

BOARD of SUPERVISORS



City Hall
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MEMORANDUM

TO: Katy Tang, Director
Small Business Commission, City Hall, Room 448
FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee
DATE: September 22, 2023
SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 230988

Ordinance amending the Planning Code to require a minimum distance of 600 feet between a Cannabis Retail Use and daycare centers, exempt pending applications from that distance requirement, and establish an 18-month period of discontinuance of a Cannabis Retail Use as abandonment of the business, preventing its restoration except as a new Cannabis Retail Use; and affirming the Planning Department's determination under the California Environmental Quality Act, making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

___ No Comment

___ Recommendation Attached

Chairperson, Small Business Commission

cc: Kerry Birnbach

1 [Planning Code - Cannabis Retail Uses]

2

3 **Ordinance amending the Planning Code to require a minimum distance of 600 feet**
 4 **between a Cannabis Retail Use and daycare centers, exempt pending applications from**
 5 **that distance requirement, and establish an 18-month period of discontinuance of a**
 6 **Cannabis Retail Use as abandonment of the business, preventing its restoration except**
 7 **as a new Cannabis Retail Use; and affirming the Planning Department’s determination**
 8 **under the California Environmental Quality Act, making findings of consistency with**
 9 **the General Plan, and the eight priority policies of Planning Code, Section 101.1, and**
 10 **making findings of public necessity, convenience, and welfare pursuant to Planning**
 11 **Code, Section 302.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 13 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 14 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 15 **Board amendment additions** are in double-underlined Arial font.
 16 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 17 **Asterisks (* * * *)** indicate the omission of unchanged Code
 18 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18

19 Section 1. Environmental and Land Use Findings.

20 (a) The Planning Department has determined that the actions contemplated in this
 21 ordinance comply with the California Environmental Quality Act (California Public Resources
 22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
 23 Supervisors in File No. _____ and is incorporated herein by reference. The Board
 24 affirms this determination.

25

1 (b) On _____, the Planning Commission, in Resolution No. _____,
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
5 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
7 amendments will serve the public necessity, convenience, and welfare for the reasons set
8 forth in Planning Commission Resolution No. _____, and the Board incorporates such
9 reasons herein by reference. A copy of said resolution is on file with the Clerk of the Board of
10 Supervisors in File No. _____.

11
12 Section 2. Article 2 of the Planning Code is hereby amended by revising Section
13 202.2, to read as follows:

14 **SEC. 202.2. LOCATION AND OPERATING CONDITIONS.**

15 (a) **Retail Sales and Service Uses.** The Retail Sales and Service Uses listed below
16 shall be subject to the corresponding conditions:

17 * * * *

18 (5) **Cannabis Retail.** A Cannabis Retail establishment must meet all of the
19 following conditions:

20 (A) A Cannabis Retail establishment must apply for a permit from the
21 Office of Cannabis pursuant to Article 16 of the Police Code prior to submitting an application
22 to the Planning Department.

23 (B) *The following locational restrictions apply:*

24 (i) The parcel containing the Cannabis Retail Use shall not be
25 located within a 600-foot radius of a parcel containing an existing School, public or private,

1 ~~If~~ ~~unless~~ a State licensing authority ~~requires~~ ~~specifies~~ a different radius, ~~then~~ ~~in which case~~ that
2 different radius shall apply.

3 (ii) The parcel containing the Cannabis Retail Use shall not be located
4 within a 600-foot radius of a parcel containing an existing Daycare Center, as defined in California
5 Business and Professions Code Section 26001, as amended from time to time. This radius shall not
6 apply to a Cannabis Retail establishment which submitted an application to the Office of Cannabis
7 pursuant to Article 16 of the Police Code prior to the effective date of the ordinance in Board File No.
8 _____ , amending this subsection (a)(5). If a State licensing authority requires a different radius,
9 then that different radius shall apply.

10 (iii) ~~In addition,~~ The parcel containing the Cannabis Retail Use
11 shall not be located within a 600-foot radius of a parcel for which a valid permit from the City's
12 Office of Cannabis for a Cannabis Retailer or a Medicinal Cannabis Retailer has been issued,
13 except that a Cannabis Retail Use may be located in the same place of business as one or
14 more other establishments holding valid permits from the City's Office of Cannabis to operate
15 as Cannabis Retailers or Medicinal Cannabis Retailers, where the place of business contains
16 a minimum of 350 square feet per Cannabis Retail or Medical Cannabis Dispensary Use,
17 provided that such locations are permitted by state law.

18 (iv) There shall be no minimum radius from a Cannabis Retail Use
19 to an existing ~~day care center or~~ youth center. ~~If~~ ~~unless~~ a State licensing authority ~~requires~~ ~~specifies~~
20 a minimum radius, ~~then~~ ~~in which case~~ that minimum radius shall apply.

21 (C) Cannabis may be consumed or smoked on site pursuant to
22 authorization by the Department of Public Health as applicable.

23 (D) A Cannabis Retail Use which is discontinued for a period of 18 months, or
24 otherwise abandoned, shall not be restored, except as may be permitted or authorized as a new
25 Cannabis Retail Use.

1 * * * *

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3 Section 3. Effective Date. This ordinance shall become effective 30 days after
4 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
5 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
6 of Supervisors overrides the Mayor’s veto of the ordinance.

7
8 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
9 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
10 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
11 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
12 additions, and Board amendment deletions in accordance with the “Note” that appears under
13 the official title of the ordinance.

14
15 APPROVED AS TO FORM:
16 DAVID CHIU, City Attorney

17 By: /s/ HEATHER L. GOODMAN
18 HEATHER L. GOODMAN
19 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Cannabis Retail Uses]

Ordinance amending the Planning Code to require a minimum distance of 600 feet between a Cannabis Retail Use and daycare centers, exempt pending applications from that distance requirement, and establish an 18-month period of discontinuance of a Cannabis Retail Use as abandonment of the business, preventing its restoration except as a new Cannabis Retail Use; and affirming the Planning Department’s determination under the California Environmental Quality Act, making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1, and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302

Existing Law

Existing state law provides that commercial cannabis uses must be located at least 600 feet away from existing kindergarten through twelfth grade (“K-12”) schools, daycare centers, and youth centers, unless the California Department of Cannabis or a local jurisdiction specifies a different radius. Planning Code Section 202.2 specifies that Cannabis Retail Uses cannot be located within 600 feet of a K-12 school, another Cannabis Retail Use, or a Medical Cannabis Dispensary. There is no minimum distance between a daycare center or youth center and a Cannabis Retail Use under Planning Code Section 202.2.

State law includes a specific definition for “daycare center” that includes licensed daycare centers but not family daycare homes. The Planning Code includes a definition for “child care center” that is different than the state definition. One key difference is that the Planning Code definition includes small family daycare homes.

Under the Planning Code, if a Cannabis Retail business with a Conditional Use Authorization is closed for three years, the use may be deemed abandoned, which is the standard abandonment period for conditional uses in the Planning Code.

Amendments to Current Law

This ordinance would add a 600-foot required buffer between a Cannabis Retail Use and daycare centers. The new buffer would not apply to businesses that applied for a permit with the Office of Cannabis before the effective date of this ordinance.

A Cannabis Retail Use, whether conditionally authorized or otherwise permitted, would be deemed abandoned if the business is closed for 18 months.

Background Information

Commercial cannabis businesses are heavily regulated at the state level under the California Medicinal and Adult-Use Cannabis Regulation and Safety Act and California Department of Cannabis regulations. Cannabis businesses are also regulated by the City, including under the Planning Code, administered by the Planning Department and Planning Commission, and under Article 16 of the Police Code, administered by the Office of Cannabis.

This ordinance uses the definition of “daycare center” from state law to avoid confusion between the state law and City regulations concerning cannabis. Because this definition of “daycare center” excludes family daycare homes, there would be a buffer around licensed daycare centers but not around family daycare homes.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Stefani

Subject:

Planning Code - Cannabis Retail Uses

The text is listed:

Ordinance amending the Planning Code to require a minimum distance of 600 feet between a Cannabis Retail Use and daycare centers, exempt pending applications from that distance requirement, and establish an 18-month period of discontinuance of a Cannabis Retail Use as abandonment of the business, preventing its restoration except as a new Cannabis Retail Use; and affirming the Planning Department's determination under the California Environmental Quality Act, making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1, and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

Signature of Sponsoring Supervisor: /s/ Catherine Stefani