

LEGISLATIVE DIGEST
Amended in Committee 11/6/17

[Planning Code - Cannabis Regulation]

Ordinance amending the Planning Code to 1) regulate cannabis land uses, including, among other things, adult use cannabis retail, Medical Cannabis Dispensaries, delivery-only services, manufacture of cannabis products, cannabis cultivation, and cannabis testing; 2) allow Medical Cannabis Dispensaries in additional zoning districts; 3) establish a land use process for the conversion of existing Medical Cannabis Dispensaries to Cannabis Retail establishments; 4) establish location and operating conditions for cannabis uses; 5) repeal Ordinance No. 186-17, which limited the number of medical cannabis dispensaries in Supervisorial District 11; 6) create a limit of three Medical Cannabis Dispensaries and Cannabis Retail Uses, in any combination, in the Excelsior Outer Mission Street Neighborhood Commercial District; and 7) delete superseded Planning Code provisions; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1, and public necessity, convenience, and welfare findings pursuant to Planning Code, Section 302.

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 (MCDs).

Planning Code Section 202.2(e) sets forth location and operating restrictions for MCDs. MCDs are currently prohibited in PDR zoning districts and certain other districts, including some Neighborhood Commercial Districts (NCDs). (See generally Planning Code, Art. 7.) MCDs are also prohibited in Mixed-Use zoning districts. (See generally Planning Code, Art. 8.) In most Neighborhood Commercial Transit Districts (NCTs) and NCDs, MCDs are allowed on the first floor, subject to Mandatory Discretionary Review by the Planning Commission. (See generally Planning Code, Art. 7.) MCDs are required to obtain Conditional Use Authorization in certain NCDs and NCTs, including the West Portal Avenue NCT, Noriega Street NCT, Irving Street NCT, Taraval Street NCT and Judah Street NCT.

Ordinance No. 186-17, enacted on September 15, 2017, creates a limit of three MCDs in Supervisorial District 11.

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

This ordinance would change the zoning controls for MCDs. Among other things, it would permit MCDs in some NCDs in which they are currently prohibited, such as the Japantown NCD. In most NCDs, MCDs would be subject to Mandatory Discretionary Review by the Planning Commission; in some, Conditional Use Authorization would continue to be required. The ordinance would also permit MCDs on the second floor of most NCDs and NCTs, subject to the same controls that apply to first floor MCDs. In addition, this ordinance would make MCDs in PDR Zoning Districts and most Mixed Use Districts a principally permitted use. This ordinance would also prohibit MCDs in the NC-S and NCT-1 Zoning Districts.

This ordinance would also regulate Cannabis Retail as a distinct land use. It would generally permit Cannabis Retail where other retail is permitted. In NCDs, Cannabis Retail uses would be subject to a Conditional Use Authorization. Cannabis Retail as an accessory use would be permitted only where the Office of Cannabis has issued a permit to the Cannabis Retail establishment to operate accessory to another activity on the same premises. The ordinance would also establish a land use process for the conversion of existing MCDs to Cannabis Retail establishments, allowing existing MCDs and those that applied for Department of Public Health permits by July 20, 2017, and that obtained such permits, to be deemed Cannabis Retail Uses as of January 1, 2018 or on the date the MCD receives its permit from DPH, whichever is later.

In addition, this ordinance would establish location and operating provisions for MCDs, Cannabis Retail establishments, and other cannabis businesses. Among other things, it would prohibit a Cannabis Retail use or MCD from locating within 600 feet of a school, public or private, or a day care center. It would not require a minimum distance between a Cannabis Retail use or MCD and a youth center. The ordinance would require a conditional use authorization for a proposed MCD or Cannabis Retail Use if it would be within a 600-foot radius of two other MCDs or Cannabis Retail Uses. It would delete land use controls for cannabis smoking and allow smoking and consumption pursuant to authorization by the Office of Cannabis.

The ordinance would also create a cap of three MCDs and Cannabis Retail Uses in the Excelsior Outer Mission NCD.

In addition, this ordinance would create land use regulations for the cultivation, delivery and testing of cannabis and the manufacture of cannabis products. Among other things, it would require that Industrial Agriculture Uses, including commercial cannabis cultivation, obtain a Conditional Use Authorization in PDR Zoning Districts.

This ordinance would also repeal Ordinance No. 186-17, which limited the number of MCDs in Supervisorial District 11 to three.

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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