

In an effort to clear up the confusion surrounding the project at 2139 Taraval and the Building Department's contention that an MCD needs to submit to a Conditional Use hearing as opposed to a Discretionary Review, we submit the following.

AMMENDED IN BOARD

2/3/15

File NO. 141253

Ordinance 22-15

Sec. 102. DEFINITIONS (page 42 line 16)

Medical Cannabis Dispensary. *An Institutional Healthcare Use defined in Section 3301(f) of the San Francisco Health Code, which is permitted only if it meets the conditions listed in section 202.2(e)*

3301(f) "Medical cannabis dispensary" means a cooperative or collective of ten or more qualified patients or primary caregivers that facilitates the lawful cultivation and distribution of cannabis for medical purposes and operates not for profit, consistent with California Health & Safety Code Sections 11362.5 et seq., with the Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use issued by the California Attorney General in August 2008, and with this ordinance. A cooperative must be organized and registered as a Consumer Cooperative Corporation under the Corporations Code, Sections 12300, et seq., or a Nonprofit Cooperative Association under the Food and Agricultural Code, Sections 54002, et seq. A collective may be organized as a corporation, partnership or other legal entity under state law but must be jointly owned and operated by its members. As set forth in Section 3308(q), a medical cannabis dispensary may purchase or obtain cannabis only from members of the cooperative or collective and may sell or distribute cannabis only to members of the cooperative or collective. As set forth in Section 3308(c), a medical cannabis dispensary may operate only on a not for profit basis and pay only reasonable compensation to itself and its members and pay only reasonable out-of-pocket expenses.

202.2(e) ***Institutional Uses.*** *The institutional Uses listed below shall be subject to the corresponding conditions:*

(I) Medical Cannabis Dispensaries. *Medical Cannabis Dispensaries are required to meet all of the following conditions.*

(H) After this 30 day period, the Planning Commission shall schedule a hearing to consider whether to exercise its discretionary review powers over the building permit application for a Medical Cannabis Dispensary.

This is all very clear.

The Bay Area Compassion Health center has complied with every condition put forth.

Seven days before the Discretionary Review was to be held The Planning Department called the architect for the Project and informed him that the DR was being taken off the calendar and must submit to a Conditional Use hearing. The reason given was:

“Section 741.13 states "Active Frontage Required § 145.1; Generally Active Use Required § 145.4(c), unless exempted by Conditional Use." MCDs are not active uses per Section 145.4(c). As such, a CU is required.”

Sec. 145.4 (c) Definitions.

"Active commercial uses" shall include those uses specifically identified below in Table 145.4, and:

- (1) Shall not include uses oriented to motor vehicles except for automobile sale or rental where curb-cuts, garage doors, or loading access are not utilized or proposed, and such sales or rental activity is entirely within an enclosed building and does not encroach on surrounding sidewalks or open spaces;
- (2) Shall include public uses except for utility installations; and
- (3) Shall not include residential care uses as defined in Sections 790.50, 790.51, and 890.50.

This language states “shall include”. There are very specific exclusions. A Medical Cannabis Dispensary complies with every definition of “active use”.

Table 145.4

<i>Reference for Neighborhood Commercial Districts</i>	<i>Reference for Mixed Use Districts</i>	<i>Use</i>
<u>790.4</u>	<u>890.4</u>	Amusement Game Arcade
<u>790.6</u>	<u>890.6</u>	Animal Hospital
<u>790.12</u>	<u>890.13</u>	Automobile Sale or Rental (see qualification, above)
<u>790.22</u>	<u>790.22</u>	Bar
N/A	<u>890.23</u>	Business Goods and Equipment Sales and Repair Service
<u>790.34</u>	<u>790.34</u>	Eating and Drinking Use
<u>790.38</u>	<u>890.37</u>	Entertainment, Other

N/A	890.39	Gift Store-Tourist Oriented
790.50, 790.51	890.50	Institutions, Other (see qualification, above)
N/A	890.51	Jewelry Store
790.68	890.68	Neighborhood-Serving Business
N/A	890.69	Non-Auto Vehicle Sales or Rental (see qualification, above)
790.70	890.71	Outdoor Activity Area
790.80	890.80	Public Use (see qualification, above)
790.90	790.90	Limited-Restaurant
790.91	790.91	Restaurant
790.102	890.102	Sales and Service, Other Retail
790.104	890.104	Sales and Services, Retail
790.110	890.110	Service, Financial
790.112	890.112	Service, Limited Financial
790.114	890.114	Service, Medical
790.116	890.116	Service, Personal
790.122	790.122	Take-Out Food
790.124	890.124	Trade Shop
790.140	890.140	Walk-Up Facility

This table clearly includes “Institutions Other”. A Medical Cannabis Dispensary is (by Definition) an “Institutional Healthcare Use”.

SEC. 790.50. INSTITUTIONS, OTHER LARGE.

A public or private, nonprofit or profit-making use, excluding hospitals and medical centers, which provides services to the community and meets the applicable provisions of Section 304.5 of this Code concerning institutional master plans, including but not limited to the following:

(a) **Assembly and Social Service.** A use which provides social, fraternal, counseling or recreational gathering services to the community. It includes a private noncommercial club house, lodge, meeting hall, recreation building, or community facility not publicly owned. It also includes an unenclosed recreation area.

(b) **Child Care.** A use which provides less than 24-hour care for 13 or more children by licensed personnel and which meets the requirements of the State of California and other authorities.

(c) **Educational Service.** A use certified by the Western Association of Schools and Colleges which provides educational services, such as a school, college or university. It may include, on the same premises, employee or student dormitories and other housing operated by and affiliated with the institution.

(d) **Religious Facility.** A use which provides religious services to the community, such as a church, temple or synagogue. It may include on the same lot, the housing of persons who engage in supportive activity for the institution.

(e) **Residential Care.** A medical use which provides lodging, board, and care 24 hours or more to seven or more persons in need of specialized aid by personnel licensed by the State of California and which provides no outpatient services; including but not limited to, a board and care home, rest home, or home for the treatment of the addictive, contagious, or other diseases or physiological disorders.

(Added by Ord. 69-87, App. 3/13/87; amended by Ord. 445-87, App. 11/12/87; Ord. 36-08, File No. 080157, App. 3/17/2008; Ord. 66-11, File No. 101537, App. 4/20/2011, Eff. 5/20/2011)

AMENDMENT HISTORY

Division (a) amended; Ord. 66-11, Eff. 5/20/2011.

SEC. 790.51. INSTITUTIONS, OTHER SMALL.

A public or private, nonprofit or profit-making use which provides services to the community and limited to the following:

(a) **Child Care.** A use which provides less than 24-hour care for 12 or fewer children by licensed personnel and which meets the requirements of the State of California and other authorities.

(b) **Residential Care.** A medical use which provides lodging, board and care 24 hours or more to six or fewer persons in need of specialized aid by personnel licensed by the State of California and which provides no outpatient services, including but not limited to, a board and care home, rest home, or home for the treatment of the addictive, contagious, or other diseases or physiological disorders.

Note that the SEC.790.50 states “including but not limited to the following”.

In EVERY section of the code, including:

- **Section 217. INSTITUTIONS (k)**
- **Section 790.141. Medical Cannabis Dispensary**
- **Section 741.1 Taraval Street Neighborhood Commercial District Zoning Control Table**
- **SEC. 209. 3. INSTITUTIONAL USES. (k)**

Medical Cannabis Dispensaries are CLEARLY mentioned as permitted with a mandatory Discretionary Review by the Planning Commission.

We do not understand the Planning Department’s position and wonder why the Project was put on “indefinite continuance” by the Planning Commission.

There has been loud opposition by a faction representing the Sunset District. Their opposition is largely based on fear, misconceptions, and preconceived ideas. To the people that will use it, this project is a benefit to the Sunset neighborhood and an asset to the Community of San Francisco.

A Medical Cannabis Dispensary is an Institutional Healthcare Use.

Adopted November 8, 1988

I. DECLARATION OF POLICY

The people of the City and County of San Francisco find and declare that this community has a vital public interest in available healthcare for all members of the community.

In recognition of that interest, the City and County voters adopted an amendment to the Charter in 1985 creating a Health Commission, charged among other duties with "(managing and controlling)matters pertaining to the preservation, promotion and protection of the lives, health and mental health of the inhabitants of the city and county(Section 3.697)

The people further find and declare that elimination or curtailment of health services by private hospitals and clinics in this community may have a detrimental effect on the health and well-being of this community.

SEC. 790.141. MEDICAL CANNABIS DISPENSARY.

Medical cannabis dispensary ("MCD") as defined by Section 3301(f) of the San Francisco Health Code.

(a) **Requirements.** MCDs must meet all of the following requirements:

(1) The parcel containing the MCD cannot be located within 1,000 feet from a parcel containing:

(A) a public or private elementary or secondary school; or

(B) a community facility and/or a recreation center that primarily serves persons under 18 years of age;

(2) The MCD is not located on the same parcel as a facility providing substance abuse services that is licensed or certified by the State of California or funded by the Department of Public Health;

(3) No alcohol is sold or distributed on the premises for on or off-site consumption;

(4) If medical cannabis is smoked on the premises, the dispensary shall provide adequate ventilation within the structure such that the doors and windows are not left open for such purposes, resulting in odor emission from the premises;

(5) In addition to these requirements, an MCD must meet all of the requirements in Article 33 of the San Francisco Health Code.

(b) **Application and Referral Process.** The Department of Public Health is the lead agency for regulating MCDs. Final City permits are issued by the Department of Public Health. No dispensary may open without final authorization from the Department of Public Health. The Planning Department will review an application for a Medical Cannabis Dispensary only upon receipt of

(1) a valid referral from the Department of Public Health pursuant to Health Code Section 3304 and 3305,

(2) supplemental application materials, if any, designated by the Planning Department, and

(3) a building permit application.

(c) **Notice.** Once the Department has determined that the application is complete, a 30-day notice of application shall be mailed to owners and occupants within a 300 foot radius of the subject property. Notice shall be posted on the project site for no less than 30 days.

(d) **Hearing.** A Mandatory Discretionary Review hearing will be scheduled at the Planning Commission, which may choose to exercise its discretionary review powers and disapprove, modify, or approve the dispensary.

(e) **Signage.** Signage for the medical cannabis dispensary shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated. Any wall sign, or the identifying sign if the medical cannabis dispensary has no exterior wall sign, shall include the following language: "Only individuals with legally recognized Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis may obtain cannabis from medical cannabis dispensaries." The required text shall be a minimum of two inches in height.

(f) **Abandonment.** If an MCD closes for a duration longer than 18 months or if the MCD's license is revoked by DPH pursuant to Health Code Section 3315, the MCD will be considered abandoned and any Planning Commission authorization for the parcel shall be null and void.

(g) **Permit Statement.** Any permit issued for a medical cannabis dispensary shall contain the following statement in bold-face type: "Issuance of this permit by the City and County of San Francisco is not intended to and does not authorize the violation of State or Federal law."

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; amended by Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070677, App. 10/2/2007; Ord. 90-08, File No. 080232, App. 5/21/2008; Ord. 140-11, File No. 110482, App. 7/5/2011, Eff. 8/4/2011)

AMENDMENT HISTORY

Section amended in its entirety; Ord. 140-11, Eff. 8/4/2011.

Conditional Use has never been a requirement for a Medical Cannabis Dispensary.

It was defined as an Active Use in 2011

**A Medical Cannabis Dispensary is an
Institutional Healthcare Use**

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AMENDMENT HISTORY

Section amended in its entirety; Ord. 140-11, Eff. 8/4/2011.

**Table 741. TARAVAL STREET NEIGHBORHOOD
COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

			<i>Taraval Street</i>
<i>No.</i>	<i>Zoning Category</i>	<i>§ References</i>	<i>Controls</i>
BUILDING STANDARDS			
741.10	Height and Bulk Limit	§§ <u>102.12</u> , <u>105.106</u> , <u>250-252</u> , <u>260,261.1</u> , <u>263.20</u> , <u>270,271</u>	Varies See Zoning Map. Additional 5 feet for commercial uses on the ground floor
741.11	Lot Size <i>[Per Development]</i>	§§ <u>121.1</u> , <u>790.56</u>	P up to 9,999 sq. ft.; C 10,000 sq. ft. & above § <u>121.1</u>
741.12	Rear Yard	§§ <u>130</u> , <u>134</u> , <u>136</u>	Required at the second story and above and at all residential levels § <u>134(a)</u> (e)
741.13	Street Frontage		Active Frontage Required § <u>145.1</u> ; Generally Active Use Required § <u>145.4(c)</u> , unless exempted by Conditional Use

	Game Arcade (Mechanical Amusement Devices)				
741.69C	Neighborhood Agriculture	§ <u>102.35(a)</u>	P	P	P
741.69D	Large-Scale Urban Agriculture	§ <u>102.35(b)</u>	C	C	C
Institutions and Non-Retail Sales and Services					
741.70	Administrative Service	§ <u>790.106</u>			
741.80	Hospital or Medical Center	§ <u>790.44</u>			
741.81	Other Institutions, Large	§ <u>790.50</u>	P	C	C
741.82	Other Institutions, Small	§ <u>790.51</u>	P	P	P
741.83	Public Use	§ <u>790.80</u>	C	C	C
741.84	Medical Cannabis Dispensary	§ <u>790.141</u>	P#		
RESIDENTIAL STANDARDS AND USES					
741.90	Residential Use	§ <u>790.88</u>	P	P	P
741.91	Dwelling Unit Density	§ <u>207</u>	Generally, up to 1 unit per 800 sq. ft. lot area § <u>207(c)</u>		
741.92	Residential Density, Group Housing	§§ <u>207, 208</u>	Generally, up to 1 bedroom per 275 sq. ft. lot area § <u>208</u>		
741.92b	Residential Density, Homeless Shelters	§§ <u>102, 207.1, 790.88(c)</u>	Density limits per Section <u>208(a)</u>		



City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 110482

Date Passed: June 28, 2011

Ordinance amending the San Francisco Planning Code to: 1) correct clerical errors, make language revisions and update Sections 121.2, 134, 136.1, 142, 185, 201, 204.1, 204.2, 205, 205.1, 205.3, 207.2, 209.3, 217, 243, 303, 309, 311, 312, 317, 602.25, 602.26, 607.1, and various Sections and Tables in Articles 7 and 8; and 2) adopting findings, including findings under the California Environmental Quality Act, Planning Code Section 302 findings, and findings of consistency with the General Plan and Planning Code Section 101.1.

June 13, 2011 Land Use and Economic Development Committee - RECOMMENDED

June 21, 2011 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

June 28, 2011 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

File No. 110482

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
6/28/2011 by the Board of Supervisors of the
City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Edwin Lee

Date Approved

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										under 20,000 sf if no housing	under 20,000 sf if no housing	under 20,000 sf if no housing	20,000 sf if no housing	postsecondary educational institution, other than as specified in Subsection 217(g) and (h) above.
P	P	P	P	P	P	P	P	P	P	P under 20,000 sf if no housing	P under 20,000 sf if no housing	P under 20,000 sf if no housing	P under 20,000 sf if no housing	(j) Church or other religious institution. Such institution may include, on the same lot, the housing of persons who engage in supportive activity for the institution.
P	P	P	P	P	P	P								(k) Medical cannabis dispensary as defined by Section 3301(f) of the San Francisco Health Code. <i>provided that: (a) Requirements. MCDs must meet the following requirements:</i> <i>1. the parcel containing the MCD cannot located within 1,000 feet from a parcel containing:</i> <i>a. a public or private elementary or secondary school and</i> <i>b. a community facility and/or recreation center that primarily serves persons under 18 years of age; and</i> <i>2. the MCD is not located on the same parcel as a facility providing substance abuse services that is licensed or certified by the State of California or funded by the Department of Public Health;</i> <i>3. no alcohol is sold or distributed on the premises for on or off-site consumption;</i> <i>4. if medical cannabis is smoked on the premises the</i>

