SAN FRANCISCO
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April 4, 2014

Ms. Angela Calvillo, Clerk
Honorable Supervisor Yee
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: **Transmittal of Planning Department Case Number 2014.0306T**
MCD Controls within the Ocean Avenue NCT District
Board File No. 140097
Planning Commission Recommendation: Approval

Dear Ms. Calvillo and Supervisor Yee,

On April 3, 2014, the Planning Commission conducted a duly noticed public hearing at regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Yee, which would require Conditional Use authorization for an MCD to locate within 500 feet of an existing MCD in the Ocean Avenue NCT District. The Commission voted to recommend that Board of Supervisors **approve** the proposed Ordinance.

The proposed Ordinance was determined not to be a project per State CEQA Guidelines, Section 15060(c) and 15378.

Please find the attached documents relating to the actions of the Commissions. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

Aaron D Starr
Acting Manager of Legislative Affairs

cc:
Victoria Wong, Deputy City Attorney
Jen Low, Aide to Supervisor Yee
Andrea Ausberry, Office of the Clerk of the Board

Attachments
Planning Commission Resolution 19115
Planning Commission Executive Summary

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Planning Commission Resolution No. 19115

HEARING DATE APRIL 3, 2014

Project Name:	**MCD Controls within the Ocean Avenue NCT**
Case Number:	2014.0306T [Board File No. 140097]
Initiated by:	Supervisor Yee/ Introduced February 6, 2014
Staff Contact:	Aaron Starr, Legislative Affairs aaron.starr@sfgov.org, 415-558-6362
Reviewed by:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation:	**Recommend Approval**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE AMENDING THE PLANNING CODE TO REQUIRE THAT, IN THE OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT, A MEDICAL CANNABIS DISPENSARY (MCD) MAY BE ALLOWED WITHIN 500 FEET OF ANOTHER MCD AS A CONDITIONAL USE, PROVIDED THAT NO OTHER CITYWIDE REGULATION GOVERNING THE PROXIMITY OF MCDS TO EACH OTHER BECOMES LAW; AFFIRMING THE PLANNING DEPARTMENT'S CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION; AND MAKING PLANNING CODE, SECTION 302, FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

WHEREAS, on February 6, 2014, Supervisor Yee introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 140097, which would amend the Planning Code to require that, in the Ocean Avenue Neighborhood Commercial Transit District, a Medical Cannabis Dispensary (hereinafter MCD) may be allowed within 500 feet of another MCD as a conditional use, provided that no other Citywide regulation governing the proximity of MCDs to each other becomes law; and

WHEREAS, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on April 3, 2014; and

WHEREAS, The proposed Ordinance has been determined not to be a project under the California Environmental Quality Act Section 15060(c) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance.

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve** the proposed ordinance.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission would prefer that any changes to the City's MCD regulations be held off until the MCD Report, adopted by the Commission on March 27, is received by the Board, and any further restricts on the location of MCDs be tied to an expanded Green Zone. However, Supervisor Yee has expressed a need to address an immediate concern in his district, and because this Ordinance would be superseded if and when City-wide regulations governing the proximity of MCDs are adopted and this type of buffer could potentially work city-wide because of its flexibility, the Commission finds that this is a workable solution.

2. The Commission finds that this type of buffer, which the Commission supported as a compromise measure in the Excelsior Outer Mission NCD, is a less restrictive way to avoid MCD clustering than banning them within 500 feet of each other. It does set a higher threshold for approval, but if a proposed MCD is found to be necessary or desirable, the Commission can still approve the application.

3. **General Plan Compliance.** The proposed amendments to the Planning Code are consistent with the following Objectives and Policies of the General Plan.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 6
MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1
Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The proposed Ordinance will help maintain a diversity of uses, including neighborhood serving uses, in the Ocean Avenue NCT by moderating the number of MCDs that located within the district.

4. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

    1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would help ensure that existing neighborhood-serving retail uses are preserved by moderating the number of MCDs that located within the district.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

   The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

   The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

   The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

   The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

   The proposed Ordinance would not have an impact on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

   The proposed Ordinance would not have an impact on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

   The proposed Ordinance would not have an impact on the City's parks and open space access to sunlight and vistas.

8. Planning Code Section 302 Findings. The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on April 3, 2014.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Antonini, Borden, Fong, Hillis, Moore, Sugaya, and Wu

NOES: none

ABSENT: none

ADOPTED: April 3, 2014

SAN FRANCISCO
PLANNING DEPARTMENT

Executive Summary
Planning Code Text Change
HEARING DATE: APRIL 3, 2014

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Date:	March 27, 2014
Project Name:	**MCD Controls within the Ocean Avenue NCT**
Case Number:	2014.0306T [Board File No. 140097]
Initiated by:	Supervisor Norman Yee/ Introduced February 4, 2014
Staff Contact:	Aaron Starr, Legislative Affairs aaron.starr@sfgov.org, 415-558-6362
Reviewed by:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation:	**Recommend Approval**

PLANNING CODE AMENDMENT

Ordinance amending the Planning Code to require that, in the Ocean Avenue Neighborhood Commercial Transit (hereinafter NCT) District, a Medical Cannabis Dispensary (hereinafter after MCD) may be allowed within 500 feet of another MCD as a conditional use (hereinafter CU), provided that no other Citywide regulation governing the proximity of MCDs to each other becomes law.

The Way It Is Now:

MCD applications generally require a mandatory Discretionary Review (hereinafter DR) hearing before the Planning Commission. In the West Portal Neighborhood Commercial District (hereinafter NCD), a CU is required to establish an MCD regardless of its proximity to another MCD, and in the Excelsior Outer Mission NCD a CU is required to establish an MCD within 500 feet of an existing MCD.

The Way It Would Be:

MCDs in the Ocean Avenue NCT may only locate within 500 feet of an existing MCD with CU approval. MCDs not seeking to locate within 500 feet of an existing MCD are still subject to the existing mandatory DR hearing requirement. This Ordinance includes a provision that directs the removal of these controls if the City adopts City-wide anti-clustering controls for MCDs.

ISSUES AND CONSIDERATIONS

- There are currently two MCDs on Ocean Avenue, the 1944 Ocean Collective located at 1944 Ocean Ave. and Waterfall Wellness located at 1545 Ocean Ave. A third MCD is proposed for 1423 Ocean Ave., Case #2013.1340D, which will be considered by the Commission within four to six weeks[1]. The proposed location of that MCD is within 500 feet of Waterfall Wellness.

[1] A date for this hearing has not been set yet, however the assigned planner anticipates that it will be heard within four to six weeks.

Additionally, Waterfall Wellness is going through a change of ownership and will have a hearing before the Director of the Department of Public Health in about two months[2].

- The Department recently presented a 27-page report, titled "Evaluating the Planning Code's Medical Cannabis Dispensaries Locational Requirements," on the locational requirements for MCDs that includes several recommended changes to the City's MCD controls. One of the recommendations was as follows:

  Recommendation 4: In the event that the existing Green Zone is expanded, it would be appropriate to institute a buffer around MCDs on the ground floor in Neighborhood Commercial Districts.

  The MCD community was mixed on the issue of buffering. Some MCD owners voiced support for a buffer around MCDs to prevent overconcentration, while other MCD advocates strongly opposed it. Most neighbors on the other hand were strongly in favor of a buffer. The Department included it as a recommendation in this report primarily because it addresses the issue of MCDs exclusivity (see discussion on page 16 above). MCDs are a peculiar use; they've been compared to pharmacies because they dispense medication and to bars, another use that sells an intoxicating and highly regulated product. In reality, neither of those comparisons captures the unique nature of MCDs. MCDs are private clubs not open to the public, and having too many of them on a commercial street could potentially deaden the street for non-patients. Up until now, the Department was cautious about instituting buffers around MCDs because the Green Zone was so limited. However, if the Green Zone is sufficiently expanded, buffering should also be considered. Conversely, the Department recommends avoiding further locational barriers if other steps are not take to expand the Green Zone. Currently the Excelsior Outer Mission NCD requires a CU for MCDs that are proposing to locate within 500 feet of an existing MCD and a similar provision is being proposed for the Ocean Avenue NCT. Such a proposal could be adopted city-wide.

  As of the drafting of this report, the Commission's response to the above recommendation is unknown. At the time of this hearing on the Ocean Avenue ordinance, however, there will have been no opportunity for the legislative changes necessary to expand the Green Zone; therefore the Green Zone will be the same. This proposal would add a change in review requirements—a CU instead of a DR—not a reduction of the Green Zone.

- Uses subjected to CU approval are <u>not permitted</u> unless the Commission finds that the use is necessary or desirable, and compatible with the community. Uses that require a DR hearing are <u>permitted</u> unless the Commission finds that there are exceptional or extraordinary circumstances that would compel the Commission to deny or modify the project. A CU must receive four votes to be approved, if it doesn't the application is deemed disapproved. A DR needs four votes for the Commission to modify or deny the project. If a motion to take DR doesn't receive four votes, the application is automatically approved. A CU is appealable to the Board of Supervisors, while a use permit subject to a DR hearing is appealable to the Board of Appeals.

- MCDs are permitted in what the Planning Department refers to as the "Green Zone", which is based on the land use restrictions outlined in City's 2005 Medical Cannabis Act (hereinafter MCA). The Green Zone map shows properties that are within the permissible zoning districts and not located within 1000 feet of a school. The map doesn't show the properties that are

[2] According to the Department of Public Health, this hearing is being postponed until the DR hearing for 1423 Ocean has been heard by the Planning Commission.

outside of the 1000 foot buffer around recreation buildings that primarily cater to people under the age of 18, or properties that contain drug treatment centers, both of which are restrictions outlined in the MCA. It also doesn't show which properties have suitable commercial spaces and willing landlords, or which neighborhoods are more receptive to MCDs. When these factors are included, the limited pool of potential MCD sites shrinks even further.

- The proposed Ordinance includes the following findings for the Commission to use when evaluating MCD applications subject to CU approval:

  (b) The Planning Commission shall approve the application and authorize the conditional use if, in addition to the application's satisfying the requirements of Planning Code Section 303, the facts presented establish that:

  (1) the MCD will bring measurable community benefits and enhancements to the Ocean Avenue NCT District;

  (2) the MCD has prepared a parking and transportation management plan sufficient to address the anticipated impact of patients visiting the MCD; and

  (3) the MCD has demonstrated a commitment to maintaining public safety by actively engaging with the community prior to applying for the Conditional Use, including adequate security measures in its operation of the business, and designating a community liaison to deal effectively with current and future neighborhood concerns.

  (c) In addition to the above criteria, in regard to a Conditional Use authorization application, the Planning Commission shall consider the existing concentrations of MCDs within the District.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors

RECOMMENDATION

The Department recommends that the Commission recommend ***approval*** of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The Department would prefer that any changes to the City's MCD regulations be held off until the MCD Report is received by the Board, and any further restrictions on the location of MCDs be tied to an expanded Green Zone. However, Supervisor Yee has expressed a need to address an immediate concern in his district, and because this Ordinance would be superseded if and when City-wide regulations governing the proximity of MCDs are adopted, and this type of buffer could potentially work city-wide because of its flexibility, the Department finds that this is a workable solution. Further, the Department finds that this type of buffer, which the Commission supported as a compromise measure in the Excelsior Outer Mission NCD, is a less restrictive way to avoid MCD clustering than banning them within 500 feet of each other. It does set a higher threshold for approval, but if a proposed MCD is found to be necessary or desirable, the Commission can still approve the application. A complete ban would preclude a proposed MCD from even being considered by the Commission.

ENVIRONMENTAL REVIEW

The proposed Ordinance was determined not to be a project under the California Environmental Quality Act Sections 15060(c) and 15378.

PUBLIC COMMENT

As of the date of this report, the Planning Department received an email from Axis of Love expressing that the organization was against this proposal.

RECOMMENDATION:	**Recommendation of Approval**

Attachments:

Exhibit A: Draft Planning Commission Resolution
Exhibit B: Board of Supervisors File No. 140097
Exhibit C: Map of the Ocean Avenue NCD w/ existing MCDs