



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

November 14, 2017

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 171042 [Various Codes - Regulation of Cannabis Businesses]

Small Business Commission Recommendation to the Board of Supervisors: **Approval, with ten (12) recommendations**

Dear Ms. Calvillo,

On October 23, 2017, the Small Business Commission (SBC) voted (6-0, 1 absent) to recommend that the Board of Supervisors approve BOS File No. 171170, with ten (10) recommendations. The legislation was subsequently amended. Some of the amendments address the SBC's first set of recommendations. The SBC heard the amended legislation on November 13, 2017 and took action by 6-0 vote (1 absent), on two specific amendments to File No: 171042.

- Recommend approval of Section 1604. Equity Program. The Commission supports the Equity Program proposal and appreciates the Board of Supervisors for extending the conviction history beyond cannabis related convictions and the State of California. (Recommendation #11)
- Recommend not to approve Section 1618. Eligibility and Operating Standards Applicable to all Cannabis Businesses. (ff) Local Hire Requirements as drafted. The Commission urges the Board of Supervisor to conduct a thorough jobs analysis to determine whether such a mandate could have implications that negatively impact the hiring and employee retention for San Francisco non-cannabis small businesses. And to work the Office of Economic and Workforce Development to identify the best means to meet the goals and intent of a Local Hire program. (Recommendation #12)

This memo reflects the ten original recommendations (some of which have already been addressed by the legislation), two additional recommendations made on November 13, 2017 (recommendations 11 and 12), and an amendment to add a missed recommendation (number 6b) from October 23, 2017.

- 1. Amend SECTION 1605(d): Separate the registration process into 2 steps (without requiring disclosure of an exact address in the first step) and provide a pathway for existing operators to move toward compliance without interrupting the flow of the supply chain.**

As proposed in the legislation, a business must register with the Office of Cannabis during the Cannabis Business Registration Period in order to be eligible for a temporary medicinal permit to operate in 2018. However, some businesses have not yet secured a properly zoned location,

which prevents them from completing the registration as it is currently structured. The SBC recommends that the process be split into two steps.

Step 1: All existing businesses operating in San Francisco will have a means to register and provide proof of their existence in San Francisco on or before 9/26/17. This would satisfy the requirement under Section 1605(b). (Note: this mirrors Oakland's process, which allows applicants who have not yet secured a location to apply and obtain conditional approval. The location requirement is considered a barrier to entry.)

Step 2: Offer a provisional temporary permit to allow nonconforming businesses to move toward compliance, without having to wait until the general applications in 2019.

Allow businesses a certain amount of time (not less than 6 months) to come into compliance. Some small businesses would be unable to afford operating expenses without revenue and may go out of business; therefore, a pathway that would allow them to continue operating as they work toward compliance would be optimal.

Furthermore, the reality is that much of the cannabis industry is comprised of small businesses (small growers, edibles/topicals/ light manufacturers, and delivery operators) that operate in inappropriately zoned locations throughout the City. They are part of MCD collectives and are integral to the City's cannabis supply chains. Interrupting their operations would create complications in the current flow of products through the supply chain. Not allowing them to register or obtain a permit would encourage them to continue operating unlicensed and unpermitted.

Where possible under state law, allow "non-conforming" cottage operations. Some small businesses have relied on starting their business on a small scale at home, to establish themselves before signing an expensive lease agreement. Allowing cottage operations would also ease competition for a limited number of spaces with zoning designations such as PDR.

San Francisco should consider advocating for a change in policy at the state level to allow cottage production of cannabis food products.

2. Allow small cannabis businesses to share spaces.

Rent in the city is prohibitive for many small businesses, but sharing the cost of rent makes it feasible for some. This will be critical as businesses shift from residential to commercial spaces. Amendments include accommodations in the registration process, permitting process, and operating standards. Because of the state requirement that only one licensee may occupy the premises, the City will need to determine how to maintain distinct premises within a shared space.

3. Amend SECTION 1620: Address issues with shortage of on-site consumption and smoking/vaporization options.

The SBC expressed serious concern about the contradiction of allowing cannabis sales without providing avenues to legally consume or smoke/vape it. Commissioner Ortiz-Cartagena likened it to opening a lemonade stand and not providing cups.

Their concern relates to the shortage of legal places for "consumption" (eating, drinking, chewing, applying topically, or otherwise ingesting) as well as smoking and vaporization

(“vaping”). The SBC recommended that the options for on-site consumption be expanded considerably if the City is to accommodate the many residents and tourists that are expected to use cannabis.

First, there are not enough spaces for consumption and smoking/vaping. The proposed ordinance only allows consumption at cannabis retailers, medicinal cannabis retailers, and microbusinesses, and a very small subset of these (8 retailers, to be exact) are allowed to have smoking/vaping on the premises. The 8 retailers, which are insufficient to handle the anticipated volume of consumers, would no longer be able to allow on-site smoking/vaping if they obtain adult use permits once they are available, leaving the City with zero on-site smoking/vaping locations. The logical result is that any cannabis user who prefers smoking/vaping over edibles will engage in such activity on sidewalks, in parks, in hotel rooms, in cars, etc.

Using tourism data from Colorado (a state in which adult use cannabis is legal) as a proxy for San Francisco tourists’ interest in cannabis, staff developed a rough estimate of anticipated demand. A Colorado tourism study showed that 12 percent of tourists visited a cannabis retailer. According to SF Travel, there were 25.1 million visitors to San Francisco in 2016. Using the 12 percent figure from Colorado, we might estimate that just over a quarter-million tourists (251,000) will try to visit a cannabis retailer in San Francisco each month. Twelve percent is likely a conservative figure. Add to this figure San Francisco residents, a greater proportion of whom use cannabis than in any other city in the country.

Second, the City should consider whether it wants to encourage an edibles-only on-site consumption model. Edibles are processed in the body very differently than inhalation is processed. An edible is metabolized by the liver, enters the blood stream, and is associated with a stronger effect. It releases more slowly so the effects also lasts longer, but does not kick in for some time after ingestion. Persons unfamiliar with the way edibles work in the body should receive guidance on the appropriate dose and on the timing for effects to be felt. The effects of smoked or vaporized cannabis are felt much more quickly by the user and also fade more quickly, thereby facilitating self-dosing with little guidance. They are not interchangeable; users should have both options.

4. Amend SECTION 1606(b)(5): Clarify the registration process for pipeline applicants that were left out of the process.

The SBC thanks the legislative sponsors for addressing this recommendation in Section 1606(b)(5) of the substitute legislation that was introduced on October 24, 2017.

5. Amend SECTION 1618(0): Allow a cannabis retailer that holds an M-License to employ persons 18 and over (with a valid physician’s recommendation).

State law (BPC Section 26140) does not require M-licensees to employ persons 21 and over, but the proposed City law would require all employees to be at least 21 years of age. Amend the ordinance to allow M-licensees to employ persons 18-21 years of age.

6. Revise ownership provisions.

a) Ensure that MCD ownership provisions are able to accommodate the transition from not-for-profit to for-profit business structures.

Such businesses should not inadvertently violate Article 33 during the temporary permitting

period under Article 16. This recommendation is not intended to provide a loophole for a transfer of ownership and operations to an entirely new set of individuals. (Suggestion: Amend Article 33 to strike the not-for-profit requirement under Section 3301(f).)

b) Ensure that cannabis businesses may receive investment.

The Commission recommended flexibility above 20% to allow small businesses to bring in partners or additional owners as investors. The Office of Cannabis should have the authority to make decisions on this point, as it is a complicated issue that may require some discretion and expedited decision making authority.

7. Include additional felony records beyond only cannabis-related offenses are included when equity criteria are developed in the future.

8. Consider a distinction between topicals and edibles in the regulations.

If possible under state law, allow for cottage production of topicals (and eventually edibles, if state law can be changed). Also consider a distinction between topicals and edibles in manufacturing and on-site consumption regulations.

9. Protect and preserve compassionate care programs in the new permitting process.

The new regulations and process for integrating existing cannabis businesses should not inadvertently eliminate compassionate care programs that many patients rely upon.

10. Specify a radius of no more than 600 ft.

Retain the 600 ft. radius requirement regarding distance from a storefront retailer to an existing school, public or private, as proposed in the original draft of the legislation.

To illustrate the practical implications of a more restrictive radius, take the example of District 8. 84.4% of District 8 residents voted “yes” on Proposition 64. A 1,000 foot radius requirement (the current radius requirement under the MCD regulations) would prevent cannabis retail in nearly every part of District 8, including the Castro district. Expanding the radius to be more restrictive produces effects that are inconsistent with voter intent. As drafted, BOS File No. 171042 specifies a radius of 600 feet, which the SBC supports.

This recommendation is detailed further in the Small Business Commission’s response to BOS File No. 171041.

11. Support the Equity Program

The Commission supports moving forward the initial Equity Program proposal and appreciates the Board of Supervisors for extending the conviction history beyond cannabis related convictions and California.

12. Strike any reference to workforce requirements in the legislation.

The Commission expressed significant concerns about the feasibility of meeting a local hire requirement mandate, including changing demographics of the City, practical challenges with compliance, and the potential negative consequences for non-cannabis employers.

Applying a blanket mandate does not get to or guarantee that the mandate will address the hiring needs of areas of the City where there unemployment is above 3%. An intent of the local hire program is to target employment from these areas for the hourly wage or lower salary range positions in the cannabis industry. These are the exact jobs that current non-cannabis small businesses (neighborhood retailers, restaurants, manufactures, etc.) are currently having difficulty in filling. The SBC is concerned that applying a blanket mandate will increase the challenge local small businesses are having in hiring and retaining employees due to the high cost of living in San Francisco.

The Commission urges the Board of Supervisor to conduct a thorough jobs analysis to determine whether a blanket mandate could have implications that negatively impact the hiring and employee retention for San Francisco non-cannabis small businesses. And to work the Office of Economic and Workforce Development to identify the best means to employ individuals that live in areas where the unemployment is above 3% in the cannabis industry.

On a general note, the proposed policies are already fairly conservative, displaying more caution than the election results suggest is necessary. San Francisco had the highest percentage of voters in support of any county in the state of California, at 74% of voters. For the sake of comparison, the next highest percentages of “yes” votes were in Santa Cruz County (69.9%) and Marin County (69.6%). The table below shows the number of votes per district and the percentages of voters for (“yes”) and against (“no”) Proposition 64.

Table 1: Proposition 64 Election Data (by district)

Supervisory District	Number of votes	Yes (%)	No (%)
1	34,567	71.4%	28.6%
2	43,246	77.0%	23.0%
3	30,990	75.6%	24.4%
4	33,254	61.3%	38.7%
5	45,087	84.5%	15.5%
6	30,283	78.2%	21.8%
7	39,044	66.8%	33.2%
8	50,938	84.4%	15.6%
9	34,559	77.5%	22.5%
10	28,109	69.6%	30.4%
11	27,554	59.0%	41.0%
All Districts	397,631	74.3%	25.7%

In light of the very strong voter support for Proposition 64, amendments should move the legislation in a more progressive direction, rather than toward more conservative regulations or land use policies.

San Francisco has been a trailblazer in other policy areas. Considering the history of cannabis in the City, it should be a leader and innovator in developing progressive, common-sense cannabis policies. It should engage in thoughtful dialogue to develop policies that are rational and appropriate for their intended objectives (for example, to prevent youth access to cannabis), rather than allowing antiquated and unsubstantiated fears about cannabis to dominate the policy-making process.

The SBC respectfully requests that you amend the legislation to reflect the recommendations above and

approve promptly, remaining conscious of the timelines for the legislation to be effective on January 1, 2018 when the first licenses are to be issued.

Thank you for considering the Small Business Commission's comments. Please feel free to contact me should you have any questions.

Sincerely,



Regina Dick-Endrizzi
Director, Office of Small Business

cc: Edwin M. Lee, Mayor
Jeff Sheehy, Board of Supervisors
Ahsha Safai, Board of Supervisors
Sandra Fewer, Board of Supervisors
Norman Yee, Board of Supervisors
Nicole Elliott, Office of Cannabis
Barbara Garcia, Department of Public Health
Colleen Chawla, Department of Public Health
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Mawuli Tugbenyoh, Mayor's Office
Francis Tsang, Mayor's Office
Lisa Pagan, Office of Economic and Workforce Development
Alisa Somera, Rules Committee