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December 29, 2014

Edith Gutierrez
Project Manager
Development Services
1222 First Avenue
San Diego, CA 92101-4154

RE: Cycle Issues at 4427 Rainier Ave., Suite C.

Dear Ms. Gutierrez,

Our office represents SDUG, Inc. in various matters. The purpose of this letter is to address the concerns expressed to Alicia Darrow regarding several local businesses within 1,000 feet of their proposed Medical Marijuana Consumer Cooperative at 4427 Rainer Ave. In addressing these issues, the definition used for Minor-Oriented Facility is that of Chapter 11, Article 3, Division 1, Section 113.0103 of the San Diego Municipal Code, which states:

Minor-oriented facility means any after school program, teen center, club for boys and/or girls, children's theater, children's museum, or other establishment where the primary use is devoted to people under the age of 18.

It is my understanding that the Mathnasium of Mission Gorge matter has been addressed via email by Tommy Najarian, Center Director of Mathnasium of Mission Gorge, and is no longer an issue of concern. For the reasons addressed below, it is of our legal opinion that neither Aikido San Diego, American Ballet and Dance Academy, nor the World Taekwondo Institute fall into the definition of Minor-Oriented Facility.

All three of the businesses listed as possible Minor-Oriented Facilities have services for both youth and adults. To make the determination of whether the primary use of such businesses is for youth or adults is a very subjective process and could arbitrarily preclude otherwise qualified locations from opening. The variation of the enrollment in many of these mixed use services is always fluctuating; conducting inquiries in different months can lead to inconsistent results. These varying analyses are subject to dispute and endless challenges which can result in litigation against the city.

A more objective position in classifying businesses as Minor-Oriented Facilities is to focus on whether both youth and adults are provided equal access of services by these businesses. Only if the services are designed for and cater primarily to youth, should the business be considered a Minor-Oriented Facility. Whether or not equal access is provided to both adults and youth is a significant factor to help to clarify any confusion. In this case, all of the businesses offer equivalent services to adults and youth alike. Therefore none of these businesses should be classified as Minor-Oriented Facilities. Another factor to consider when making this finding is to look at whether these businesses are permitted as a Minor-Oriented Facilities from the City of San Diego. None of the three businesses are specifically permitted as only youth oriented facilities.

The difficulty in determining a business as a Minor-Oriented Facility has been noted in the Union-Tribune.¹ “Many applicants weren’t qualifying because of the interpretation of minor-oriented facility,” said Edith Gutierrez, the development project manager overseeing pot shop applications for the city. “We came up with a definition, but obviously it must have been too restrictive.” Furthermore, the article states that even if a business is determined service primarily youth, a dispensary will not be prohibited from locating near such facility so long as most of the surrounding businesses cater primarily to adults. Here, the neighborhood near 4427 Rainer Ave., has multiple adult businesses in the area, most notably Groundswell Brewing Company right around the corner.

I would be more than happy to discuss our position with you over the phone or via email. I can be reached at (415) 863-1520 and at brendan@hallinan-law.com. I appreciate your understanding in this matter.

Sincerely,



Brendan V. Hallinan

¹ <http://www.utsandiego.com/news/2014/oct/23/marijuana-dispensary-legal-loosen-minor/?#article-copy>