

EXHIBIT B-3

JESSE R. CALLAHAN
ATTORNEY AT LAW

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MAY
POTENZA
BARAN &
GILLESPIE

March 12, 2018

VIA EMAIL TRANSMISSION AND HAND-DELIVERY

Steve Shields
Carolyn Laurie
City of Tucson
Planning & Development Services
201 N. Stone Avenue
Tucson, Arizona 85701
Steve.Shields@tucsonaz.gov
Carolyn.laurie@tucsonaz.gov

RE: Medical Marijuana Authorization Letter
1525 N. Park Avenue
Parcel ID No. 123-150-70A & 123-15-0720
CHAA: 108 Zoning: C-2 Activity #: T17SA0033 and T18SA00085

Dear Mr. Shields:

I respectfully disagree with your response dated March 8, 2018. I believe the City's analysis of the church identified in my prior correspondence is flawed.

In addition, and equally important, I have since discovered that the proposed dispensary site is also within 1,700 feet "from a licensed residential substance abuse diagnostic and treatment facility" and "drug or alcohol rehabilitation facility" operated by COPE Community Services, Inc.

Each of these issues independently disqualifies the proposed dispensary site under Tucson law, as discussed more thoroughly below.

I. The Drikung Dzogchen Center of Arizona is a Church.

The City failed to review the church in question under the correct ordinance. The property at 1038 E. Lester hosts The Drikung Dzogchen Center of Arizona, which is in fact

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a church under Ordinance 10850, the appropriate regulating ordinance of concern in this matter (the "Ordinance"). The Ordinance intentionally defines a church independently and apart from the zoning codes cited by the City in its March 8th letter.

To be clear, the Ordinance defines a "church" as "a building which is erected *or converted* for use as a church, where services are regularly convened which is used primarily for religious worship and schooling and which a reasonable person would conclude is a church by reason of design, signs or other architectural features" (emphasis added). Thus, the fact that the property originated as residential is irrelevant, because it has been converted to religious use.

There is no reference to compliance with any other section of the Unified Development Code ("UDC") in the governing Ordinance. Nor is there any requirement for a church to have a Certificate of Occupancy ("CofO") under the Ordinance. The City's requirement that there be a "recognized legal use" of the property in the form of a CofO and/or be compliant with the UDC is entirely incorrect. The Ordinance does not require or reference any conformity with the remainder of the UDC or require a CofO to qualify as a church in establishing setbacks for dispensaries. Indeed, the manner in which the Ordinance defines a church would be superfluous if the only type of property to qualify as a church are those properties with CofOs. If the Ordinance meant a church only existed if it obtained a CofO, it would incorporate by reference the requirement of a CofO. The Ordinance does not so define a church for the purpose of a setback, instead referring to a demonstrable use and the reasonable belief of a person without reference, requirement, or regard to a formal CofO.

Indeed, the City previously confirmed that property qualifies as a church regardless of CofO status. As set forth in the enclosed correspondence, the City required proof of the 1,000 foot setback from the "church property" located at 1212 N. Saluara Ave. That church property is zoned residential and no CofO is listed on the City's website for use of that church property as a church.

Moreover, the commercial requirements of the UDC and the definitions of a church established in the Ordinance are severable. This is easily demonstrated by the simple fact that an entity that qualified for commercial religious use under the sections of the UDC cited in your letter, but that did not possess religious architecture, features, or symbols, would conceivably not be a "church" under the Ordinance, which requires these elements in its definition of establishing a setback distance for dispensaries, to wit "... *and* which a reasonable person would conclude is a church by reason of design, signs or other architectural features" (emphasis added).

Applying the relevant criteria, The Drikung Dzogchen Center of Arizona located at 1038 E. Lester Street clearly meets the definition of "church" under the Ordinance provisions that establish setbacks. The property is used primarily for religious worship.

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convening regularly with religious patrons who frequent the facility for religious worship, as evidenced by the following websites:

<http://www.lhorigdzin.org/arizona.html>

<http://www.lhorigdzin.org/uploads/8/9/0/2/89023758/drikungdzogchencenterazbrochure.pdf>

<http://network.awaminstitute.org/drikung-dzogchen-az.html>

https://www.facebook.com/pg/DrikungDzogchenCenterofArizona/about/?ref=page_internal

I included photos of the exterior of the church property in my original correspondence, which showed religious symbols, designs, and other features that are prominent indicia of a church.

The Ordinance requires that “a reasonable person” would conclude that the property is a church based on its architecture, features, and symbols. A reasonable person of the Buddhist faith looking at the architecture and symbols of The Drikung Dzogchen Center of Arizona would certainly recognize it as a place of worship. A non-Buddhist reasonable person would concur, because the appearance of the property and the above-cited webpages and photos demonstrate that The Drikung Dzogchen Center of Arizona is a religious center, independent of the religious affiliation, if any, of the “reasonable person.” Although the religious signs and features in question are Buddhist, not Judeo-Christian, the City is constitutionally required to analyze the “reasonable person” test in a neutral, equal, and non-discriminatory manner.

Interestingly, the Applicant in question acknowledged Google Maps as a legitimate basis for determining whether a property is a place of worship, (not merely checking for CofOs), by performing its due diligence using Google Maps and incorrectly attesting to PDSO that no places of worship were located within 1,000 feet. As shown in my prior letter, Google Maps clearly identifies the property at 1038 E. Lester as a “Place of Worship.” Thus, by its own methodology, the Applicant fails to meet its burden of proof that a property identified as a church under the specific language of the Ordinance does not disqualify its petition to locate a dispensary on Park Ave.

II. COPE Community Services, Inc. Operates a Licensed Residential Substance Abuse Diagnostic and Treatment facility or Other Licensed Drug or Rehabilitation facility Within 1,675 Feet.

The Ordinance further requires that a “medical marijuana dispensary shall be setback... a minimum of 2,000 feet from a licensed residential substance abuse diagnostic

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and treatment facility or other licensed drug or rehabilitation facility.” Such facilities are hereinafter referred to as “Treatment Facilities.”

According to the City of Tucson Fact Sheet concerning medical marijuana dispensaries, “[i]t is the responsibility of the applicant to research the uses on the surrounding properties and accurately identify the distances and separations as required. Failure to accurately document surrounding uses may result in the revocation of any zoning compliance. The applicant shall provide information explaining what methods were used to identify the surrounding uses and distances.”

Unfortunately, the Applicant in this case appears to have failed to properly search the surrounding uses for Treatment Facilities. A basic search with the Arizona Department of Health Services (“AZDHS”) confirms that COPE Community Services, Inc. (“COPE”) operates a Treatment Facility at 535 E. Drachman, Tucson, AZ 85705, which is approximately 1,675 feet from the proposed dispensary site. The Applicant’s application does not reference the requisite search of AZDHS records, inaccurately stating that the closest Treatment Facility is over 3,000 feet away.

It is indisputable that COPE’s Treatment Facility “was found to be in compliance with all applicable Articles in the Arizona Administrative Code Title 9, Chapter 10,” as set forth in the enclosed licensure documentation from the AZDHS. We have also enclosed a copy of the license for COPE’s Behavioral Health Residential Facility. As set forth therein, behavioral health services include providing “services for persons who are at risk of having psychiatric disorders, *harmful involvement with alcohol or other drugs, or other addictions* or who have behavioral health needs” (emphasis added). COPE has operated its Treatment Facility at this location since 1997. We have performed due diligence on COPE’s Drachman location to confirm that the Treatment Facility is licensed to provide substance abuse treatment. The Applicant bears the burden to demonstrate that COPE’s Drachman location is not a Treatment Facility. Under the circumstances, the Applicant will not be able to do so.

Importantly, the AZDHS specifically licensed COPE’s Drachman Treatment Facility. COPE even states on its website the following: “COPE provides residential services to adults with serious mental illness and those who have other behavioral health and/or *substance abuse issues*.”

<http://www.copcommunityservices.org/services/behavioral-services/residential-services/>

As set forth *supra*, it was not the City’s responsibility to verify the information provided by the Applicant. Rather, it was entirely the Applicant’s burden to ensure accurate information was provided to the City. Although the Applicant failed to inform the City of this Treatment Facility, its existence precludes a medical marijuana dispensary at the proposed dispensary location, and the City is left with no choice but to decline the

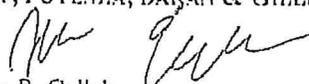
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application to renew the zoning approval and/or revoke the prior letter of permission. At this stage, the AZDHS has not issued an approval to operate the subject dispensary, and the information provided by the Applicant upon which the City relied appears to have been woefully inaccurate.

Accordingly, I respectfully ask you to consider the foregoing points and decline to renew the letter of permission for the proposed dispensary site identified above and/or revoke the prior letter of permission. If you have any questions, please contact me.

Sincerely,

MAY, POTENZA, BABAN & GILLESPIE, P.C.


Jesse R. Callahan

JRC/el

cc:
Piroshchka Glinsky, City Attorney's Office,
Piroshchka.Glinsky@tucsonaz.gov
Mike Rankin, City Attorney's Office,
mike.rankin@tucsonaz.gov



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Residential Services

COPE provides residential services to adults with serious mental illness and those who have other behavioral health and/or substance abuse issues. Services are provided in community facilities that provide individualized care and may include the following:

- Supervision 24 hours a day, 7 days a week
- Counseling for behavioral health issues
- Medication supervision (providing storage, reminders, and observation of clients taking medications)
- Instructions in daily living skills (hygiene, budgeting, cooking, shopping, resources, etc.)
- Social and recreational activities
- Establishing positive daily routines
- Transportation to appointments for medical, financial, and legal needs

For more information about residential services, please call COPE's Intake Department at 520.205.4732.

For additional information on COPE's Behavioral Health Services [click here](#).

[☐ Medical & Health News](#)

COPE Community Services, Inc.

82 S. Stone Avenue
Tucson, AZ 85701
Phone: (520)792-3293
Fax: (520)792-4336
communications@copecommunityservices.org

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PROPERTY OF THE
ARIZONA DEPARTMENT OF HEALTH SERVICES



COPE Community Services, Inc., dba
COPE Community Services, Inc.
535 East Drachman
Tucson, AZ 85705

This facility is licensed to operate as a(n) Behavioral Health Residential Facility

Total Capacity: 15

From: September 1, 2017 To: August 31, 2018

Issued: July 12, 2017

License: BH1469

Recommended By: Harmony Dupont, Bureau Chief

Issued By: Colby Bower, Assistant Director

HEALTH AND WELLNESS FOR ALL ARIZONANS

PURSUANT TO A.R.S. §41-1092.11 (A), UPON SUBMITTAL OF A TIMELY AND SUFFICIENT APPLICATION
THIS LICENSE WILL REMAIN IN EFFECT UNTIL REISSUED OR REVOKED
TO BE FRAMED AND DISPLAYED IN A CONSPICUOUS PLACE



H. Quality Records Management

Description

The organization has systems and procedures that provide for the ongoing monitoring of the quality, appropriateness, and utilization of the services provided. This is largely accomplished through a systematic review of the records of the persons served. The review assists the organization in improving the quality of services provided to each person served.

Key Areas Addressed

- Quarterly professional review
- Review current and closed records
- Items addressed in quarterly review
- Use of information to improve quality of services

Recommendations

H.4.e.

H.4.h.(1)

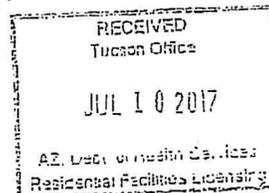
H.4.h.(2)

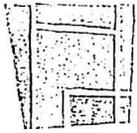
The records review process should also address whether the actual services were related to the goals and objectives in the person's plan and a transition plan and/or discharge summary was completed, when applicable.

SECTION 3. BEHAVIORAL HEALTH CORE PROGRAM STANDARDS

Description

The standards in this section address the unique characteristics of each type of core program area. Behavioral health programs are organized and designed to provide services for persons who have or who are at risk of having psychiatric disorders, harmful involvement with alcohol or other drugs, or other addictions or who have other behavioral health needs. Through a team approach, and with the active and ongoing participation of the persons served, the overall goal of each program is to improve the quality of life and the functional abilities of the persons served. Each program selected for accreditation demonstrates cultural competency and relevance. Family members and significant others are involved in the programs of the persons served as appropriate and to the extent possible.





ARIZONA DEPARTMENT
OF HEALTH SERVICES

LICENSING

Statement of Deficiencies
Survey Date - 7/5/2017

COPE COMMUNITY SERVICES, INC
535 EAST DRACHMAN
TUCSON, AZ 85705
(520) 792-3293

Facility ID: BH1469
License: BH1469

Based on Commission on Accreditation of Rehabilitation Facilities report for this behavioral health residential, submitted to the Department of Health Services, Cope Community Services, Ocotillo Residential, was found to be in compliance with all applicable Articles in the Arizona Administrative Code Title 9, Chapter 10 on July 5, 2017 for the licensure year September 1, 2016 through August 31, 2017. No on-site inspection was conducted.

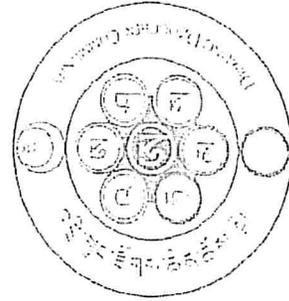
Ann Pearson, RN, BSN, MS Date: _____
State Licensing Surveyor

DRIKUNG DZOGCHEN
CENTER OF ARIZONA

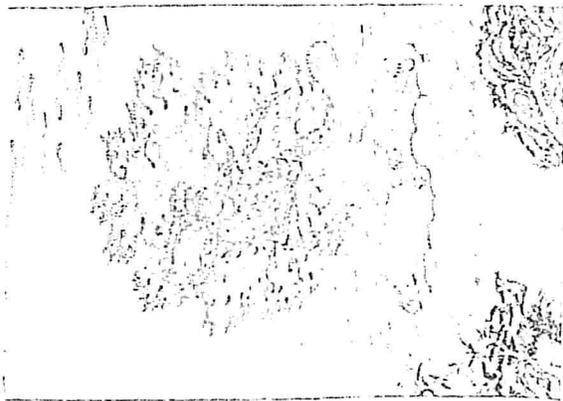
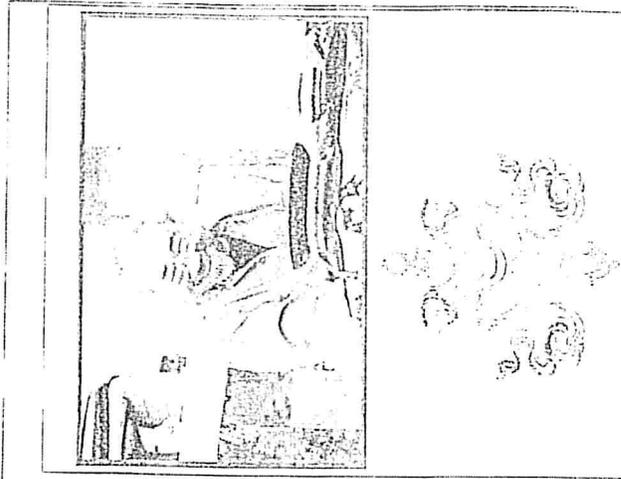


1038 E. LESTER ST.
TUCSON, AZ 85719

TEL. (520) 829-7013
MKA.RUNA@COX.NET



THE DRIKUNG DZOGCHEN CENTER OF ARIZONA WAS FOUNDED IN 2014 BY VENERABLE ONTUL RINPOCHE. GRATEFUL ACKNOWLEDGEMENT IS ALSO MADE TO CLIFF LEFTWICH FOR THE MANY BLESSINGS AND DONATIONS OVER THE YEARS THAT HAVE MADE OUR SHRINE ROOM POSSIBLE, IN WHICH OUR DEVOTED MISSION HAS BEEN AND WILL CONTINUE TO BE TO BRING BENEFIT TO ALL BEINGS. MAY ALL BEINGS HAVE HAPPINESS AND THE CAUSES OF HAPPINESS. SARVA MANGALANI.



MEDITATION SCHEDULE

Mondays at 7 pm: Dorje Doodle

Wednesdays at 7 pm: Kalden Drendak, "A Guide to the Fortunate" (specifically for protection against war, famine, and plague)

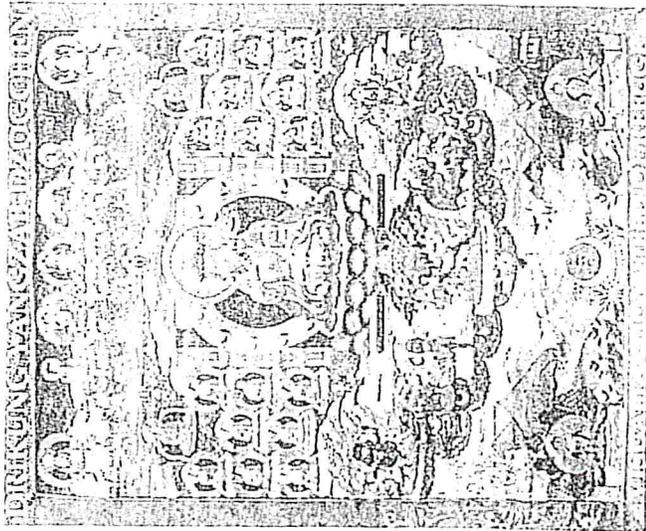
Saturdays at 10 am: Introduction to Tibetan Buddhism (call for more info)

Sundays at 11 am: Khyo Sang Chod smoke offering



The Practice of Tibetan Buddhism

What is the basis of who we are? Most go through life in search of external conditions to satisfy our need for fulfillment and happiness, and yet find such searching to be ultimately fruitless, as all things eventually decay and are lost. In this way, life is so often full of suffering because we base it on the need for gain rather than an acceptance of how things are in their natural state. In this light, the practice of Buddhism focuses on cultivating and refining our natural state of awareness, what has been and always will be the source of ultimate happiness.



"LIFE IS NOT SUFFERING: LIFE HAS THE NATURE OF SUFFERING AND IS BEAUTIFUL." - ZA CHOEJE RINPOCHE

In particular, Tibetan Vajrayana Buddhism provides very powerful methods of visualization and mantra recitation to awaken one to one's primordial mind-state, the ultimate ground of all phenomena and our awareness of it as integrally the same essence. One begins with the four thoughts that turn the mind:

First, everything is impermanent. There is nothing that has any ultimate solidity and lasting state of fixity in time and space.

Second, we have this precious human life, so brief and so rare in the firmament of all life-forms, and the only kind of embodiment that provides any real opportunity to advance ourselves toward enlightenment.

Third, there is the law of cause and effect or Karma, to which we continually find ourselves bound, always carrying us forward from one life to the next, endlessly.

Finally, there are the basic defects of "Samsara," the suffering of gradual change, the suffering of sudden change, and the suffering of suffering itself, as well as the sufferings of birth, old age, sickness, death, getting what we don't want, not getting what we do, the loss of loved ones, and the fear of meeting enemies.



In contemplating and realizing the nature of these Four Thoughts, as well as all causes of suffering, one realizes the necessity of cultivating inner happiness. Through the practices of deity and guru yoga of Vajrayana Buddhism, one transcends the ordinary perceptions that give rise to attachment and enters into a state of awareness of oneself as the essence of the deity or sambhogakaya (light-body). One enters into one's natural pure essence state of loving-kindness and compassion.

THE DRUKUNG DZOGCHEN LINEAGE

About Venerable Öntül Rinpoche

Öntül Rinpoche received Mahamudra and Dzogchen teachings from H.H. Dalai Lama, H.H. Kyatsgon Chetsang Rinpoche, H.H. Dudjom Rinpoche, H.H. Dilgo Khyentse Rinpoche, Yogi Pachu Rinpoche, Pulu Khenchen Dorje, Ven. Khama Lama Tenzin Gyatso, Kyalje Kulu Rinpoche, Khenpo Khedrup Rinpoche and others. From the yogi Chyungo Rinpoche, Öntül Rinpoche received teachings and his personal instructions on the Drigung Kagyu Five-Fold Profound Path of Mahamudra. In the years which followed, Öntül Rinpoche went to Drigung Kagyu Monasteries in Ladakh where he received most of the important empowerments, instructions and oral transmissions of the Drigung Kagyu tradition from H.H. Choje Tenzin Rinpoche.

Ven. Öntül Rinpoche holds both the unbroken lineages of the Maha Mudra and Maha Air transmission of Drigung Kagyu and Nyingma. Rinpoche is a well known Dzogchen Master who has the blessings from His Holiness Dalai Lama, H.H. 14th Galtan Karumpa and His Holiness Drigung Kyabgon Chetsang Rinpoche and has many students all over the world in generously sharing previous Dharma to those interested in learning and practicing.

About The Director

Tom Cox has been practicing the Dharma for 24 years, in which his principal teachers are Ven. Öntül Rinpoche, Ven. Khenchen Gyatso Rinpoche, H.E. Garcho Rinpoche, H.E. Jigme Lodro Rinpoche, H.H. Do Khenpa Rinpoche and Yogi Lama Gursam. He has written a number of books of poetry, including "The Lotus King," an epic re-telling of the life-story of Padmasambhava.





CITY OF
TUCSON

PLANNING AND
DEVELOPMENT
SERVICES
DEPARTMENT

ZONING
ADMINISTRATION
DIVISION

7/22/2016

Samuel Capin
ALFA Delta Foundation
2050 N. Smokey Lane
Nogales AZ 85621

Subject: Medical Marijuana Authorization Letter
5751 E. Speedway Blvd
Parcel ID No. 121-06-4070
CHAA: 109 Zoning: C-2 Activity #: T16SA00313

Dear Mr. Capin:

Planning and Development Services Department (PDS) has reviewed the materials provided with the application for a proposed Medical Marijuana Dispensary Location at 5751 E. Speedway Blvd as regulated by City of Tucson Ordinance No. 10850, 11199, and 11346. Based on the information you have provided the subject site is in general compliance with Ordinance No. 10850, 11199, and 11346, subject to the following condition:

- A survey showing that the proposed dispensary location meets the required 1000' setback to the church properties located at 5901 E. 2nd Street and 1212 N. Sahuara Avenue. This survey shall be done by a registered land surveyor.

This letter will provide authorization for proceeding with all required permits necessary to comply with City regulations and will vest the subject site as a Medical Marijuana Dispensary Location for City of Tucson purposes for one (1) year from the date of this letter. The subject site will be considered to be fully vested upon issuance of an Arizona Department of Health Services (ADHS) Certification and issuance of applicable City of Tucson building permits.

Zoning compliance is specifically contingent upon ADHS approval of your application. The City of Tucson is aware of other applications for zoning approval within the subject CHAA. Prior approval of any Medical Marijuana dispensary(ies), by ADHS, whose location would be within 2000 feet of your proposed dispensary, or which would result in no further approval of dispensaries within the CHAA, pursuant to ADHS regulations, would render this approval null and void.

NOTICE: The information provided herein is solely related to compliance with the City of Tucson land use regulations. Nothing herein is intended to express any opinion regarding compliance with federal or state laws or any lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized agency.

Sincerely,

Carolyn Laurie
Principal Planner
City of Tucson - Planning and Development Services Department

C: Piroshka Glinsky, City Attorney's Office

☰ **worship**

- Desert View Church of God**
1001 N. University Ave. Phoenix, AZ 85024
- Drikung Dzogchen Center Of Arizona**
1001 N. University Ave. Phoenix, AZ 85024
- Mt Calvary Missionary Baptist**
1001 N. University Ave. Phoenix, AZ 85024
- Bahai Information Center**
1001 N. University Ave. Phoenix, AZ 85024
- Centro Familiar Getsemari**
1001 N. University Ave. Phoenix, AZ 85024
- Rob's Hideaway**
1001 N. University Ave. Phoenix, AZ 85024

