S.C. § 1961(1)(D)]. Such substances include marijuana and products containing marijuana. *Id.*; *see also* 21 U.S.C. § 802(16).

Although marijuana dispensaries are a relatively recent phenomenon, they are akin to other businesses which may legally sell or distribute intoxicating substances that pose a danger to sensitive populations – most notably liquor stores and taverns. Because a liquor store or tavern “is a business attended with danger to the community, ***it may be entirely prohibited or permitted under such circumstances as will limit to the utmost its evils.***” *Schaub’s, Inc. v Dept. of Alcoholic Beverage Control*, 153 Cal. App. 2d 858, 866 (Cal. App. 2<sup>nd</sup> Dist. 1957) (emphasis added) [quoting *Crowley v. Christiansen*, 137 U.S. 86, 91 (1890)]. In fact, “because of the problems presented by traffic in liquor ... regulations by way of exceptions with respect to churches and schools ***should be liberally construed in favor of such regulations and against applicants for license*** to sell liquor within prescribed areas.” *Id.* at 867 (emphasis added). The word “marijuana” could easily replace the word “liquor” in this case. See, e.g., *People ex rel. Feuer v. Nestdrop, LLC*, 245 Cal. App. 4<sup>th</sup> 664, 675 (Cal. App. 2<sup>nd</sup> Dist. 2016) (*Nestdrop*) [declaring that the dangers associated with drug trafficking make it necessary “to minimize the ‘negative impacts and secondary effects’ of (marijuana dispensaries) by tightly regulating their locations and ***avoiding close proximity to sensitive areas like schools, churches, (and) residential neighborhoods***” (emphasis added)] and *City of Palm Springs v. Luna Crest, Inc.*, 245 Cal. App. 4<sup>th</sup> 879, 885-86 (Cal. App. 4<sup>th</sup> Dist. 2016) [“(C)ommon sense suggests that a strong local regulatory regime governing medical marijuana related conduct would tend to prevent the transformation of purported medical marijuana dispensaries into ‘profiteering enterprises’ that contribute to recreational drug abuse and drug trafficking”].

The dangers of drug trafficking are not limited to creating a secondary black market for, or getting kids addicted to, illegal drugs, either: The harmful secondary effects attendant to marijuana dispensaries include “murders, robberies, burglaries, assaults, drug trafficking and other violent crimes.” *Nestdrop*, 245 Cal. App. 4<sup>th</sup> at 675. These harmful secondary effects have already been seen with other marijuana dispensaries in Union City: Two robberies occurred within the span of a week at FLOR, a marijuana dispensary on Courthouse Drive. In one of them – which occurred less than a week before the Council approved the Dispensary’s application to operate at the Property – a security guard was shot. *Break-in at Union City Cannabis Dispensary Leads to Shooting*, BayCityNews.com (July 7, 2023). And at Lemonnade, a marijuana dispensary on Union City Boulevard, a car drove through the front window during a burglary. Lemonnade is still boarded up following the incident. Given that marijuana dispensaries sell an illegal drug for which there is a black market and have large piles of cash on hand, it stands to reason that dispensaries are targets for armed and/or dangerous criminals who will endanger children and the elderly.

“It clearly makes sense to restrict” businesses that can only serve adults, including marijuana dispensaries, “from areas which are an intrinsic draw for children.” *Madain v. City of Stanton*, 185 Cal. App. 4<sup>th</sup> 1277, 1292 (App. 4<sup>th</sup> Dist. 2010) (Sills, P.J., concurring) (*Madain*); see also *Nestdrop*, 245 Cal. App. 4<sup>th</sup> at 675. Churches like the LDS Church are intrinsic draws for children because they “may have a Sunday-school class and have regularly organized youth groups other days of the week.” *Madain*, 185 Cal. App. 4<sup>th</sup> at 1292 (Sills, P.J., concurring). Noble Education, located just 35 feet away from the Property where the Dispensary wishes to operate, is also an intrinsic draw for children – in fact, it is a

business that caters specifically to children. And the 7/11 store where JLHS students congregate after school is an intrinsic draw for children as well, as they will head there after school for snacks and Slurpees.

“Deterrence of future drug activity ... provides ample justification for applying” California’s Juvenile Drug Trafficking and Schoolyard Act of 1988 “*at all times*[.]” *Williams*, 10 Cal. App. 4<sup>th</sup> at 1395 (emphasis added); *see also* Cal. Health & Saf. Code § 11353.6. It is presumably for this reason that Union City’s Municipal Code (“Mun. Code” when cited) prohibits marijuana dispensaries from operating within one hundred feet of any (1) residential zoning district, (2) school or child care facility, or (3) park, library, or youth center. Mun. Code § 5.44.050(E)(1)-(3). The City’s Municipal Code defines “youth center” to include “*any* public or private facility that is used to host recreational or social activities for minors[.]” Mun. Code § 5.44.020(LL) (emphasis added). Under that definition, Noble Education, an art school for children, certainly qualifies. Even granting that the JLHS and the LDS Church are not within 100 feet of the Property, allowing the Dispensary to operate at the Property violates the spirit, if not the letter, of the Municipal Code’s provisions protecting children from the evils of drug trafficking.

Children, incidentally, are not the only sensitive population affected by drug trafficking: Seniors are affected, too. The ones who live at Vintage Court or attend events at the Ruggeri Senior Center are fearful of having to travel even the short distance to Baldie’s Café, which is just 200 feet away from Vintage Court, to enjoy a meal or head to 7/11 to grab snacks or beverages. Should the Dispensary attract criminals to the neighborhood, seniors will likely be unable to flee quickly from or defend themselves against those who purport to harm them.

The City should also note that Alameda County (the “County”) prohibits marijuana dispensaries from locating within 1,000 feet “from any school, any licensed child or day care facility, public park or playground, drug recovery facility or recreation center” or “a residential zone or its equivalent.” *See* Alameda Cnty. Code of Ords. § 6.108.030(E). The City presumably cannot allow marijuana dispensaries to operate in closer proximity to schools, churches, residential areas, etc., than the County does. Regardless, the fact that the County requires marijuana dispensaries to maintain the wide berth of 1,000 feet reaffirms that sensitive populations in Union City need to be protected from the evils attendant to commercial marijuana activity to the greatest extent possible.

## **II. In Allowing the Dispensary to Operate at the Property, the Council has Unlawfully Abused its Discretion.**

Under California law, “an abuse of discretion occurs when, in light of the applicable law and considering all of the relevant circumstances, [a] decision *exceeds the bounds of reason* and results in a miscarriage of justice.” *Uzyel v. Kadisha*, 116 Cal. Rptr. 3d 244, 267 (Cal. App. 2 Dist. 2010) (emphasis added). “A miscarriage of justice occurs when it is ‘... reasonably probable that a result more favorable to the appealing party would be reached in absence of the error.’” *Lundy v. Ford Motor Co.*, 87 Cal. App. 4th 472, 479 (Cal. App. 2 Dist. 2001) [quoting *In re Marriage of Jones*, 60 Cal. App. 4th 685, 694 (Cal. App. 5 Dist. 1998)].

In this case, Mun. Code § 5.44.050(E)(4) grants the Council discretion to let marijuana dispensaries operate within 100 feet of a residential zoning district, school, child care facility, park, library, or youth center “when the applicant can show that an actual physical separation exists between land uses or parcels such that ***no off-site impacts could occur***, unless otherwise prohibited by state law” (emphasis added). The City’s Municipal Code does not define “actual physical separation.” See Mun. Code § 5.44.020. To the best of PJI’s knowledge, however, there is no “actual physical separation” – be it a fence, wall, or even human security guards hired by the Dispensary – that will prevent off-site impacts from occurring. As California courts have recognized, such off-site impacts include:

- Neighborhood disruption;
- Increased transient visitors, and intimidation;
- Exposure of school-age children and other sensitive residents, including the elderly, to marijuana
- Unlawful drug sales to both minors and adults;
- Fraud in issuing, obtaining or using medical marijuana, including the purchase and/or use of fake IDs to obtain marijuana; and
- Murders, robberies, burglaries, assaults, drug trafficking and other violent crimes.

*Nestdrop*, 245 Cal. App. 4<sup>th</sup> at 675; see also *Safe Streets Alliance*, 859 F.3d at 885-89 [acknowledging that plaintiffs can recover damages under RICO for the nuisance created by noxious marijuana odors in their neighborhood and the accompanying decline in property values].

Even assuming the Dispensary intends, and has committed, to make efforts to limit the dangers and adverse secondary effects attendant to its business operations, it exceeds the bounds of reason for the City to pretend that the children and elderly persons who live or congregate in the neighborhood where the Property is located are not vulnerable to the hazards of drug trafficking. *Marzet*, 57 Cal. App. 4<sup>th</sup> at 338 [stating that the California Legislature enacted the Juvenile Drug Trafficking and Schoolyard Act of 1988 not only to prevent “the sale of drugs to students on their way to and from school, but, of equal importance, (to ensure) the protection of school-age children from drug sellers, drug buyers, and the hazards presented in drug trafficking”]; see also Cal. Health & Saf. Code § 11353.6 [providing for enhanced criminal penalties for persons 18 years of age or older who are convicted of trafficking illegal drugs near schools]. Because the City should have been aware of these secondary effects and state and federal laws aimed at protecting sensitive populations from them, the City has committed a miscarriage of justice in allowing the Dispensary to operate at the Property, and thereby abused its discretion.

## Conclusion

Based on the foregoing, the Citizens respectfully request that the Council reconsider its decision to award a business license allowing the Dispensary to operate at the Property. The Council should note that PJI has successfully opposed the placement of marijuana dispensaries near churches and preschools in San Francisco – a city quite friendly to marijuana dispensaries – and will not hesitate to seek injunctive relief prohibiting the City from allowing the Dispensary to operate at the Property if necessary.

Thank you kindly for your time and attention to this matter. Please keep me informed about the status of this case moving forward. Furthermore, please feel free to contact me at either (916) 857-6900 or [rhacke@pji.org](mailto:rhacke@pji.org) if you wish to discuss this matter further.

Sincerely,

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