BOARD of SUPERVISORS

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November 4, 2019

File No. 190842

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On October 30, 2019, the Board of Supervisors' Budget and Finance Committee amended the below mentioned legislation:

File No. 190842

Ordinance renewing and extending a prior waiver and refund of investigation fees imposed by Building Code, Section 107A.5, for persons registered with the Office of Cannabis through December 31, 2020; amending the Health Code to extend the date beyond which temporary Medical Cannabis Dispensary Permits issued under Article 33 of the Health Code are rendered invalid, from December 31, 2019, to December 31, 2021; amending the Police Code to extend the date beyond which Temporary Cannabis Business Permits issued under Article 16 of the Police Code cannot be extended from December 31, 2019, to December 31, 2021; amending the Planning Code to extend the date by which a Grandfathered Medical Cannabis Dispensary, as defined in the Planning Code, must have received a permit to operate from the Department of Public Health to be deemed a Temporary Cannabis Sales use, as defined in the Planning Code, from December 31, 2019, to December 31, 2021; amending the Planning Code to extend the duration of a Temporary Cannabis Retail Sales Use to up to four years, to expire on January 1, 2022; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

By: Linda Wong, Assistant Clerk
Budget and Finance Committee

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

[Various Codes - Renewing and Extending Waiver and Refund of Investigation Fee - ~~One~~Two-Year Extension of Medical Cannabis Dispensary Permits and Temporary Cannabis Business Permits - ~~Two~~Three-Year Extension of Temporary Cannabis Retail Use Authorization]

Ordinance renewing and extending a prior waiver and refund of investigation fees imposed by Building Code, Section 107A.5, for persons registered with the Office of Cannabis through December 31, 2020; amending the Health Code to extend the date beyond which temporary Medical Cannabis Dispensary Permits issued under Article 33 of the Health Code are rendered invalid, from December 31, 2019, to December 31, 202~~0~~1; amending the Police Code to extend the date beyond which Temporary Cannabis Business Permits issued under Article 16 of the Police Code cannot be extended from December 31, 2019, to December 31, 202~~0~~1; amending the Planning Code to extend the date by which a Grandfathered Medical Cannabis Dispensary, as defined in the Planning Code, must have received a permit to operate from the Department of Public Health to be deemed a Temporary Cannabis Sales use, as defined in the Planning Code, from December 31, 2019, to December 31, 202~~0~~1; amending the Planning Code to extend the duration of a Temporary Cannabis Retail Sales Use to up to ~~three~~four years, to expire on January 1, 202~~1~~2; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

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

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

Section 1. Background, Findings, and Purpose.

(a) Waiver of Department of Building Inspection Investigation Fee.

(1) To ensure that the cannabis industry in San Francisco operates in a manner that promotes health and safety, and that otherwise conforms to applicable regulatory standards, the City requires potential participants in that industry to register with the Office of Cannabis to obtain a Temporary Cannabis Business Permit. Persons (as defined in Police Code Section 1602) who register with the Office of Cannabis are required to submit to inspections of the proposed Cannabis Business's premises by the Department of Building Inspection, in addition to certain other City departments, agencies, and offices.

(2) Building Code Section 107A.5 imposes an investigation fee for any work performed without a required Building Code permit ("Investigation Fee"). As described in Building Code Table 1A-K ("Penalties, Hearings, Code Enforcement Assessments"), the amount of the Investigation Fee is generally "9 times the Permit Issuance Fee plus the original permit fee."

(3) In Ordinance No. 48-18, enacted March 21, 2018, the Board of Supervisors ("Board") found that imposing the Investigation Fee on Persons registered with the Office of Cannabis would likely be perceived as unfair or punitive by applicants who have cooperated with the City's efforts to regulate the cannabis industry. Likewise, the Board found that imposing the Investigation Fee might discourage similar cooperation by such Persons in the future. Accordingly, Ordinance No. 48-18 waived the Investigation Fee as to Persons registered with the Office of Cannabis, retroactively to September 26, 2017, the date on which Ordinance No. 230-17 (the Article 16 ordinance) was introduced, and ordered a refund of Investigation Fees previously collected on or after September 26, 2017.

(4) Ordinance No. 48-18 became inoperative after December 31, 2018. Unforeseen delays, however, have hindered Persons registered with the Office of Cannabis from correcting by December 31, 2018, all preexisting Building Code violations subject to the Investigation Fee. But for these unforeseen delays, the Investigation Fee would have been waived and refunded as to such violations. Accordingly, the Board finds that the policy goals embodied in Ordinance No. 48-18 support a retroactive renewal and extension of the fee-waiver and refund provisions of Ordinance No. 48-18.

(b) Extension of Expiration Dates for Medical Cannabis Dispensary Permits and Temporary Cannabis Business Permits.

(1) Ordinance No. 230-17, enacted December 6, 2017, created Article 16 of the Police Code, establishing a comprehensive City process for regulating Cannabis Business activity, and created the Office of Cannabis to oversee the regulatory scheme. To facilitate the transfer of all regulation of Cannabis Business activity to the Office of Cannabis after a transition period, Ordinance No. 230-17 provided for the expiration, after December 31, 2019, of Medical Cannabis Dispensary permits previously issued by the Department of Public Health. To enable other cannabis businesses not holding Medical Cannabis Dispensary permits to operate during the period when the Office of Cannabis processed applications for permanent Cannabis Business Permits, Ordinance No. 230-17 also established within Article 16 a Temporary Cannabis Business Permit, with a final expiration date of December 31, 2019.

(2) Unforeseen delays have extended the length of time required by the Office of Cannabis to process applications for Cannabis Business Permits. As a result, the current expiration dates for Medical Cannabis Dispensary permits and Temporary Cannabis Business Permits will pass before many holders of these permits who have already submitted applications for permanent Cannabis Business Permits will have completed the process for obtaining such a permit from the Office of Cannabis. The Board finds that the policy goals

embodied in Ordinance No. 230-17 and Article 16 support a ~~one~~two-year extension of the expiration dates for Medical Cannabis Dispensary permits and Temporary Cannabis Business Permits from December 31, 2019, to December 31, 202~~0~~1, to allow current holders of those permits to continue lawful operation of their cannabis businesses while the Office of Cannabis completes its processing of their Cannabis Business Permit applications.

(c) Environmental and Land Use Findings.

(1) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 190842 and is incorporated herein by reference. The Board affirms this determination.

(2) On October 24, 2019, the Planning Commission, in Resolution No. 20553, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 190842, and is incorporated herein by reference.

(3) Pursuant to Planning Code Section 302, the Board finds that the Planning Code amendments in this ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 20553 and the Board incorporates such reasons herein by reference. A copy of Planning Commission Resolution No. 20553 is on file with the Clerk of the Board of Supervisors in File No. 190842.

Section 2. Renewal and Extension of Waiver of Investigation Fee; Refund of Fees Previously Collected.

(a) The Investigation Fee referenced in subsection (a) of Section 1 of this ordinance is hereby waived with respect to Persons who are currently registered with the Office of Cannabis. Accordingly, neither the Department of Building Inspection, nor any other City department, agency, or office may collect this fee from any Person who is currently registered with the Office of Cannabis.

(b) This Section 2 is retroactive to September 26, 2017. Accordingly, the Department of Building Inspection, and, if applicable, any other City department, agency, or office, shall refund any fees described in subsection (a) that have, as of the effective date of this ordinance, already been collected, including but not limited to fees collected on or between January 1, 2019, and the effective date of this ordinance.

(c) This Section 2 shall be inoperative after December 31, 2020. After that date, Persons registered with the Office of Cannabis shall again be subject to the Investigation Fee. After that date, the Department of Building Inspection, and, as applicable, other City departments, agencies, or offices, may impose the Investigation Fee on Persons registered with the Office of Cannabis for unpermitted work that occurs, or other Building Code violations that exist.

Section 3. Article 33 of the Health Code is hereby amended by revising Section 3323, to read as follows:

SEC. 3323. SUNSET PROVISION.

This Article 33 shall expire by operation of law on December 31, ~~2019~~2020~~0~~1. All permits authorizing the operation of a Medical Cannabis Dispensary issued under this Article 33 shall be rendered invalid after December 31, 2018, except for those permits issued under this Article 33 where the permit holder has applied for a Police Code Article 16 permit, which shall

be rendered invalid on December 31, ~~2019~~2020~~0~~1. Upon expiration of the Article, the City Attorney shall cause it to be removed from the Health Code.

Section 4. Article 1.7 of the Planning Code is hereby amended by revising Section 191, to read as follows:

SEC. 191. AUTHORIZATION OF TEMPORARY CANNABIS SALES USES.

(a) A Grandfathered MCD, as defined in Section 190, that receives a permit to operate as a Medical Cannabis Dispensary from the Department of Public Health before December 31, ~~2019~~*2020* shall be deemed a Temporary Cannabis Sales Use, as defined in Section 205.2. Upon expiration of the Temporary Cannabis Sales Use authorization, the land use authorization for the parcel will revert to the original authorization to operate as a Medical Cannabis Dispensary Use, unless the Planning Department or Planning Commission has issued a permanent authorization for a Cannabis Retail Use.

(b) This Section 191 shall expire by operation of law on January 1, 202~~1~~2. Upon its expiration, the City Attorney shall cause this Section 191 to be removed from the Planning Code.

Section 5. Article 2 of the Planning Code is hereby amended by revising Section 205.2 to read as follows:

SEC. 205.2. TEMPORARY USES: ONE- ~~*OR TWO*~~*TO* ~~THREE~~FOUR-YEAR LIMIT.

A temporary use may be authorized for a period not to exceed two years*, or, in the case of a Temporary Cannabis Retail Use, for a period not to exceed* ~~three~~four *years,* for any of the following uses:

* * * *

(e) Temporary Cannabis Retail Use for a period of up to ~~one~~~~three~~four years, as provided by Section 191, to be authorized no earlier than January 1, 2018 and to expire on January 1, 20~~19~~2~~1~~2. This is the only type of Temporary Use allowed for the sale of cannabis or cannabis products.

Section 6. Article 16 of the Police Code is hereby amended by revising Section 1605, to read as follows:

SEC. 1605. TRANSITION PROVISION.

* * * *

(h) **Duration.** A Temporary Cannabis Business Permit issued under this Section 1605 shall be valid for a period of 120 days and may be extended for additional 120-day periods at the discretion of the Director. Notwithstanding the prior sentence, the Director shall not issue a new temporary permit after January 1, 2019, and shall not extend the term of a Temporary Cannabis Business Permit issued to an applicant for a Cannabis Business Permit under this Article 16 past December 31, ~~2019~~2020~~0~~1.

* * * *

Section 7. Effective Date; Retroactivity.

(a) This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

(b) Upon the effective date of this ordinance, as stated in subsection (b) of Section 2, the fee waiver described in Section 2 shall be retroactive to September 26, 2017.

(c) Upon the effective date of this ordinance, Section 5 of this ordinance (amending the Planning Code to extend the maximum duration of a Temporary Cannabis Retail Sales Use from one year to ~~three~~four years, and to extend the expiration date of the Temporary Cannabis Retail Sales Use from January 1, 2019, to January 1, 202~~1~~2) shall be retroactive to January 1, 2019.

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

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
SARAH A. CROWLEY
Deputy City Attorney

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AMENDED IN COMMITTEE
10/30/2019

FILE NO. 190842

LEGISLATIVE DIGEST

[Various Codes - Renewing and Extending Waiver and Refund of Investigation Fee - Two-Year Extension of Medical Cannabis Dispensary Permits and Temporary Cannabis Business Permits - Three-Year Extension of Temporary Cannabis Retail Use Authorization]

Ordinance renewing and extending a prior waiver and refund of investigation fees imposed by Building Code, Section 107A.5, for persons registered with the Office of Cannabis through December 31, 2020; amending the Health Code to extend the date beyond which temporary Medical Cannabis Dispensary Permits issued under Article 33 of the Health Code are rendered invalid, from December 31, 2019, to December 31, 2021; amending the Police Code to extend the date beyond which Temporary Cannabis Business Permits issued under Article 16 of the Police Code cannot be extended from December 31, 2019, to December 31, 2021; amending the Planning Code to extend the date by which a Grandfathered Medical Cannabis Dispensary, as defined in the Planning Code, must have received a permit to operate from the Department of Public Health to be deemed a Temporary Cannabis Sales use, as defined in the Planning Code, from December 31, 2019, to December 31, 2021; amending the Planning Code to extend the duration of a Temporary Cannabis Retail Sales Use to up to four years, to expire on January 1, 2022; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

1. Any business or individual seeking to operate a cannabis business in San Francisco must register with the Office of Cannabis ("OOC") and apply to OOC for a Temporary Cannabis Business Permit, and as part of that process, submit to inspections of the business's premises by the Department of Building Inspection. The Building Code imposes an investigation fee for any work performed without a required Building Code permit ("Investigation Fee"). Ordinance No. 48-18 retroactively waived the Investigation Fee as to persons registered with the OOC, and ordered a refund of Investigation Fees previously collected, but that ordinance became inoperative after December 31, 2018.

2. Medical Cannabis Dispensary permits (issued under Article 33 of the Health Code) and Temporary Cannabis Business Permits (issued under Article 16 of the Police Code) will no longer be effective after December 31, 2019.

3. The Temporary Cannabis Retail Sales Use (authorized by Section 205.2 of the Planning Code) are no longer effective as of January 1, 2019.

Amendments to Current Law

1. This ordinance would waive any Investigation Fee with respect to persons now registered with the OOC, retroactive to September 26, 2017, and would require reimbursement of Investigation Fees that have already been collected. This section of the ordinance would be inoperative after December 31, 2020, so that after that date, persons registered with the OOC will again be subject to the Investigation Fee.

2. This ordinance would extend the date beyond which Medical Cannabis Dispensary Permits and Temporary Cannabis Business Permits can no longer be effective to December 31, 2021.

3. This ordinance would extend the maximum duration of a Temporary Cannabis Retail Sales Use from one year to four years, and would extend the expiration date of the Temporary Cannabis Retail Sales Use from January 1, 2019, to January 1, 2022.

Background Information

1. The City enacted Ordinance No. 48-18 in March 2018 to incentivize participants in the cannabis industry to cooperate with the OOC's cannabis permitting scheme. Since the enactment of that ordinance, unforeseen delays have hindered persons registered with the OOC from correcting all preexisting Building Code violations subject to the Investigation Fee before the sunsetting of Ordinance No. 48-18. But for these unforeseen delays, the Investigation Fee would have been waived and refunded as to such violations under Ordinance No. 48-18. This ordinance would ensure that all persons registered with the OOC have an equal opportunity to remedy Building Code violations while avoiding payment of an Investigation Fee.

2. The City enacted Ordinance No. 230-17 (effective January 2018) to comprehensively regulate Cannabis Business activity in San Francisco under Article 16 of the Police Code and under the oversight of the OOC. It provided for a transition to Article 16 regulation by imposing a sunset date of December 31, 2019, for Medical Cannabis Dispensary permits issued under Article 33 of the Health Code, and by establishing Temporary Cannabis Business Permits to be issued by the OOC, not to be effective beyond December 31, 2019. Unforeseen delays have extended the length of time required by the OOC to process applications for Cannabis Business Permits, necessitating a one-year extension of the sunset dates for both Medical Cannabis Dispensary permits and Temporary Cannabis Business Permits, extending the maximum duration of a Temporary Cannabis Retail Sales Use from one year to three years, and extending the expiration date of the Temporary Cannabis Retail Sales Use from January 1, 2019, to January 1, 2021.

3. The original version of this ordinance, introduced on July 30, 2019, extended the final expiration dates for Medical Cannabis Dispensary Permits and Temporary Cannabis Business Permits from December 31, 2019, to December 31, 2020, and did not include the provisions in the current version of the ordinance amending the Planning Code to extend the maximum

duration of a Temporary Cannabis Retail Sales Use from one year to four years, and to extend the expiration date of the Temporary Cannabis Retail Sales Use from January 1, 2019, to January 1, 2022. A substitute ordinance introduced on October 24, 2019, added amendments to the Planning Code to extend the duration of a Temporary Cannabis Retail Sales Use from one year to three years, and to extend the expiration date of the Temporary Cannabis Retail Sales Use from January 1, 2019, to January 1, 2021. The ordinance was amended in committee on October 30, 2019, following the recommendations of the Planning Commission, to further extend the final expiration dates for Medical Cannabis Dispensary Permits and Temporary Cannabis Business Permits to December 31, 2021, to further extend the maximum duration of a Temporary Cannabis Retail Sales Use to four years, and to further extend the expiration date of the Temporary Cannabis Retail Sales Use to January 1, 2022.

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