

REVISED LEGISLATIVE DIGEST

(11/14/2017, Amended in Board)

[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 implement an Equity Program to promote equitable ownership and employment opportunities in the cannabis industry by providing priority permitting for Equity Applicants and Equity Incubators, as defined; 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) requiring all cannabis businesses to ensure that 50% of work hours are performed by San Francisco residents, and cannabis businesses with 10 or more employees to adopt labor peace agreements; 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) allowing pre-existing non-conforming cannabis operators to register with the Office of Cannabis and apply for cannabis business permits in 2018; 10) prohibiting the consumption of cannabis and cannabis products 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) allowing medical cannabis dispensaries to sell adult use cannabis for a period of 120 days, starting January 1, 2018, and 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) requiring the Department of Public Health to implement an ongoing public health education campaign about the safe consumption and health benefits of cannabis; 16) requiring the Controller to submit a report to the Board of Supervisors within one year of the effective date of Article 16 recommending whether the issuance of cannabis business permits should be subject to any limits; 17) establishing an Equity Operator Fund to receive any monies appropriated for the purpose of assisting Equity Operators; and 18) 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.

1. The Equity Program and Fund.

The ordinance requires the Director of the Office of Cannabis (“Director”) to implement 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 Equity Applicants who meet specified criteria relating to income, assets, residence in select San Francisco tracts, criminal history, and/or history of housing insecurity.

The Equity Program will also offer priority permitting to Equity Incubators, who are defined as cannabis businesses that do not qualify as Equity Applicants, but that commit to: 1) hiring local San Francisco residents and individuals who meet equity requirements, and 2) providing support to Equity Operators by offering them technical assistance or rent-free commercial space.

The ordinance would also establish an Equity Operator Fund to receive monies that are appropriated or donated for the purpose of assisting Equity Operators. The Director would be authorized to disburse funds to Equity Operators on a case-by-case basis, for the purpose of providing them with access to technical assistance, capital improvements and renovations, and access to legal services. The Director must adopt a policy governing such disbursements by no later than April 1, 2018.

2. Permit Categories.

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. However, Storefront Cannabis Retailers and Delivery-Only Cannabis would be required to sell both medicinal and adult use cannabis.

3. Transition Process for Permitted Medical Cannabis Dispensaries.

Businesses that 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, provided that they apply for and obtain a state cannabis license authorizing the retail sale of medicinal cannabis.

MCDs that hold a valid MCD permit as of the effective date of the proposed ordinance, as well as permitted MCDs that can demonstrate that they were previously subject to federal prosecution or threat of prosecution, would also be allowed to sell adult use cannabis and cannabis products, starting on January 1, 2018, for a period of 120 days, provided that they: 1) obtain a state cannabis license authorizing adult use cannabis sales; 2) demonstrate that adult use cannabis sales on their premises are consistent with the Planning Code; 3) comply with those provisions of Article 16 of the Police Code that apply to cannabis retailers; and 4) apply for an Article 16 permit from the Office of Cannabis once such permits are made available.

An MCD that sells adult use cannabis and violates any provision in Article 16 of the Police Code applicable to cannabis retailers would be subject administrative and permit penalties as set forth in Article 33 of the Health Code.

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.

4. Transition Process for Non-Retail Cannabis Businesses and Delivery-Only Cannabis Retailers.

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 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 both medicinal and adult use cannabis.

5. Transition Process for Pre-Existing Non-Conforming Operators.

Businesses that have been operating as cannabis businesses in San Francisco, but in a location that is not zoned to allow such a business (“Pre-Existing Non-Conforming Operators”) may register with the Office of Cannabis during the registration period, and may apply for a cannabis business permit in 2018, provided they find a location for their business that is consistent with the Planning Code, and meet all other eligibility criteria.

6. Applications for “Permanent” Permits.

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. In 2018, the only businesses that will be eligible to receive permanent cannabis business permits will be:

- Equity applicants and Equity Incubators;
- Permitted MCDs;
- Temporary 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;
- Businesses that applied for an MCD permit prior to September 26, 2017 that required referral to and approval by the Planning Commission; and
- Pre-Existing Non-Conforming Operators.

The Office of Cannabis will review and process applications for Cannabis Business Permits in an order that reflects the Applicant’s priority category:

- First priority: applications from Equity Applicants;
- Second priority: applications from Equity Incubators;
- Third priority: applications from Applicants, including Pre-Existing Non-Conforming Operators, that were operating in compliance with the Compassionate Use Act of 1996 before September 1, 2016;
- Fourth priority: applications that demonstrate a commitment on the part of the Applicant to provide benefits to the community in which the Cannabis Business is located,

including but not limited to workforce opportunities and community benefits contributions; and

- Fifth priority: all other applications.

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.

7. Business Operating Standards.

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 consumption of cannabis and cannabis products will be prohibited on the premises of all cannabis businesses, except Medicinal Cannabis Retailers, Cannabis Retailers, and Cannabis Microbusinesses that receive and maintain a cannabis consumption permit from the Department of Public Health. There will be three types of consumption permits: one permit category will allow the consumption of pre-packaged cannabis products only; a second permit category will allow limited preparation of cannabis products; and a third permit category will allow onsite smoking and vaping of cannabis.
- 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, and subject to strict reporting requirements.
- Cannabis Manufacturers will be prohibited from manufacturing non-cannabis products.
- All Cannabis Businesses will be required to ensure that at least 50% of all work hours performed for the business are performed by San Francisco residents, provided, however, that in 2018, cannabis businesses that formerly held an MCD permit would only be required to ensure that 35% of work hours are performed by San Francisco residents. In addition, Cannabis Businesses with 10 or more employees must agree to adopt a Labor Peace Agreement.
- To the extent consistent with state law, Storefront Cannabis Retailers may operate a "Compassion Program" in which they provide low- or no-cost medicinal cannabis to qualified patients.

8. Miscellaneous.

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 require the Department of Public Health to implement an ongoing public health education campaign relating to the safe consumption and health benefits of cannabis.

Within one year of the effective date of the proposed ordinance, the Controller's Office would be required to submit a report to the Board of Supervisors including recommendations about whether the issuance of cannabis business permits should be subject to any numerical, geographical, or other limits.

The ordinance would authorize the Director to adopt rules, regulations, or guidelines for the implementation of the ordinance. The ordinance would require the Director to adopt rules, regulations, or guidelines to ensure that cannabis retailers maintain and sell an inventory of medicinal cannabis and medicinal cannabis products that is sufficient in volume and variety to meet the diverse needs of qualified patients.

Background Information

This legislative digest reflects revisions included in a substitute ordinance introduced on October 24, 2017, amendments introduced in the Rules Committee on November 1, 2017, November 7, 2017, and November 13, 2017, and amendments introduced in a meeting of the full Board of Supervisors on November 14, 2017.

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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