



March 14, 2024

**Re: Appeal of the Planning Commission's approval of CP23-0106, an Administrative Use Permit to establish a cannabis retail facility at 1129 Mission.**

Santa Cruz City Council  
% Bonnie Bush, CMC - City Clerk  
809 Center Street, Room 8  
Santa Cruz, California 95060

Dear Members of the Santa Cruz City Council:

In accordance with Municipal Code Section 24.04.180 et seq (Appeal Procedure), we appeal the Santa Cruz Planning Commission's March 7th, 2024, decision to approve CP23-0106 (the Hook commercial cannabis application) based on the application's lack of conformance with Title 24 and the General Plan, as set forth below.

Approval of this application requires the decision-making body to make Administrative Use Permit (24.08.050) and Commercial Cannabis Use (24.12.1350) findings which, when made, demonstrate conformance with Title 24 and the General Plan. *The inability to make even one finding requires denial of the project.*

1. The following Commercial Cannabis (24.12.1250) Use findings cannot be made.

**Finding 2:** *The proposed use will not adversely affect the health, safety, or welfare of area residents or businesses, or uses, or will not result in an undue concentration in any one neighborhood or district and will not be located within proximity of an incompatible use, such as a children's school, daycare facility or children's play area.*

The project site is located approximately 850 feet from Santa Cruz High School at one of the two main signalized Mission St. / Highway 1 crossings students use on their way to and from SCHS. Due to its proximity, the cannabis outlet, if approved, would adversely affect the health, safety, and welfare of students in the area. The negative impact of cannabis on teen's developing brains and behavior is well documented in the following study findings summarized here:

- Marijuana use has been associated with several adverse mental health outcomes, including increased incidence of addiction and comorbid substance use, suicidality, and new-onset psychosis. Kids who use cannabis at age 15 are 4 times more likely to develop schizophrenia.
- Negative impacts on cognition and academic performance. Marijuana use directly affects the brain, specifically the parts of the brain responsible for memory, learning, attention, decision-making, coordination, and emotion. Children and teens are especially susceptible to the adverse effects of marijuana.
- A youth risk behavior (12,500 students 12–18 yrs old) study found that youth who use marijuana are 3 times more likely to be aggressive.
- A Cambridge study (a meta-analysis of 297,000 people) found that marijuana use at 18 years old is associated with a 9-fold increase in violent behaviors.
- Nine percent of youth in grades 9 to 12 use marijuana daily or nearly every day, an increase of 80% since 2008.
- Marijuana vaping by teens doubled between 2013 and 2020.
- The Centers for Disease Control cite research that found approximately 3 in 10 people who use marijuana have marijuana use disorder. For people who begin using before age 18, the risk of developing marijuana use disorder is even greater.

Research further shows that young adults who live in neighborhoods with a higher number of medical marijuana dispensaries use cannabis more frequently than their peers; if the outlet has signage, the increase in cannabis use is amplified substantially. This research tells us that cannabis usage among students would increase as a result of approving the Hook in this location simply by being in proximity to the cannabis outlet.

Further, the use is inconsistent with the following General Plan policies, which are intended to protect the health, safety, and welfare of students.

**CC7.4** - Enhance programs designed to reinforce positive juvenile behavior and prevent delinquency.

**CC7.4.3** - Work with Santa Cruz City Schools and private schools to provide drug prevention.

**CC8.4.1** - Implement the Safe Routes to School program where funded.

**CC8.3.4** - Work with appropriate agencies to develop aggressive prevention and early intervention efforts toward reducing educational failure and other problems for children and youth.

Finding 2 requires decision-makers to find that the commercial cannabis business *"...will not be located within proximity of an incompatible use, such as a children's school, daycare facility or children's play area."* Staff's findings for approval rely on the 600-foot buffer as the surrogate for "within proximity." The staff report states, "The use will not be located within the proximity of an incompatible use as the site meets the...600-foot buffer from schools..." However, had the intent of the finding been to use the 600-foot buffer as the measure of proximity, the finding would have explicitly referenced the 600-foot buffer rather than use the term "within proximity."

**The use of the phrase "within proximity" in the finding provides decision-makers the discretion to interpret the phrase and evaluate the appropriateness of the location of an application regardless of whether the proposal meets the 600-foot minimum setback.** Given that Finding 2 explicitly describes cannabis and school uses as incompatible, and given the fact that any commonsense evaluation would conclude that Santa Cruz High School is "within proximity" to 1129 Mission, this finding cannot be made.

It is worth noting that other similar uses require a greater setback from schools, and it would be reasonable to impose the same or greater on this project. For example, Municipal Code 6.07.030(c) prohibits tobacco retailers from being closer to schools than 1000 feet. Similarly, Municipal Code 5.54.040 prohibits hookah lounges from being located within 1000 feet of any public or private preschool or school. Why require these setbacks from schools? This is well-documented territory: **Advertising works and proximity matters**<sup>1</sup>. It is the impetus for decades of anti-tobacco legislation aimed at creating "safe zones" around schools to prevent advertising from reaching minors. Similarly, a safe zone from cannabis should be maintained around SCHS and Mission Hill Middle School, which are currently buffered by about one mile to the nearest cannabis outlet. As noted above, **Finding 2 provides decision-makers with the discretion to deny applications that are within proximity to schools.**

Given these considerations, the finding cannot be made since a cannabis retailer in this location will adversely affect the health, safety, and welfare of students.

**Finding 4:** *The proposed use is compatible with the sizes and types of other neighboring uses in the surrounding area, particularly those used primarily by persons under the age of 18.*

This finding specifically requires decision-makers to consider persons under the age of 18 when reviewing a cannabis application.

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<sup>1</sup> Monical L, Adams, MPH, PhD, Leonard A. Jason, PhD, Steven Pokorny PhD, and Yvonne Hunt, MPH, PhD "Exploration of the Link Between Tobacco Retailers in School Neighborhoods and Student Smoking," J. School Hlth.

The zoning code establishes that cannabis and school uses are not compatible. This is evidenced by the requirement to provide a 600' minimum setback and is explicitly stated in Finding 2 of the Commercial Cannabis findings.

Here again, decision-makers are given the discretion to deny an application even if it conforms with the 600' setback. Where Finding 2 uses the phrase "within proximity," the standard in this finding is "in the surrounding area." SCHS is undeniably in the "surrounding area" of 1129 Mission, and its student body is composed almost entirely of "persons under the age of 18."

Given these facts, this finding cannot be made.

II. The following Administrative Use Permit findings cannot be made.

**Finding 1** *The proposed structure and use conforms to the requirements and the intent of this title, and of the General Plan, relevant area plans, and the Coastal Land Use Plan, where appropriate.*

The General Plan's Guiding Principles express the city's "commitment to education through our schools, educational systems and programs." In addition, the General Plan states, "Consideration for the needs of children is a critical part of community planning. Children have intrinsic worth, and this Plan recognizes the value of investing in our collective future" (page 75). As described in Commercial Cannabis findings above and incorporated by reference here, this application poses a threat to the health, safety, and welfare of students, which is contrary to the General Plan excerpts cited above.

**Staff's findings for approval rely entirely on General Plan policies intended to support economic development, leaving out policies intended to protect and help children.** The following General Plan policies, not cited in the staff's findings for approval, are intended to protect the health, safety, and welfare of children.

CC7.4 - Enhance programs designed to reinforce positive juvenile behavior and prevent delinquency.

CC7.4.3 - Work with Santa Cruz City Schools and private schools to provide drug prevention.

CC8.4.1 - Implement the Safe Routes to School program where funded.

CC8.3.4 - Work with appropriate agencies to develop aggressive prevention and early intervention efforts toward reducing educational failure and other problems for children and youth.

In addition, the Staff's findings for approval did not address the project's conformance with the intent of the Zoning Ordinance (Title 24), which focuses on the health, safety, and welfare of the community.

Municipal Code 24.02.020 details the intent of the Zoning Ordinance. The following provides excerpts of 24.02.020 in *italics*, followed by an explanation of the application's lack of conformance.

- *The purpose of this title is to protect and promote the public health, safety, morals, peace, prosperity, and the general community welfare;*

The proposed cannabis business would be located within proximity of Santa Cruz High School. As described above in Finding 2 of the Commercial Cannabis findings and incorporated here by reference, cannabis is deleterious for children's health and well-being, including causing heightened risks of anxiety, depression, and psychosis. Marijuana use is associated with negative impacts on cognition and academic performance. Research tells us that the proximity of cannabis outlets increases use among young adults. Therefore, siting a cannabis business at 1129 Mission would adversely affect public health, safety, and general community welfare in that we can reasonably assume that, as a result of this project, cannabis use would increase among students.

Siting the Hook in this location would amplify the already significant cannabis issue at Santa Cruz High School. During the 2022–2023 school year, 91 reported incidents resulted in students being suspended for possession or use of a controlled substance during the school day across the district. This is double the number from the previous school year. More than 95% of these were for vaping marijuana. Locating a cannabis retailer in proximity to SCHS would only amplify this problem since it would normalize cannabis further, expose students to the Hook—including its signage—resulting in an increase in cannabis use, and facilitate the purchase of cannabis nearby to school by students with medical cards.

- *To encourage orderly, compatible, and beneficial uses of land in a manner that will be of benefit to the general community as well as to neighborhoods and individuals;*

Finding 2 of the Commercial Cannabis Use findings explicitly states that cannabis businesses are not compatible uses with schools and other uses involving children. **Therefore, the application is not compliant with the purpose of Title 24 and the finding cannot be made; the project would not be a benefit to students given the negative impacts associated with cannabis use among youth.**

- *To secure freedom of choice and initiative to all persons in the use of privately owned land, insofar as that use is not harmful to the public health, safety, or general community welfare;*

This excerpt clarifies that decision-makers should provide latitude to the property owner's interests **as long as** those interests are not harmful to public health, safety, or general community welfare.

At the hearing, Mr. Berryessa made a compelling case for his interests. He described the challenges of finding a compliant location and a willing landlord and noted that to secure a location for his business, he signed a lease for the property located at 1129 Mission. He implored the Planning Commission to approve his application because of the tremendous investment he's made in this application.

Title 24, however, is clear; the interests of the property owner, however compelling, must not harm public health, safety, or general community welfare. In other words, Mr. Berryessa's desire to locate his cannabis business at 1129 Mission is not more important than the health and welfare of Santa Cruz's children.

- *Further, the purpose of these regulations is to establish land use regulations and a zoning plan for the city of Santa Cruz deemed necessary to encourage the most socially desirable use of the land; to maintain and enhance the desirable character of neighborhoods; and to otherwise promote health, safety, and the general community welfare all in accordance with the Santa Cruz General Plan.*

Schools are an essential institution of civil society and are clearly a socially desirable use of the land. SCHS has been educating generations of Santa Cruz students in this location for more than 125 years. There is no alternative location for the high school.

As noted, among teenagers, cannabis use is associated with a host of negative health and behavioral outcomes, and research tells us that cannabis outlets in proximity to young adults increase cannabis use. Given this, it is not socially desirable to locate a cannabis location just 850 feet away from the high school on one of the main routes to and from school.

Public testimony at the Planning Commission, including that of school administrators, indicated that students with medical cards are a significant source of cannabis at school. Medical cards are easy to obtain (see The Hook's website FAQ: \$40 and available from 420medicalcardnow.com). Locating a cannabis outlet at 1129 Mission, a 5-minute walk from SCHS, would facilitate student access to cannabis.

The zoning land use regulations and findings explicitly identify schools and cannabis as incompatible uses (see above). Locating a cannabis retailer in this location is not a socially desirable use, and it is certainly not the *most* socially desirable use for this location for all of the reasons cited above and incorporated by reference here. Zoning regulations and federal banking laws make finding a compliant location and a willing landlord difficult for cannabis retailers. However, despite this (and unlike SCHS), alternative locations are possible, if not now, then in the future.

In addition, the project plans for this application show that the old Emily's Bakery building would house both the cannabis business and a cafe. Children can legally patronize a cafe. Given its location so close to school (and SCHS's open campus policy), we can anticipate that children will be onsite before and after school and at lunch, giving them a front-row seat to the Hook's comings and goings.

There is currently an approximately 1-mile buffer to the City's other cannabis retailers (Three Brothers, CannaCruz, Reef, and Kind Peoples), which promotes the health, safety, and welfare of students by keeping cannabis retailers out of sight of children during the school day. Siting the Hook at 1129 Mission will destroy the existing oasis currently benefiting SCHS and Mission Hill students and would negatively affect their health, safety, and welfare.

Given the considerations described above whereby this application does not meet the intent of Title 24, Administrative Use Permit Finding 1 cannot be made.

***Finding 3: The use and structure will not constitute a nuisance or be detrimental to the public welfare of the community.***

As noted in Finding 2 of the Commercial Cannabis Findings and incorporated by reference here, cannabis use among youth can have life-altering negative health and behavioral consequences. Research tells us that proximity to cannabis outlets increases cannabis usage among young adults. Therefore, locating a cannabis outlet at 1129 Mission would be detrimental to the public welfare.

### III. Questionable compliance with Municipal Code 24.12.1320(5)

Municipal Code 24.12.1320(5) lists the zone districts where cannabis retail sales may occur. The code says that cannabis retail sales, including both medical and adult use cannabis, are allowed in Community Commercial (C-C), Thoroughfare Commercial (C-T), General Industrial (I-G), and General Industrial Performance (IG/PER-2) Districts.

The subject parcel, however, is zoned MU-M (Mixed-Use Medium Density), which is not listed as a zone district where the use is allowed. The staff report comments on this, saying, "It should be noted that while this Zoning Code Section 24.12.1320(5) references the CC (Community Commercial) zone district, this property was recently rezoned to MU-M, which also permits cannabis retail sales with the approval of an AUP pursuant to the aforementioned Section 24.10.802(1)(c)." However, Section 24.10.730, which describes the uses allowed in MU-M, requires compliance with the cannabis ordinance. As previously noted, MU-M is not listed as a zone district where retail cannabis is allowed. This incongruence is not only confusing but creates ambiguity as to whether or not a cannabis outlet is indeed allowed on the subject parcel.

### Conclusion

The overwhelming intent of the zoning ordinance (Title 24) is to protect the health, safety, and welfare of area residents. In one permutation or another, that phrase is repeated throughout the code and in the required permit findings. The record shows that cannabis harms the health, safety, and welfare of teen users, particularly when cannabis outlets are located nearby.

The zoning ordinance recognizes this in that it makes it clear that school and cannabis uses are incompatible. This is explicitly stated in Finding 2 of the Commercial Cannabis findings, and it is inherent in establishing the 600' minimum setback. By using the phrase "within proximity" (Finding 2) and "in the surrounding area" (Finding 4) instead of explicitly referencing the 600' setback, decision-makers are provided the discretion to deny an application even if the location is in conformance with the 600' minimum setback. In addition, Finding 4 specifically requires that decision-makers find that cannabis use is compatible with "uses in the surrounding area, *particularly those used primarily by persons under the age of 18.*" In summary, the code was written specifically to protect students from cannabis use, and your Council has the authority to deny this application.

As parents with a front row to the challenges facing our teens, and in particular, the pervasiveness and harm of cannabis use, we ask that you use this authority to deny the Hook application. Weighing heavily on this decision will be its impact on Mr. Berryessa and WAMM. Although we support Mr. Berryessa in his quest to find a Westside location, 1129 Mission is not the right one. It is simply too close to SCHS and Mission Hill Middle School. Denying this application is not denying WAMM patients access to their medicine. Mr. Berryessa testified that WAMM's products are currently available through his other cannabis outlets. In short, there are alternative locations for the distribution of WAMM's products. However, there is no alternative location for Santa Cruz High School.

**Please prioritize the well-being of generations of Santa Cruz's children over the well-being of a single cannabis business and deny this application.**

Thank you for your consideration,

 3/18/2024

Steve Sikes, SCHS and MHMS Parent, on behalf of:

Annette Olson, SCHS Parent

Anna Paganelli, MFT, SCHS Parent

Debra Feldstein, SCHS Parent

Dr. Melinda White, DO, Physician, Dignity Health Medical Group - Dominican, SCHS Parent

Sage Smiley, Addiction Therapist, New Therapist Supervisor, SCHS Parent

Dr. Sarah Maufe, MD, Pediatrician, Palo Alto Medical Foundation

Stacey Saady, SCCS Teacher and Former SCHS/SCCS Parent

Monarch Community School Parent Board