

REVISED LEGISLATIVE DIGEST

(Substituted, 10/24/17)

[Various Codes - Regulation of Cannabis Businesses]

Ordinance amending the Administrative, Business and Tax Regulations, Health, and Police Codes to comprehensively regulate commercial activities relating to the cultivation, manufacture, distribution, testing, sale, and delivery of medicinal and adult use cannabis by, among other things: 1) requiring businesses that engage in commercial cannabis activities to obtain a permit from the Office of Cannabis; 2) requiring the Director of the Office of Cannabis to establish an Equity Program to promote equitable ownership and employment opportunities in the cannabis industry; 3) defining eligibility for temporary and permanent cannabis business permits; 4) establishing priorities for the review of cannabis business permit applications; 5) establishing operating standards for cannabis businesses; 6) establishing criteria for granting, denying, suspending, and revoking cannabis business permits; 7) incorporating state law governing commercial cannabis activities into local law for enforcement purposes; 8) authorizing the imposition of fines and penalties for violation of local and state laws governing cannabis businesses, and establishing procedures by which cannabis businesses may appeal a fine or permit penalty; 9) prohibiting the smoking and vaping of cannabis on the premises of all cannabis businesses, except select Medicinal Cannabis Retailers, as authorized by the Department of Public Health; 10) prohibiting the consumption of cannabis and cannabis products, other than by smoking or vaping, on the premises of all cannabis businesses, except Storefront Cannabis Retailers and Cannabis Microbusinesses that obtain consumption permits from the Department of Public Health; 11) prohibiting until January 1, 2019, tours of cannabis cultivators, manufacturers, and cannabis microbusinesses, and authorizing the Director of Cannabis to extend the prohibition on tours, or establish guidelines for the operation of tours; 12) prohibiting the acceptance of new applications for medical cannabis dispensary permits, starting January 1, 2018; 13) prohibiting medical cannabis dispensaries from cultivating cannabis under the authority of a medical cannabis dispensary permit, starting April 1, 2018; 14) establishing a sunset date of December 31, 2018, for Article 33 of the Health Code ("Medical Cannabis Act"); 15) eliminating the duty of the Clerk of the Board of Supervisors to send letters annually to state and federal officials requesting that cannabis be regulated and taxed; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

On October 9, 2015, Governor Brown signed into law the Medical Marijuana Regulation and Safety Act ("MMRSA"), effective January 1, 2016, which established a comprehensive state licensing and regulatory framework for the cultivation, manufacturing, testing, distribution, transportation, dispensing, and delivery of medicinal cannabis, and which recognized the

authority of local jurisdictions to prohibit or impose additional restrictions on commercial activities relating to medicinal cannabis. MMRSA was later renamed the Medical Cannabis Regulation and Safety Act ("MCRSA").

On November 8, 2016, the voters of California approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA), which decriminalized the nonmedicinal use of cannabis by adults 21 years of age and older, created a state regulatory, licensing, and taxation system for non-medicinal cannabis businesses, and reduced penalties for marijuana-related crimes.

On June 27, 2017, Governor Brown signed into law the Medicinal and Adult-Use Cannabis Regulations and Safety Act (MAUCRSA), which reconciled MCRSA and Proposition 64, and established a unified state regulatory scheme for commercial activities relating to both medicinal and adult use cannabis. Under MAUCRSA, businesses that engage in commercial cannabis activities will be required to obtain a state cannabis license and comply with strict operating conditions. MAUCRSA requires that state agencies begin issuing state cannabis business licenses by January 1, 2018.

Under MAUCRSA, local jurisdictions may adopt and enforce ordinances to further regulate cannabis businesses, including but not limited to zoning and permitting requirements.

Article 33 of the San Francisco Health Code, adopted in 2005, regulates medical cannabis, and authorizes the San Francisco Department of Public Health to oversee the permitting of medical cannabis dispensaries. Medical cannabis dispensaries are cooperatives or collectives of ten or more qualified patients or caregivers that facilitate the lawful cultivation and distribution of cannabis for medical purposes. Medical cannabis dispensaries may not sell cannabis to individuals who are not members of the collective, and may not sell or cultivate non-medical cannabis.

Currently, there is no City law that authorizes and regulates commercial activities relating to non-medical cannabis. There is also no City law that authorizes and regulates the commercial manufacture, testing, or distribution of cannabis.

Article XXVI of the Administrative Code establishes an Office of Cannabis under the direction of the City Administrator, and authorizes the Director of the Office of Cannabis to issue permits to cannabis-related businesses, and to collect permit application and annual license fees following the enactment of a subsequent ordinance establishing the amounts of those fees.

Amendments to Current Law

The proposed ordinance would authorize and comprehensively regulate commercial activities relating to the cultivation, manufacture, distribution, testing, sale, and delivery of medicinal and adult use cannabis. The new regulatory scheme would complement and then replace Article 33 of the Health Code, which would sunset on December 31, 2018.

The ordinance requires the Director of the Office of Cannabis (“Director”), in consultation with the Human Rights Commission, to develop an Equity Program designed to foster equitable access to participation in the cannabis industry, including equitable access to promotional and ownership opportunities in the industry. The Equity Program will offer priority permit processing and technical assistance to applicants who meet Equity Criteria (“Equity Applicants”) adopted by the Director.

Under the proposed ordinance, the Office of Cannabis would make available the following cannabis business permits:

- Cannabis Cultivation Facility;
- Cannabis Manufacturing Facility;
- Cannabis Testing Facility;
- Cannabis Distributor;
- Cannabis Microbusiness;
- Medicinal Cannabis Retailer;
- Cannabis Retailer; and
- Delivery-Only Cannabis Retailer.

Businesses that are awarded a local cannabis business permit would be required to apply for and receive a state cannabis license in order to operate. With the exception of Medicinal Cannabis Retailers, all other business permit categories would authorize permittees to engage in commercial activities relating to both medicinal and adult use cannabis, provided that the permittee applies for and receives state licenses authorizing those activities.

The proposed ordinance would establish a process by which businesses will transition into the new regulatory scheme. Businesses that currently hold a medical cannabis dispensary (“MCD”) permit issued by the Department of Public Health under the authority of Article 33 of the Health Code would be allowed to continue operating under the terms of that permit until they apply for and receive a new cannabis business permit from the Office of Cannabis, or until Article 33 sunsets on December 31, 2018, whichever occurs first. During their continued operation, MCDs would be required to apply for and obtain a state cannabis license and apply for a local cannabis business permit, once the Office of Cannabis releases applications for those permits.

In addition, the proposed ordinance would amend Article 33 of the Health Code to provide that: 1) starting on January 1, 2018, the Department of Public Health will no longer accept applications for MCD permits; and 2) starting on April 1, 2018, MCDs will no longer be authorized by Article 33 to engage in the cultivation of cannabis.

Businesses that have already applied for an MCD permit but that have not yet received a determination from the Department of Public Health would be able to continue the MCD permit application process.

Businesses that intend to apply for any permit category other than a Medicinal Cannabis Retailer or a Cannabis Retailer (collectively, “Storefront Cannabis Retailers”) would be required to register with the Office of Cannabis. The registration process would allow the Office of Cannabis to determine: how many businesses are interested in operating within the City; whether any existing businesses pose immediate threats to health or safety; and how the City may work with businesses to eliminate those threats. Businesses that complete the registration process would be allowed to apply for a temporary medicinal cannabis business permit, which may be awarded to applicants that demonstrate to the Office of Cannabis that they have been engaged in commercial cannabis activities, have undergone inspections, meet applicable interim health and safety standards, and have provided all information required by the Director. Temporary permits would authorize businesses to engage in commercial activities relating to medicinal cannabis only; temporary permits would not allow the permit holders to engage in activities relating to adult use cannabis.

Lastly, the proposed ordinance would allow businesses to apply for “permanent” cannabis business permits, which will authorize activities relating to both medicinal and adult use cannabis. The Office of Cannabis will not make “permanent” cannabis business permits available until the Equity Program is established. In 2018, the only businesses that will be eligible to receive permanent cannabis business permits will be:

- Equity applicants;
- Permitted MCDs;
- Temporary Medicinal Cannabis Business permit holders;
- Businesses that were operating in compliance with the Compassionate Use Act of 1996 that were forced to discontinue operations as a result of federal prosecution or threat of prosecution; and
- Businesses that applied for an MCD permit prior to September 26, 2017 that required referral to and approval by the Planning Commission.

The proposed ordinance specifies the information that applicants will need to provide to the Office of Cannabis when applying for each type of license, and the eligibility criteria for each permit category. It also specifies the operating standards applicable to each type of cannabis business.

Among the operating standards are the following:

- Cannabis businesses may not permit entry onto their premises to persons who are underage, and must confirm that a Customer is not underage before selling cannabis or cannabis products.
- The smoking and vaping of cannabis will be prohibited on the premises of all cannabis businesses, except MCDs that have authorization to allow smoking and vaping, and Medicinal Cannabis Retailers that: 1) previously held a permit to operate as a Medical Cannabis Dispensary that was issued by the Director of Health prior to September 26, 2017; 2) were not prohibited by the Planning Department or the Planning Commission

from allowing smoking on-site; and 3) demonstrate compliance with ventilation standards to be adopted by the Department of Public Health.

- The consumption of cannabis and cannabis products, other than by smoking or vaping, will be prohibited on the premises of all cannabis businesses except those Storefront Cannabis Retailers and Cannabis Microbusinesses that receive a cannabis consumption permit from the Department of Public Health. There will be two types of consumption permits: one permit category will allow the consumption of pre-packaged cannabis products only, and a second permit category will allow limited preparation of cannabis products.
- In 2018, tours of cannabis businesses other than Storefront Cannabis Retailers will be prohibited. By January 1, 2019, the Director will determine whether to extend the prohibition on tours, or allow tours of Cannabis Manufacturing Facilities, Cannabis Cultivation Facilities, and Cannabis Microbusinesses, subject to limitations he or she may adopt by regulation.
- Permitted Cannabis Storefront Retailers will require express authorization from the Director to deliver cannabis and cannabis products to customers. Where deliveries are authorized, they must be made by employees of the permitted business using a commercial vehicle, and subject to strict reporting requirements.
- Cannabis Manufacturers will be prohibited from manufacturing non-cannabis products.

Permitted cannabis businesses that are found to have violated the proposed ordinance, its implementing regulations, or the conditions of a permit issued as a condition of operating a cannabis business, shall be subject to administrative penalties, civil penalties, permit suspensions, and permit revocations. Appeals of administrative penalties, permit suspensions and permit revocations may be made to a hearing officer. Appeals of all permitting decisions also may be made to the Board of Appeals.

The ordinance would authorize the Director to adopt rules, regulations, or guidelines for the implementation of the ordinance.

Background Information

In 2015, the City enacted Ordinance No. 115-15, creating the San Francisco Cannabis State Legalization Task Force (“the Task Force”) to advise the Board of Supervisors, the Mayor, and other City departments on matters relating to the potential legalization of non-medical cannabis. In December 2016, the Task Force submitted its Year I Report, and made recommendations related to Public Safety and Social Environment, Land Use and Social Justice, and Regulation and City Agency Framework for the City’s policymakers to consider.

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