

File No. 171311

Committee Item No. 12
Board Item No. 14

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date January 11, 2018

Board of Supervisors Meeting

Date January 23, 2018

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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OTHER (Use back side if additional space is needed)

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Completed by: Linda Wong Date January 5, 2018
Completed by: Linda Wong Date January 16, 2018

[Health Code - License Fee for Cannabis Smoking Consumption Permit]

Ordinance amending the Health Code to impose an annual license fee of \$1,200 for a Cannabis Smoking Consumption permit.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font. **Additions to Codes** are in *single-underline italics Times New Roman font*. **Deletions to Codes** are in ~~italics Times New Roman font~~. **Board amendment additions** are in double-underlined Arial font. **Board amendment deletions** are in ~~Arial font~~. **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Health Code shall be amended by revising Section 8A.5, to read as follows:

SEC. 8A.5. PAYMENT OF ANNUAL LICENSE FEE.

(a) The license fee for a Cannabis Consumption Permit shall be paid annually on or before March 31, in accordance with the provisions of Section 76.1 of the Business and Tax Regulations Code.

(b) The annual license fee for a "Prepackaged Cannabis Products - No Preparation" Cannabis Consumption Permit shall be \$800.

(c) The annual license fee for a "Limited Preparation of Cannabis Products" Cannabis Consumption Permit shall be \$1,000.

(d) The annual license fee for a "Cannabis Smoking" Cannabis Consumption Permit shall be \$1,200.

(de) Beginning with fiscal year 2018-2019, the annual license fees set pursuant to this Section 8A.5 may be adjusted each year on July 1, without further action by the Board of

1 Supervisors. Not later than April 1 of each year, the Controller shall determine whether the
2 current fees have produced or are projected to produce revenues sufficient to support the
3 costs of licensing-related activities, and that the fees will not produce revenue that is
4 significantly more than the costs of providing such services. The Controller shall, if
5 necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to
6 ensure that the program recovers the costs of operation without producing revenue that is
7 significantly more than such costs. The adjusted rates shall become operative on July 1.
8

9 Section 2. Scope of Ordinance.

10 (a) In enacting this ordinance, the Board of Supervisors intends to amend only those
11 words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks,
12 charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly
13 shown in this ordinance as additions, deletions, Board amendment additions, and Board
14 amendment deletions in accordance with the "Note" that appears under the official title of the
15 ordinance.

16 (b) For purposes of this Section 2, the text of Section 8A.5 of the Health Code is
17 considered to include the amendments to Section 8A.5 that are part of the ordinances in
18 Board File Nos. 171042 and 171153. In accordance with this Section 2, there is no intent for
19 this ordinance to amend the aforementioned ordinances except to the extent indicated in this
20 ordinance.
21


22 Section 3. Effective and Operative Dates.

23 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
24 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
25

1 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
2 Mayor's veto of the ordinance.

3 (b) This ordinance shall become operative either on its effective date or on the date
4 that both the ordinance in Board File No. 171042 and the ordinance in Board File No. 171153
5 have become operative, whichever is later.

6
7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

9
10 By: 
11 ANNE PEARSON
12 Deputy City Attorney

13 n:\leganas2017\1700692\01237584.docx

FILE NO.

LEGISLATIVE DIGEST

[Health Code - License Fee for Cannabis Smoking Consumption Permit]

Ordinance amending the Health Code to impose an annual license fee of \$1,200 for a Cannabis Smoking Consumption permit.

Existing Law

The ordinance in Board File Number 171042, introduced on September 26, 2017, would establish a new Article 8A of the Health Code, authorizing the Department of Public Health to issue cannabis consumption permits to cannabis businesses that allow the consumption of cannabis on-site. The ordinance in Board File Number 171153 would impose annual license fees of \$800 and \$1,000 on two categories of cannabis consumption permits that would allow the on-site consumption of prepackaged cannabis products, and cannabis products that require limited preparation, respectively.

Amendments to Current Law

The proposed ordinance would amend Section 8A.5 of the Health Code to impose an annual license fee of \$1,200 for a third category of cannabis consumption permits that would allow the on-site smoking of cannabis.

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<p>Item 12 File 17-1311</p>	<p>Department: Department of Public Health (DPH)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> The proposed ordinance would amend Section 8A.5 of the City’s Health Code to impose an annual license fee of \$1,200 for a third category of cannabis consumption permits that would allow the on-site smoking of cannabis. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> In June 2017, the State passed SB 94, which consolidates provisions of the State’s regulatory framework for medical cannabis and the Adult Use of Marijuana Act (Proposition 64) approved by California voters in November 2016. In December 2017, the Board of Supervisors approved an ordinance establishing a new Article 8A of the Health Code, authorizing the DPH to issue cannabis consumption permits to cannabis businesses that allow the consumption of cannabis on-site (File 17-1042). In December 2017, the Board of Supervisors approved an ordinance amending the Health Codes to impose the following annual license fees on two categories of cannabis consumption permits: (1) an \$800 annual license fee that would allow the on-site consumption of prepackaged cannabis products; and (2) a \$1,000 annual license fee that would allow the on-site consumption of cannabis products that require limited preparation (File 17-1153). 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> According to DPH, the \$1,200 smoking consumption permit fee amount reflects estimated costs for permitting on-site smoking at cannabis businesses. The \$1,200 fee amount is based on adding an additional amount of \$200 to the existing \$1,000 annual license fee that would allow the on-site consumption of cannabis products that require limited preparation. DPH states that the \$200 reflects the approximate costs required for review of ventilation standards for smoking consumption rooms and is based on the hourly rate of \$191 for additional work as needed for inspections of cannabis businesses for all permit categories as set pursuant to Article 16 of the Police Code (File 17-1153). The additional \$200 amount is calculated as a blended rate of staff time, primarily the 6122 Senior Environmental Health Inspector classification and related supervision time from the 6124 Principal Environmental Health Inspector classification. The rate is further adjusted to reflect productive time, departmental overhead, and city administrative overhead as calculated in the County Wide Cost Allocation Plan. DPH anticipates reviewing nine applications for on-site smoking permits for nine cannabis storefront retail businesses in the first year (FY 2017-18). Revenues for year one (FY 2017-18) from the smoking consumption permit fee are estimated to be \$5,400 based on the nine cannabis businesses seeking permits for six months (January 1, 2018 through June 30, 2018). 	
<p style="text-align: center;">Recommendation</p>	
<ul style="list-style-type: none"> Approval of the proposed ordinance is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

BACKGROUND**Changes to California Law**

On November 8, 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA), which allows adults 21 years of age or older to legally grow, possess, transport, purchase, and use cannabis for non-medical purposes, with certain restrictions. Under Proposition 64, the State is responsible for creating a regulatory and licensing system to govern the commercial cultivation, manufacture, testing, distribution, taxation and sale of non-medical cannabis and related products. In accordance with Proposition 64, cities and counties can also regulate non-medical cannabis businesses, including imposing restrictions on where such businesses can be located, requiring local licenses or permits to operate and allowing restricted taxation and fee structures. Under Proposition 64, cities and counties may begin issuing licenses for such businesses on January 1, 2018.

In 2015, Governor Brown signed legislation that established California's first regulatory framework for the medical cannabis industry. Under the Medical Cannabis Regulation and Safety Act (MCRSA), all commercial medical cannabis activity requires both a state license and local approval through a license, permit, or other authorization. Local approval will be authorized by local governments. Under MCRSA, cities and counties would begin issuing local permits for such businesses on January 1, 2018. While AUMA and MCRSA had similar requirements, they established different license types and procedures at the State and local level. In order to address these differences, on June 27, 2017, Governor Brown signed SB 94 into law. This bill repealed MCRSA and included certain provisions of MCRSA in the licensing provisions of AUMA. Under the bill, these consolidated provisions are now known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). 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.

Current Local Regulations

Since 2005, medical cannabis has been regulated under Article 33 of the City's Health and Safety Code, which authorizes the Department of Public Health (DPH) to oversee the permitting of medical cannabis dispensaries, which operate as collectives or cooperatives¹.

¹ 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.

In July 2017, the Board of Supervisors approved an ordinance amending Chapter 2A, Article XXVI of the City's Administrative Code entitled "Cannabis Regulation" to establish an Office of Cannabis under the direction of the City Administrator and authorized 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 (File 17-0275).

In December 2017, the Board of Supervisors approved an 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 (File 17-1042). The new regulatory scheme would complement and then replace Article 33 of the Health Code, which would sunset on December 31, 2018. The ordinance established a new Article 8A of the Health Code, authorizing the DPH to issue cannabis consumption permits to cannabis businesses that allow the consumption of cannabis on-site.

In December 2017, the Board of Supervisors approved an ordinance amending the Business and Tax Regulations and Health Codes to (1) require the Office of Cannabis to collect permit application fees of \$2,000 and annual license fees of \$5,000 for cannabis business permits; (2) authorize DPH to impose fees relating to the inspection of cannabis businesses; (3) establish annual license fees for cannabis consumption permits; and (4) require the Office of Cannabis and DPH to waive certain fees for Equity Applicants (File 17-1153). The ordinance imposed the following annual license fees on two categories of cannabis consumption permits: (1) an \$800 annual license fee that would allow the on-site consumption of prepackaged cannabis products; and (2) a \$1,000 annual license fee that would allow the on-site consumption of cannabis products that require limited preparation.²

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend Section 8A.5 of the City's Health Code to impose an annual license fee of \$1,200 for a third category of cannabis consumption permits that would allow the on-site smoking of cannabis.

According to Mr. Drew Murrell, Finance Manager at DPH, the smoking consumption permit is different than the other cannabis consumption permits because businesses may include either prepackaged cannabis products or limited preparation of cannabis products in addition to the designated smoking consumption rooms. The permit also requires review of ventilation standards³ and operation of ventilation equipment inside and outside of the designated smoking consumption area.

² According to Mr. Drew Murrell, Finance Manager at DPH, the annual license fee amounts are based on comparable work done permitting bars and taverns with and without food preparation as set pursuant to Business and Tax Regulations Code 249.1

³ According to Mr. Patrick Fosdahl, Environmental Health Branch Assistant Director at DPH, a designated smoking room must meet the following ventilation standards: (1) the designated smoking room must have a separate heating, ventilation, and air-conditioning (HVAC) system such that none of the air in the designated smoking room

According to Mr. Patrick Fosdahl, Environmental Health Branch Assistant Director at DPH, the department is in the process of developing regulatory standards for smoking consumption rooms. These standards will include items related to ventilation, air volume per person in the room, filtration, negative air pressure standards and odor/smoke controls. All of these items will need to be verified both at the time of the initial permit and during any annual inspections or in response to complaints.

FISCAL IMPACT

Proposed On Site Smoking Consumption Permit Fee

According to Mr. Murrell, the \$1,200 smoking consumption permit fee amount reflects estimated costs for permitting on-site smoking at cannabis businesses. The \$1,200 fee amount is based on adding an additional amount of \$200 to the existing \$1,000 annual license fee that would allow the on-site consumption of cannabis products that require limited preparation. Mr. Murrell states that the \$200 reflects the approximate costs required for review of ventilation standards for smoking consumption rooms and is based on the hourly rate of \$191 for additional work as needed for inspections of cannabis businesses for all permit categories as set pursuant to Article 16 of the Police Code (File 17-1153). Mr. Murrell states that the additional \$200 amount is calculated as a blended rate of staff time, primarily the 6122 Senior Environmental Health Inspector classification and related supervision time from the 6124 Principal Environmental Health Inspector classification. The rate is further adjusted to reflect productive time, departmental overhead, and city administrative overhead as calculated in the County Wide Cost Allocation Plan.

According to Mr. Murrell, DPH anticipates reviewing nine applications for on-site smoking permits for nine cannabis storefront retail businesses⁴ in the first year (FY 2017-18). Revenues for year one (FY 2017-18) from the smoking consumption permit fee are estimated to be \$5,400 based on the nine cannabis businesses seeking permits for six months (January 1, 2018 through June 30, 2018). Beginning in FY 2018-19, the Office of the Treasurer and Tax Collector (TTX) will collect renewal permits as part of the department's consolidated permit and license fee collection process⁵. Mr. Murrell states that revenues for the second year (FY 2018-19) are

will be recirculated into other parts of the cannabis business' premises; (2) the air from a designated smoking room must be directly exhausted to the outdoors by a filtration system that, at a minimum, eliminates all odor and smoke; (3) from the designated smoking room, odor and smoke must not drift to other portions of the premises, (4) the designated smoking room must be completely separated from the remainder of the premises by solid partitions or glazing without openings other than doors, and all doors leading to the designated smoking room must be self-closing, and must be installed with a gasket to provide a seal where the door meets the stop; and (5) the designated smoking room must meet other health and safety standards as adopted by the Director under Article 8.

⁴ The nine locations include the following: Barbary Coast Collective, Harvest Off Mission, Bloom Room, Harvest on Geary, Love Shack, Re-leaf Herbal Cooperative, Inc., SPARC, Urban Pharm, and the Vapor Room Cooperative (provisional permit)

⁵ The annual license fee payment is due March 31 each year in accordance with Article 2, Section 76.1 of the Business and Tax Regulations Code.

currently unknown because the on-site smoking consumption permit is optional for cannabis businesses with a brick and mortar retail location⁶.

Beginning in FY 2018-19, the annual license fee of \$1,200 for a smoking consumption permit may be adjusted each year on July 1, without further action by the Board of Supervisors. Not later than April 1 of each year, the Controller will determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of licensing-related activities, and that the fees will not produce revenue that is significantly more than the costs of providing such services. The Controller will, if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operations without producing revenue that is significantly more than such costs⁷.

Estimated Annual License Fee Revenues for Cannabis Business Permits

The annual license fee would allow DPH to recover costs associated with consumption permitting for cannabis smoking.⁸ According to Mr. Murrell, DPH is projected to recover approximately \$392,881 or costs equal to 6 months of recreational cannabis operations in the first year (FY 2017-18)⁹ given that fees cannot be collected until after January 1, 2018. DPH is required to report on license fee amounts annually during the budget process and work with the Controller's Office to adjust fees to be revenue neutral.

RECOMMENDATION

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

⁶ According to Mr. Fosdahl, in order to provide the on-site smoking of cannabis, the cannabis retailer would (1) have to identify a location large enough to have a designated smoking room, (2) have the landlord agree to a designated smoking room, and (3) not have the neighbors protest the smoking room.

⁷ The adjusted rates will become operative on July 1.

⁸ The majority of cost recovery for DPH will come from fees relating to the inspection of cannabis businesses pursuant to the fee structure approved in File 17-1153.

⁹ As appropriated by the Board of Supervisors in DPH's budget for FY 2017-18.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

BUDGET AND FINANCE COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

NOTICE IS HEREBY GIVEN THAT the Budget and Finance Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: January 11, 2018

Time: 10:00 a.m.

Location: Legislative Chamber, Room 250, located at City Hall,
1 Dr. Carlton B. Goodlett Place, San Francisco, CA

Subject: File No. 171311. Ordinance amending the Health Code to impose an annual license fee of \$1,200 for a Cannabis Smoking Consumption permit.

If the legislation passes, a new annual license fee of \$1,200 for a "Cannabis Smoking" Cannabis Consumption Permit shall be established. This annual license fee may be adjusted each year on July 1, without further action by the Board of Supervisors. Not later than April 1 of each year, the Controller shall, if necessary, adjust the fee upward or downward for the upcoming fiscal year as appropriate. The adjusted rate shall become operative on July 1.

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made part of the official public record in this matter, and shall be brought to the attention of the members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board. Agenda information relating to this matter will be available for public review on Friday, January 5, 2018.


for Angela Calvillo, Clerk of the Board

DATED: December 28, 2017

PUBLISHED: December 31, 2017 and January 5, 2018

CALIFORNIA NEWSPAPER SERVICE BUREAU

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SAN FRANCISCO, CA 94102

COPY OF NOTICE

Notice Type: GPN GOVT PUBLIC NOTICE
Ad Description File No. 171311 - Fee Ad

To the right is a copy of the notice you sent to us for publication in the SAN FRANCISCO EXAMINER. Thank you for using our newspaper. Please read this notice carefully and call us with ny corrections. The Proof of Publication will be filed with the County Clerk, if required, and mailed to you after the last date below. Publication date(s) for this notice is (are):

12/31/2017 , 01/05/2018

The charge(s) for this order is as follows. An invoice will be sent after the last date of publication. If you prepaid this order in full, you will not receive an invoice.

EXM# 3083576

NOTICE OF PUBLIC HEARING BUDGET AND FINANCE COMMITTEE SAN FRANCISCO BOARD OF SUPERVISORS, THURSDAY, JANUARY 11, 2018 - 10:00 AM LEGISLATIVE CHAMBER, ROOM 250, CITY HALL, 1 DR. CARLTON B. GOODLETT PLACE, SAN FRANCISCO, CA

NOTICE IS HEREBY GIVEN THAT the Budget and Finance Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard: File No. 171311. Ordinance amending the Health Code to impose an annual license fee of \$1,200 for a Cannabis Smoking Consumption permit. If the legislation passes, a new annual license fee of \$1,200 for a "Cannabis Smoking" Cannabis Consumption Permit shall be established. This annual license fee may be adjusted each year on July 1, without further action by the Board of Supervisors. Not later than April 1 of each year, the Controller shall, if necessary, adjust the fee upward or downward for the upcoming fiscal year as appropriate. The adjusted rate shall become operative on July 1. In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made part of the official public record in this matter, and shall be brought to the attention of the members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton Goodlett Place, Room 244, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board. Agenda information relating to this matter will be available for public review on Friday, January 5, 2018.



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OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE

RECEIVED
12/12/17 @ 6:00 pm
SL

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *for* Acting Mayor London Breed
RE: Health Code - License Fee for Cannabis Smoking Consumption Permit
DATE: December 12, 2017

Attached for introduction to the Board of Supervisors is an ordinance amending the Health Code to impose an annual license fee of \$1,200 for a Cannabis Smoking Consumption permit.

I respectfully request that this item be calendared in Budget & Finance Committee on January 11, 2018.

Should you have any questions, please contact Mawuli Tugbenyoh (415) 554-5168.

