



SAN FRANCISCO PLANNING DEPARTMENT

July 21, 2017

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

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

**Re: Transmittal of Planning Department Case Number 2017-006196PCA:
Medical Cannabis Dispensaries in Supervisorial District 11
Board File No. 170516
Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo and Supervisor Safai,

On July 20, 2017, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance, introduced by Supervisor Safai that would amend Planning Code Section to limit the number of medical cannabis dispensaries in Supervisorial District 11 to three at any given time. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

- Propose a Citywide interim moratorium on the approval of MCD applications until the City adopts new MCD regulations informed by the forthcoming Adult Use Cannabis controls.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr", with a long horizontal line extending to the right.

Aaron D. Starr
Manager of Legislative Affairs

cc:

Victoria Wong, Deputy City Attorney

Suha Sandoval, Aide to Supervisor Safai

~~Alisa Somera~~, Office of the Clerk of the Board

Eriza Major

Attachments :

Planning Commission Resolution

Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 19964

HEARING DATE JULY 20, 2017

Project Name: Medical Cannabis Dispensaries in Supervisorial District 11
Case Number: 2017-006196PCA [Board File No. 170516]
Initiated by: Supervisor Safai / Introduced May 2, 2017
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO LIMIT THE NUMBER OF MEDICAL CANNABIS DISPENSARIES IN SUPERVISORIAL DISTRICT 11 TO THREE AT ANY GIVEN TIME; 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.

WHEREAS, on May 2, 2017 Supervisor Safai introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 170516, which would amend the Planning Code to limit the number of medical cannabis dispensaries in Supervisorial District 11 to three at any given time;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on July 20, 2017; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review 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; and

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

Those modifications include:

1. Propose a Citywide interim moratorium on the approval of MCD applications until the City adopts new MCD regulations informed by the forthcoming Adult Use Cannabis controls.

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 finds that the existing MCD regulatory framework needs reconsideration. The existing framework is now over 10 years old and the adult use and possession of cannabis is legal.
2. The Commission also recognizes that the City is in the process of developing a regulatory framework for Adult Use Cannabis. The end product will be a package of legislative proposals for introduction by the Board of Supervisors in early September 2017.
3. In this context, the Commission finds that an interim moratorium on the approval of MCD applications until the City adopts new MCD regulations informed by forthcoming Adult Use Cannabis controls is preferable to a piecemeal approach singling out a specific geography.
4. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The proposed Ordinance will help provide time for the City to determine what types of cannabis related uses provide substantial net benefits to the City and its Neighborhood Commercial Districts.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposed Ordinance will help provide time for the City to determine the types of cannabis related uses most appropriate of particular locations, thereby maintaining a favorable social and cultural climate that enhances its attractiveness as a firm location.

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 provide time for the City to determine the types of cannabis related uses most appropriate of particular locations, helping to recognize and encourage the diversity among its neighborhood commercial districts.

5. **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 have a beneficial effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail as the Ordinance proposes to modify controls on MCDs.

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 and will have a beneficial effect on neighborhood character as the Ordinance proposes to modify regulations on MCDs.

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 as the Ordinance proposes to modify regulations on MCDs.

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 as the Ordinance proposes to modify regulations on MCDs.

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 as the Ordinance proposes to modify regulations on MCDs.

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 adverse effect on City's preparedness against injury and loss of life in an earthquake as the Ordinance proposes to modify regulations on MCDs.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings as the Ordinance proposes to modify regulations on MCDs.

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 adverse effect on the City's parks and open space and their access to sunlight and vistas as the Ordinance proposes to modify regulations on MCDs.

6. **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 with modifications as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on July 20, 2017.



Christine L. Silva
Commission Secretary

AYES: Fong, Johnson, Koppel, Melgar, Moore

NOES: None

ABSENT: Hillis, Richards

ADOPTED: July 20, 2017



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: JULY 20, 2017
EXPIRATION DATE: AUGUST 10, 2017

Project Name: **Medical Cannabis Dispensaries in Supervisorial District 11**
Case Number: **2017-006196PCA** [Board File No. 170516]
Initiated by: Supervisor Safai / Introduced May 2, 2017
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Recommend Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to limit the number of medical cannabis dispensaries in Supervisorial District 11 to three at any given time.

The Way It Is Now:

In Supervisorial District 11 (D11) Medical Cannabis Dispensaries (MCDs) are regulated according to the Neighborhood Commercial District (NCD) in which they are located. These controls include a Mandatory Discretionary Review hearing for MCDs in those portions of the NC-2, NC-3, NC-S, NCT-2 and NCT-3 Districts in D11. For those portions of the Ocean Avenue NCT in D11 and for the Excelsior Outer Mission NCD, an MCD proposing to locate within 500 feet of another MCD requires Conditional Use authorization; otherwise a Mandatory Discretionary Review is required.

The Way It Would Be:

In addition to the existing NCD controls on MCDs, no more than three MCDs would be permitted at any given time in D11.

BACKGROUND

As a response to the growing number of Medical Cannabis Dispensaries (MCD) operating in San Francisco, the City enacted the Medical Cannabis Act (the Act).¹ The Act, effective December 30, 2005, established the City's regulatory framework for MCDs. This included designating the Department of Public Health (DPH) as the lead permitting agency. The Act also amended the City's land use regulations to assure the compatibility of MCDs with their surroundings.

¹ Ordinance 275-05:

<https://sfgov.legistar.com/View.ashx?M=F&ID=2576922&GUID=5365CFC3-B9AA-47C7-98B7-1543398E16A8>

MCDs are prohibited from locating in most Residential and all industrial zoning districts. In districts that control uses by story, such as the NCDs and Chinatown Mixed Use Districts, MCDs are allowed only at the first story. All MCDs must be located at least 1,000 feet from a school or other facility primarily serving individuals younger than 18 years. They also cannot be located on a parcel offering State certified/licensed or DPH funded substance abuse services or in locations serving alcohol for on- or off-site consumption. Finally, the Act required Planning Commission review of every MCD, generally through the Discretionary Review (DR) process.

Citywide Concentration of MCDs and proposed MCDs

As of July 2017 there are 46 MCDs either in operation or with land use approvals in San Francisco. These MCDs are dispersed throughout every Supervisorial District, except in District Four.² There are approximately four MCDs on average per Supervisorial District.

The Planning Department is currently reviewing 16 MCD applications. The majority of these pending applications are in two Supervisorial Districts, which are District Four (five applications) and District Six (nine applications).

TABLE 1: MCDs BY SUPERVISORIAL DISTRICT, JULY 2017

Supervisorial District	MCDs in Operation or Approved	MCD Applications in Review
1	1	0
2	1	0
3	11	0
4	0	5
5	2	0
6	15	6
7	2	0
8	2	0
9	7	1
10	2	2
11	3	2

ISSUES AND CONSIDERATIONS

MCDs in Supervisorial District 11

Three MCDs are located in D11, all within the Excelsior Outer Mission Street NCD.³ Two of these three are clustered within eighty feet of one another, intensifying any negative impacts of MCDs upon a small

² Exhibit B: Map of Pending and Permitted MCDs

³ MCDs are located at 5234 Mission Street, 5238 Mission Street and 4218 Mission Street.

stretch of the Excelsior Outer Mission Street NCD. D11 also borders San Mateo County, which does not allow MCDs. This may make locating an MCD within the Excelsior Outer Mission Street NCD particularly attractive for operators looking to serve residents of San Mateo County. Only Supervisorial District 10 has comparable proximity to San Mateo County.

In comparison to other supervisorial districts, D11 has an average number of permitted or operating MCDs. Supervisorial District Six has the highest number of permitted or operating MCDs, at 15, followed by Supervisorial District 3 at 11. Supervisorial District Six also has the highest number of MCD permits under Planning Department review, at six. In comparison, D11 has two under Planning Department review.⁴

Adult Use Cannabis Task Force

Ordinance 115-15, effective August 2015, established the Cannabis State Legalization Task Force (Task Force).⁵ The Task Force's stated purpose is to advise the Mayor, the Board of Supervisors and other City departments on issues concerning the legalization of the adult use and possession of cannabis. The Task Force's establishment was done in anticipation of the approval of California State Proposition 64, Control, Regulate, and Tax Adult Use of Marijuana (The Adult Use of Marijuana Act).⁶ The Adult Use of Marijuana Act passed in November 2016, garnering 57% of votes in support.⁷

The Task Force began meeting in January 2016 with intentions to meet over a two year period. The first year the Task Force held public monthly meetings and developed a report encompassing eighty recommendations.⁸ The recommendations are organized into three categories: Public Safety and Social Environment; Land Use and Social Justice; and Regulation and City Agency Framework.

For the Land Use and Social Justice category, the Task Force's recommendations addressed zoning approaches to retail and non-retail cannabis as well as approval processes for MCDs. The Task Force put forth 14 recommendations in these areas. Among them include ideas to:

- change the definition of sensitive uses;
- change how buffers between sensitive uses and cannabis uses as well as between cannabis retailers are measured;
- changes to entitlement processes for cannabis uses; and
- creating an entitlement paths for MCDs transitioning to the adult use market.

⁴ Pending MCD applications located at 5978 Mission Street and 4130 Mission Street.

⁵ Ordinance 115-15:

<https://sfgov.legistar.com/View.ashx?M=F&ID=3873579&GUID=1BAFED02-E19A-4AC4-8F96-3BB268939F5B>

⁶ The Adult Use of Marijuana Act:

[https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20\(Marijuana\)_1.pdf](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20(Marijuana)_1.pdf)

⁷ [https://ballotpedia.org/California_Proposition_64,_Marijuana_Legalization_\(2016\)](https://ballotpedia.org/California_Proposition_64,_Marijuana_Legalization_(2016))

⁸ San Francisco State Cannabis Legalization Task Force: Year 1 Report and Recommendations:

<https://www.sfdph.org/dph/files/csl/Mtg10-CLTF-Yr1-Rpt.pdf>

Interim Zoning Controls

Interim zoning controls are used to suspend the approval of building permits or other land use authorizations for a defined period of time. These are imposed to assure that the existing planning and legislative processes do not undermine a larger legislative scheme under consideration. The Planning Code authorizes the Board of Supervisors or the Planning Commission to impose interim controls for an 18 month period. It also affords an additional six month extension of the interim controls, if needed.⁹

On May 15, 2015, the Board of Supervisors enacted a resolution (Enactment Nos. 015-17) that imposed interim zoning controls to require Conditional Use authorization for indoor Agriculture uses, as defined in Planning Code Section 102, and other indoor Agriculture uses in Production, Distribution and Repair (PDR) zoning districts. The interim controls were established to last for six months from the effective date.

The Interim Controls were passed to help protect the City's existing industrial spaces from being over concentrated with commercial cannabis cultivation facilities. The interim controls state that an over-concentration of commercial cannabis cultivation businesses may have a negative impact on the character of neighborhoods within PDR zoning districts. Further, the rush to secure growing space within the City in anticipation of the legalization of adult use cannabis may also displace existing industrial activities, and lead to the erosion of San Francisco's diverse industrial sector. The interim controls were put in place to provide the City time to study the issue of cannabis cultivation, and decide if additional regulations on cannabis cultivation in San Francisco are needed.

Interim Moratoria

Similar to interim controls, the Board may also institute an interim moratorium. An interim moratorium is different than interim controls in that it explicitly prohibits a use. Whereas an interim control may require conditional use authorization for a particular use, an interim moratorium would prohibit that use completely.

Per California General Government Code Section 65858, interim moratoriums are intended to protect the public safety, health, and welfare, and may include measures that prohibit any uses that may be in conflict with a contemplated general plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying within a reasonable time. Interim Controls are considered "urgency measures" and require a four-fifths vote of the Board of Supervisors for adoption. The interim controls are only effective for 45 days from its date of adoption; however, the Board may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Not more than two extensions may be adopted.

Within 25 days of the enactment of interim controls, the Planning Department shall submit to the Clerk of the Board of Supervisors a written report describing the measures taken to alleviate the conditions that led to the adoption of the ordinance. Once the report is received, the Clerk is required to calendar a motion for the full Board of Supervisors to consider and approve the report. This hearing and action is required to occur no later than 35 days after this ordinance is effective.

Developing Controls for Adult Use Cannabis

⁹ Planning Code Section 306.7

Since November 2016, the City has been studying how to regulate the cannabis industry once it's legal for cannabis to be grown and sold for adult use on January 1, 2018. On November 9, 2016 Mayor Ed Lee issued executive Directive 16-05 in response to the passage of Proposition 64: The Adult Use of Marijuana Act. Among other things, that directive instructed the Director of Planning and the Director of Public Health, in consultation with other relevant Departments heads, to draft an ordinance for the Board of Supervisor's consideration that address aspects of Proposition 64, which includes but is not limited to:

- **Land Use:** Where will cultivation, manufacturing, and sales of cannabis be allowed and disallowed, and under what conditions?
- **Local Licenses:** How should the City's local licensing process be structured?
- **Safety:** Should the City change any laws regarding where or how cannabis may be consumed in public places?
- **Youth Access:** how can the City prevent diversion and sales to under-age youth?

Since that directive was issued, the various City departments in the directive have been meeting regularly to discuss the issues around cannabis outlined in the memo. Based on those meetings, the City Attorney's office has started to draft a series of ordinance that would create a regulatory structure for the cannabis industry in San Francisco, including an ordinance that would create the Office of Cannabis, which would regulate the cannabis industry in San Francisco. The intention is to have these controls introduced at the Board of Supervisors by early to mid-September so that the permanent controls can become effective by January 1, 2018. The study of this will continue through the legislative process; the City will continue to refine the permanent controls as we receive further input from the Board of Supervisors, the Cannabis Taskforce, members of the public, and other stakeholders.

General Plan Compliance

The proposed Ordinance is supported by the following General Plan Objectives and Policies in the Commerce and Industry Element:

- Objective 1: Manage Economic Growth and Change to Ensure Enhancement of the Total City Living and Working Environment.
Policy 1.1: Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.
- Objective 2: Maintain and Enhance a Sound and Diverse Economic Base and Fiscal Structure for the City.
Policy 2.3: Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.
- 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 Ordinance proposes to amend the MCD regulations in D11 to cap the number of MCDs to three at any given time. This proposed amendment can help discourage an overconcentration of MCDs which, in

that supervisorial district, may have undesirable consequence that cannot be mitigated. The proposed amendment can also help maintain a balance of uses within D11, increasing its desirability as a location for firms and residents alike. This balance also allows the spaces for uses providing neighborhood-serving goods to locate in the NCDs in D11.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Propose a Citywide interim moratorium on the approval of MCD applications until the City adopts new MCD regulations informed by the forthcoming Adult Use Cannabis controls.

BASIS FOR RECOMMENDATION

The Department supports the underlying intention of the proposed Ordinance, which is to preserve neighborhood character and ensure that the neighborhood commercial districts in D11 have a diversity of goods and services. The Department recognizes that D11 is situated along the City's southern border, providing an ideal location for MCDs wanting to service San Mateo County. However, the City is in the midst of developing new adult use cannabis controls, which will ultimately help inform new MCD controls. Further, it is likely that a new use definition will be established for adult cannabis retail and many MCDs will want to convert to this new use to increase their customer base. If that is the case, then a cap on MCDs will not solve this issue. In that respect the Department believes that permanent controls should wait until a broader approach to reforming MCD regulations is developed.

Recommendation 1: Propose a Citywide interim moratorium on the approval of MCD applications until the City adopts new MCD regulations informed by the forthcoming Adult Use Cannabis controls. The City is in the process of developing a regulatory framework for adult use cannabis. This end product will be a package of legislative proposals for introduction by the Board of Supervisors in early September. Any changes to MCD controls should either be informed by this legislative proposal or be included in them. In this situation the Department finds that an interim zoning moratorium is the appropriate tool to prevent new MCDs from being authorized in D11 and throughout the City, while the new adult use cannabis rules make their way through the legislative process.

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.

IMPLEMENTATION

The Department has determined that this ordinance will not impact our current implementation procedures.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department received one letter from the Small Business Commission (SBC). The SBC recommends that the Board of Supervisors not approve the proposed Ordinance for the following reasons:

- It is prudent to wait for proposed Ordinances regulating the Adult Use of Cannabis prior to amending current regulations on MCDs;
- The proposed Ordinance would impede the entry of exemplary MCDs into D11;
- The proposed Ordinance does nothing to address grievances with existing MCD operators in D11; and
- A cap on MCDs in D11 will push them to other supervisorial districts, requiring patients to travel further and potentially creating other issues such as increased traffic congestion.

RECOMMENDATION: Recommendation of Approval with Modification
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Map: Pending and Permitted MCDs
- Exhibit C: Letters of Support/Opposition
- Exhibit D: Board of Supervisors File No. 170516