BOARD of SUPERVISORS



City Hall 1 Dr. Carlton B. Goodlett Place, Room 244 San Francisco 94102-4689 Tel. No. 554-5184 Fax No. 554-5163 TDD/TTY No. 554-5227

MEMORANDUM

TO: Arfaraz Khambatta, Interim Director, Mayor's Office on Disability

FROM: Alisa Somera, Legislative Deputy Director Land Use and Transportation Committee

DATE: December 12, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Campos on November 8, 2016:

File No. 161229

Ordinance amending the Planning Code to allow Medical Cannabis Dispensaries to be located on the second story and above in zoning districts in which they are permitted; 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 a finding of public necessity, convenience, and welfare under Planning Code, Section 302.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: <u>alisa.somera@sfgov.org</u>.

FILE NO. 161229

[Planning Code - Medical Cannabis Dispensaries]

ORDINANCE NO.

Ordinance amending the Planning Code to allow Medical Cannabis Dispensaries to be
located on the second story and above in zoning districts in which they are permitted;
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 a finding 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 <u>single-underline italics Times New Roman font</u> . Deletions to Codes are in <u>strikethrough italics Times New Roman font</u> . Board amendment additions are in <u>double-underlined Arial font</u> . 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. Environmental and Land Use Findings.
(a) 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 and is incorporated herein by reference. The Board affirms this
determination.
(b) On, the Planning Commission, in Resolution No,
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. _____, and is incorporated herein by reference.

(c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that the proposed Planning Code amendments will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. _____, and the Board incorporates such reasons herein by reference.

Section 2. General Findings.

(a) Since 2005, the San Francisco Health Code has required medical cannabis dispensaries (MCDs) to be accessible pursuant to the California Building Code, with exemptions made for hardship and landmarked buildings. Initially, the City did not permit MCDs above the first floor due to concerns over accessibility. However, as stated by the Planning Department in a 2014 Draft Report on Medical Cannabis Dispensaries, accessibility and appropriate MCD location are two separate issues – there are accessible upper floor locations just as there are inaccessible first floor locations.

(b) The 2014 Draft Report recommended allowing MCDs above the first floor, as it would increase the number of available locations for dispensaries within the City without introducing them into areas where MCDs are prohibited. Furthermore, the Report stated that such a decision would address the aesthetic and exclusivity issues associated with ground floor MCDs. Additionally, the Report stated that this would not exacerbate the housing crisis, as currently existing protections in the Planning Code limiting the conversion of dwelling units reduce the risk that MCDs above the first floor would displace upper-floor dwelling units.

c) Other cities already permit MCDs above the first floor. For example, Denver permits this, with permission granted by the Denver Community Planning and Development's Zoning Division. Seattle does not regulate MCDs as a distinct use and therefore has no floor controls

on MCDs. The Oregon Liquor Control Commission, which regulates MCDs in Portland, OR, also does not prohibit MCDs above the first floor.

(d) The City already permits medical cannabis delivery services to be located above the first floor. There are currently six in such locations active within San Francisco, and the Mayor's Office of Disability verified that the locations would be accessible for patients. Therefore, allowing MCDs above the first floor would be consistent with already established City zoning and access laws and policies.

(e) For the foregoing reasons, the Board of Supervisors finds that the establishment of MCDs above the first floor should be permitted, as it will expand the areas where MCDs can be established and increase accessibility, without impacting the existing housing stock or changing the existing buffer zone between MCDs and schools and other sensitive uses.

Section 3. The Planning Code is hereby amended by revising Sections 711, 712, 713. 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 746, 747, 810, 811, and 812, to read as follows:

SEC. 711. NC-2 – SMALL-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT.

Table 711. SMALL-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT NC-2 ZONING CONTROL TABLE

Zoning Category § References NC-2 Controls by Story No. § 790.118 3rd+ 1st 2nd *

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Supervisor Campos BOARD OF SUPERVISORS

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711.84	Medical Cannabis Dispensary	§ 790.141	P#	<u> </u>	<u>P#</u>

SEC. 712. NC-3 – MODERATE-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT.

Table 712. MODERATE-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT NC-3 ZONING CONTROL TABLE

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No.	Zoning Category	§ References		N	IC-	3 0	Con	tro	ols	by	S	tor	У	
		§ 790.118		1	st			21	nd			3r	d+	
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712.84	Medical Cannabis Dispensary	§ 790.141		P	#			P	• #			F	P #	

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SEC. 713. NC-S – NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT.

Table 713. NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT NC-S ZONING CONTROL TABLE

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	Medical Cannabis Dispensary	§ 790.141	P#	<u>P#</u>	<u>P#</u>
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		§ 790.118	1st	2nd	3rd-
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714.84	Medical Cannabis Dispensary	§ 790.141	P	<u>P</u>	<u>P</u>
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SEC. 716. INNER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT.

Table 716. INNER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

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SEC. 717. OUTER CLEMENT STREET NEIGHBORHOOD COMMERICAL DISTRICT.

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Table 717. OUTER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

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SEC. 718. UPPER FILLMORE STREET NEIGHBORHOOD COMMERCIAL DISTRICT.

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Table 718. UPPER FILLMORE STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

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Institutio	ns and Non-Retail	Sales and Services			-									_
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718.84	Medical Cannabis Dispensary	§ 790.141	P				<u>P</u>				<u>P</u>			

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SEC. 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT.

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Table 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

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		§ 790.118		1	st			21	nd			3r	d+	
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Institutio	ns and Non-Retail	Sales and Services		-		-							_	-
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719.84	Medical Cannabis Dispensary	§ 790.141	P				<u>P</u>				<u>P</u>			

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SEC. 720. HAYES-GOUGH NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.

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Table 720. HAYES-GOUGH NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE

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No.	Zoning Category	§ References									ran tor			
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720.84	Medical Cannabis Dispensary	§ 790.141	P				<u>P</u>				<u>P</u>			

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SEC. 721. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL DISTRICT.

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 Table 721. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL DISTRICT

 ZONING CONTROL TABLE

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721.84	Medical Cannabis Dispensary	§ 790.141	P				<u>P</u>				<u>P</u>			

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SEC. 722. NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT.

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Table 722. NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

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SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT.

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Table 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

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		§ 790.118		1:	st			2	nd			3r	d+	
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723.84	Medical Cannabis Dispensary	§ 790.141	P				<u>P</u>				<u>P</u>			

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SEC. 724. SACRAMENTO STREET NEIGHBORHOOD COMMERCIAL DISTRICT.

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Table 724. SACRAMENTO STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

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		§ 790.118	1st	2nd	d		3rd	+
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724.84	Medical Cannabis Dispensary	§ 790.141	Р	<u>P</u>		<u>P</u>		
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SEC. 727.	24TH STREET – M	ISSION NEIGHBORHO		IERCIAL TI	RANSIT
DISTRICT	-				
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	TRANSIT	DISTRICT ZONING C	ONTROL	TABLE	
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* * * * Institutio	* * * * ons and Non-Retail	§ 790.118 * * * * Sales and Services * * * *	Co 1st	ntrols by S 2nd	itory 3rd+
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* * * * * Institutio * * * * * 727.84 * * * * * SEC. 728. * * * * *	* * * * ons and Non-Retail S * * * * Medical Cannabis Dispensary 24TH STREET – No	§ 790.118 * * * * Sales and Services * * * * § 790.141 DE VALLEY NEIGHBO	Co 1st * * * * P	2nd 2nd * * * * * <u>P</u>	3rd+
* * * * * Institutio * * * * * 727.84 * * * * * SEC. 728. * * * * *	* * * * ons and Non-Retail S * * * * Medical Cannabis Dispensary 24TH STREET – No	§ 790.118 * * * * Sales and Services * * * * § 790.141	Co 1st * * * * P DRHOOD C	2nd 2nd * * * * * <u>P</u>	3rd+
* * * * * Institutio * * * * * 727.84 * * * * * SEC. 728. * * * * *	* * * * ons and Non-Retail S * * * * Medical Cannabis Dispensary 24TH STREET – No	§ 790.118 * * * * Sales and Services * * * * § 790.141 OE VALLEY NEIGHBO NOE VALLEY NEIGHBO	Co 1st * * * * P DRHOOD C	2nd 2nd * * * * * <u>P</u>	3rd+
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728.84	Medical Cannabis	§ 790.141	P	<u>P</u>	<u>P</u>
	Dispensary			_	
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SEC. 729.	WEST PORTAL AV	ENUE NEIGHBORHO		IERCIAL D	ISTRICT.
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Table	729. WEST PORT	AL AVENUE NEIGHBO ZONING CONTROL		OMMERCI	IAL DISTR
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No.	Zoning Category	§ References	Co	ntrols by S	Story
		§ 790.118	1st	2nd	3rd+
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		Sales and Services	* * * *	* * * *	* * * *
* * * *	Medical Cannabis			* * * *	* * * *
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SEC. 730.	INNER SUNSET N	EIGHBORHOOD COM	MERCIAL	DISTRICT.	
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	Table 730. INNER	SUNSET NEIGHBOR	HOOD CO	MMERCIAL	DISTRIC
		ZONING CONTROL	TABLE		
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Supervisor Campos BOARD OF SUPERVISORS

Institutio	ns and Non-Retail	Sales and Services										
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SEC. 731. NCT-3 – MODERATE-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.

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Table 731. MODERATE-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT NCT-3 ZONING CONTROL TABLE

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No.	Zoning Category	§ References		N	CT	-3	Co	nti	ol	s b	y S	Sto	ry	
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SEC. 733. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT

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Table 733. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE

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Supervisor Campos BOARD OF SUPERVISORS

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SEC. 738. GLEN PARK NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.

Table 738. GLEN PARK NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE

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SEC. 739. NORIEGA STREET NEIGHBORHOOD COMMERCIAL DISTRICT.

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Table 739. NORIEGA STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

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16	SEC. 741.	TARAVAL STREET	NEIGHBORHOOD C	OMMERCI	AL DISTRIC	CT.
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Supervisor Campos BOARD OF SUPERVISORS

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SEC. 811. CHINATOWN VISITOR RETAIL DISTRICT.

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Table 811 CHINATOWN VISITOR RETAIL DISTRICT ZONING CONTROL TABLE

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SEC. 812. CHINATOWN RESIDENTIAL NEIGHBORHOOD COMMERCIAL DISTRICT.

Table 812 CHINATOWN RESIDENTIAL NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

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Supervisor Campos BOARD OF SUPERVISORS

Section 3. Effective Date. 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.

Section 4. 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.

Section 5. No Conflict with Federal or State Law. Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

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

By: ORIA WONG Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Medical Cannabis Dispensaries]

Ordinance amending the Planning Code to allow Medical Cannabis Dispensaries to be located on the second story and above in zoning districts in which they are permitted; 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 a finding of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

Existing law allows Medical Cannabis Dispensaries (MCDs) to be located only on the first floor of a building.

Amendments to Current Law

This ordinance would allow MCDs to be located above the first floor in locations where they are otherwise permitted.

Background Information

Since 2005, the San Francisco Health Code has required medical cannabis dispensaries (MCDs) to be accessible pursuant to the California Building Code, with exemptions made for hardship and landmarked buildings. (Health Code § 3308.) The Planning Department, in a 2014 Draft Report on Medical Cannabis Dispensaries, stated that accessibility and appropriate MCD location are two separate issues – there are accessible upper floor locations just as there are inaccessible first floor locations.

The 2014 Draft Report recommended allowing MCDs above the first floor, as it would increase the number of available locations for dispensaries within the City without introducing them into areas where MCDs are prohibited. Furthermore, the Report stated that such a decision would address the aesthetic and exclusivity issues associated with ground floor MCDs. Additionally, the Report stated that this would not exacerbate the housing crisis, as currently existing protections in the Planning Code limiting the conversion of dwelling units reduce the risk that MCDs above the first floor would displace upper-floor dwelling units.

Other cities, such as Denver, Seattle and Portland, Oregon allow MCDs to be located above the first floor.

The City already permits medical cannabis delivery services to be located above the first floor. There are currently six in such locations active within San Francisco, and the Mayor's Office of Disability verified that the locations would be accessible for patients. Therefore, allowing MCDs above the first floor would be consistent with already established City zoning and access laws and policies.

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