

November 8, 2017

Cristian Peirano, Esq.
Peirano & Associates, Inc.
1616 E. 4th Street, Suite 210
Santa Ana, CA 92701

**Re: Notice of Violation of Roseville Municipal Code Chapter 19.62-
Temple of Healing and Meditation**

Mr. Peirano:

Please allow this correspondence to acknowledge your letter dated November 3, 2017, and to provide you a further explanation regarding your client's violation of the Roseville Municipal Code.

As a primary matter, we would like to thank you for your representation that your client, Temple of Healing and Meditation, has stopped all activities related to marijuana at its establishment located at 250 S. Harding Blvd., Ste. #1, Roseville, CA 95678. The below will address your correspondence and provide a clear explanation of why your client's conduct violates the Roseville Municipal Code and State law.

1. Application of Roseville Municipal Code Chapter 19.62.

Your correspondence cites to an outdated and repealed section of Roseville Municipal Code section 19.62.020. Although we provided your client the current language of Roseville Municipal Code section 19.62.020 in our October 31, 2017 Cease and Desist letter, your most recent correspondence cites to language that was amended last summer. The current version of Roseville Municipal Code section 19.62.020(D) defines a "dispensary" as:

a facility or location, whether permanent, temporary, or mobile, where marijuana, products made from marijuana, or devices for the use of marijuana are offered, either individually or in any combination, for sale, use, transportation, distribution, and/or delivery, whether for compensation or otherwise, by or to: (1) another dispensary or processing facility; or (2) two or more of the following: a primary caregiver, a qualified patient, a person with an identification card, or anyone

authorized under State law to use marijuana. (RMC 19.62.020(D)
(emphasis added).)

Your correspondence states that your client is not providing marijuana or products made from marijuana to a dispensary, processing facility, or a primary caregiver, qualified patient, or a person with an identification card, but you fail to deny your client is providing marijuana to anyone else authorized under State law to use marijuana. Instead, your correspondence states your client "provides marijuana on the basis of a religious sacrament, because it is a church..."

To be clear, there is no exemption under the Roseville Municipal Code for a "church" to sell or distribute marijuana or products made from marijuana. A "church" still falls clearly within the definition of a "facility or location" under Roseville Municipal Code section 19.62.020(D).

Your client's activities are squarely within the definition of a "dispensary" under Roseville Municipal Code section 19.62.020(D) and expressly prohibited under Roseville Municipal Code section 19.62.030, which applies generally to ban all sale and distribution of marijuana, for any purpose, within the City of Roseville.

2. There is no State Recognized or Federally Recognized Right to Sell or Distribute Marijuana for Religious Purposes.

In addition to the prohibitions under the Roseville Municipal Code discussed above, it is well settled case law that there is no religious right to sell or distribute marijuana. The court in *People v. Rubin* (2008) 168 Cal.App.4th 1144 ("*Rubin*") upheld the criminal conviction of an individual who had sold and distributed marijuana, claiming to be a "church" that utilized marijuana as part of its religious beliefs. The *Rubin* Court reasoned:

The United States Supreme Court has determined that a state may prohibit 'religiously inspired' drug use without violating the Free Exercise Clause of the First Amendment. (*Employment Division Department of Human Resources of Oregon v. Smith* (1990) 494 U.S. 872, 874, 110 S.Ct. 1595, 1597-1598, 108 L.Ed.2d 876, 882 (Smith).) To permit religious beliefs to excuse acts contrary to law, 'would be to make the professed doctrines of religious belief superior to the

law of the land, and in effect to permit every citizen to become a law unto himself.' [Citation.]' (*Id.*, at p. 879, 110 S.Ct. at p. 1600, 108 L.Ed.2d at p. 886.) Appellant was prosecuted for selling and possessing marijuana for sale, not for its religious use. (*Id.* at 1149.)

The *Rubin* Court made very clear that there is no First Amendment Constitutional right to sell or distribute marijuana. Your correspondence seems to conflate a right to use marijuana with a right to sell and distribute marijuana, a merging of rights that are wholly independent from one another. Your client's sale and distribution of marijuana is in direct violation of local, State, and Federal law.

Your correspondence also attempts to place an affirmative duty on the City of Roseville to establish that the Roseville Municipal Code banning dispensaries is "a compelling government interest" that is "the least restrictive means of furthering that compelling government interest". The problem with your demand is that the *Rubin* Court makes clear there is no protected First Amendment right to sell or distribute marijuana. Additionally, the Roseville Municipal Code bans all sales and distribution of marijuana, for any purpose. This means the general enforcement of the Roseville Municipal Code has not prevented your client from legally practicing any protected act. "When the exercise of religion has been burdened in an incidental way by a law of general application, it does not follow that the persons affected have been burdened any more than other citizens, let alone burdened because of their religious beliefs." (*Id.* at 1148.)

Moreover, the *Rubin* Court also makes clear that there is a "compelling overriding state interest in controlling drug trafficking." (*Id.* at 1151.) "[W]hile religious belief is *absolutely* protected, religiously motivated *conduct* is not... Such conduct remains subject to regulation for the protection of society." (*Id.*) There is a State mandated process to sell and distribute marijuana and failure to follow that process is a direct violation of the clearly defined State interest. Business and Professions Code § 26200(a)(1) allows the City of Roseville to completely prohibit the establishment or operation of all types of businesses licensed under the Medicinal and Adult-Use Cannabis Regulation and Safety Act. This means any sale or distribution of marijuana by your client is without a valid State license and thus is also in violation of California State law.

3. Your Reliance on 22 U.S.C. 6401 Is Misplaced.

Lastly, your correspondence appears to be trying to argue that “Federal Treaty Law as embodied under 22 USC 6401” allows your client to sell and distribute marijuana for “religious” purposes. 22 USC 6401 contains no exception for marijuana sales or distribution (especially since it is a Schedule 1 Controlled Substance under Federal law). While 22 USC 6401 provides a general statement that the US supports freedom of religion, the US Supreme Court has held “a state may prohibit ‘religiously inspired’ drug use without violating the Free Exercise Clause of the First Amendment. (*Employment Division Department of Human Resources of Oregon v. Smith* (1990) 494 U.S. 872, 874, 110 S.Ct. 1595, 1597-1598, 108 L.Ed.2d 876, 882. Additionally, Federal courts have consistently held there is no federally recognized right to sell or distribute marijuana for religious purposes. Just last year the 9th Circuit Court of Appeals in the matter of *Oklevueha Native America Church of Hawaii, Inc. v. Lynch*, 828 F.3d 1012 (2016) (“*Oklevueha*”) denied a church and its founder an exemption from Federal laws prohibiting the possession and distribution of marijuana. Your reliance on Federal law is completely unsupported.

Conclusion

There is very clear case law at both the State and Federal level that make clear there is no First Amendment protection for the sale and distribution of marijuana for religious purposes. This means the marijuana related activities of your client are clearly in violation of the Roseville Municipal Code. Therefore we continue our demand that your client continue to cease and desist any sale and/or distribution of marijuana within the City of Roseville.

Should you have any questions, please feel free to contact the Roseville City Attorney’s Office at (916) 774-5325.

Sincerely,


Joseph Speaker, Esq.
Deputy City Attorney

CC:

JJ Vanderbilt Properties, LLC
7790 Mt. Vernon Rd.
Auburn, CA 95603

Scott Levitt- Agent for Service of Process for JJ Vanderbilt Properties, LLC
311 Main St. #8
Seal Beach, CA 90740

Kareem Popal
Temple of Healing and Meditation
250 S. Harding Blvd.
Roseville, CA 95678