

BOARD of SUPERVISORS



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MEMORANDUM

TO: Greg Wagner, Acting Director, Department of Public Health
Nicole Elliot, Director, Office of Cannabis

FROM: Erica Major, Assistant Clerk
Land Use and Transportation Committee

DATE: November 16, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by City Administrator on November 13, 2018:

File No. 181061

Ordinance amending the Planning Code to allow Medical Cannabis Dispensaries (MCDs) with approvals from the Planning Department for a Medical Cannabis Dispensary Use as of January 5, 2018, to apply to convert to Cannabis Retail Uses under the same conditions as MCDs that held valid final permits from Department of Public Health as of January 5, 2018; exempting all such converted Cannabis Retail Uses from otherwise applicable Conditional Use Authorization requirements; clarifying that such Cannabis Retail Uses are not exempted from any minimum radius that is required by a State licensing authority for distance between a Cannabis Retailer and an existing school, day care center or youth center; allowing Equity Program or Equity Incubator Applicants who have MCD applications pending at the Planning Department to apply to convert to Cannabis Retail Uses; exempting such Cannabis Retail Uses from the minimum radius requirements between those establishments and existing Cannabis Retailers and Medical Cannabis Retailers; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making public necessity, convenience, and welfare findings under Planning Code, Section 302.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

c: Dr. Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Ray Law, Office of Cannabis

1 [Planning Code - Conversion of Medical Cannabis Dispensary Uses to Cannabis Retail Uses]

2
 3 **Ordinance amending the Planning Code to allow Medical Cannabis Dispensaries**
 4 **(MCDs) with approvals from the Planning Department for a Medical Cannabis**
 5 **Dispensary Use as of January 5, 2018, to apply to convert to Cannabis Retail Uses**
 6 **under the same conditions as MCDs that held valid final permits from Department of**
 7 **Public Health as of January 5, 2018; exempting all such converted Cannabis Retail**
 8 **Uses from otherwise applicable Conditional Use Authorization requirements; clarifying**
 9 **that such Cannabis Retail Uses are not exempted from any minimum radius that is**
 10 **required by a State licensing authority for distance between a Cannabis Retailer and an**
 11 **existing school, day care center or youth center; allowing Equity Program or Equity**
 12 **Incubator Applicants who have MCD applications pending at the Planning Department**
 13 **to apply to convert to Cannabis Retail Uses; exempting such Cannabis Retail Uses**
 14 **from the minimum radius requirements between those establishments and existing**
 15 **Cannabis Retailers and Medical Cannabis Retailers; affirming the Planning**
 16 **Department's determination under the California Environmental Quality Act; making**
 17 **findings of consistency with the General Plan, and the eight priority policies of**
 18 **Planning Code, Section 101.1; and making public necessity, convenience, and welfare**
 19 **findings under Planning Code, Section 302.**

20 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 21 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 22 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 23 **Board amendment additions** are in double-underlined Arial font.
 24 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 25 **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:

1
2 Section 1.

3 (a) The Planning Department has determined that the actions contemplated in this
4 ordinance comply with the California Environmental Quality Act (California Public Resources
5 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
6 Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms this
7 determination.

8 (b) On _____, the Planning Commission, in Resolution No. _____,
9 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
10 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
11 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
12 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

13 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that these
14 Planning Code Amendments will serve the public necessity, convenience, and welfare for the
15 reasons set forth in Planning Commission Resolution No. _____, and the Board
16 incorporates such reasons herein by reference.

17
18 Section 2. Article 1.7 of the Planning Code is hereby amended by revising Section
19 190, to read as follows:

20
21 **SEC. 190. CONVERSION OF MEDICAL CANNABIS DISPENSARIES TO**
22 **CANNABIS RETAIL ESTABLISHMENTS.**

23 (a) Conversion of MCDs with Planning Commission Approval to Cannabis Retail Uses.
24
25

1 (1) An establishment may convert from the prior authorized Use at the property to a
2 Cannabis Retail Use by obtaining a building permit authorizing the change of Use, if the establishment
3 (to be termed a "Grandfathered MCD") satisfies one of the following three criteria: that either
4 _____ (A) holds a valid final permit from the Department of Public Health to
5 operate as a Medical Cannabis Dispensary, pursuant to Section 3307 of the Health Code, as of the
6 effective date of the ordinance in Board File No. 171042 January 5, 2018;

7 _____ (B) holds an approval for a Medical Cannabis Dispensary Use from the
8 Planning Department as of January 5, 2018; or that

9 _____ (C) submitted a complete application for such a permit from the Department
10 of Public Health to operate as a Medical Cannabis Dispensary by July 20, 2017, and receives such
11 a final permit from the Department of Public Health ("Grandfathered MCD"), may convert to a
12 Cannabis Retail Use by obtaining a building permit authorizing the change of use, as set forth below.
13 Such permits are subject to neighborhood notification pursuant to Section 312, regardless of zoning
14 district.

15 (b) (2) A Grandfathered MCD converting to a Cannabis Retail Use pursuant to this
16 Section 190 is not subject to:

17 _____ (A) a Conditional Use Authorization requirement for Cannabis Retail Uses in
18 the zoning district in which it is located; or

19 _____ (B) the locational restrictions for Cannabis Retail set forth in subsection
20 202.2(a), except that if a State licensing authority specifies a minimum radius from an existing School,
21 public or private, or from an existing day care center or youth center, that minimum radius shall apply.

22 _____ (3) A Grandfathered MCD is subject to all other Planning Code requirements,
23 including but not limited to the neighborhood notification requirement of Section 312.

24 (c) In order for a Grandfathered MCD to convert to a Cannabis Retail Use pursuant to this
25 Section 190, a completed application for the change of use must be submitted to the Department of

1 *Building Inspection no later than March 31, 2018, and a first approval by the Planning Department or*
2 *Planning Commission must be received on or before December 31, 2019. An application will be*
3 *deemed to have received its first approval from the Planning Department or Planning Commission*
4 *when that body issues its decision, regardless of whether any appeal or lawsuit is subsequently filed*
5 *challenging any City approval related to the application.*

6 **(b) Establishment of Cannabis Retail Uses at Sites with MCD Applications Pending Before**
7 **the Planning Commission.**

8 (1) For the purposes of this subsection (b), a Pending MCD Applicant is an applicant
9 that submitted a complete application to the Department of Public Health to operate a Medical
10 Cannabis Dispensary by July 20, 2017, but that did not receive a permit or authorization from the
11 Planning Department to operate such Use as of January 5, 2018, and that qualifies as either an Equity
12 Applicant or an Equity Incubator pursuant to Section 1604 of the Police Code.

13 (2) A Pending MCD Applicant may establish a Cannabis Retail Use at the property
14 where the application to operate a Medical Cannabis Dispensary was proposed by obtaining building
15 permit authorization for the change of use.

16 (3) Except as specified in this subsection (b), a Pending MCD Applicant that obtains a
17 change of use permit for a Cannabis Retail Use is subject to all Planning Code requirements, including
18 but not limited to the neighborhood notification requirement set forth in Section 312 and Conditional
19 Use Authorization if required for a Cannabis Retail Use by the zoning district in which the property is
20 located.

21 (4) A Pending MCD Applicant is not subject to the minimum radius requirement
22 between Cannabis Retailers or between a Cannabis Retailer and a Medicinal Cannabis Retailer, as set
23 forth in subsection 202.2(a), but is subject to all other locational requirements for Cannabis Retail set
24 forth in subsection 202.2(a).

1 (~~ca~~) All other applications for a change of use from a Medical Cannabis Dispensary
2 Use to a Cannabis Retail Use shall be subject to the zoning controls for the district in which
3 the Medical Cannabis Dispensary is located.

4 (~~de~~) This Section 190 shall expire by operation of law on January 1, 20201. Upon its
5 expiration, the City Attorney shall cause this Section 190 to be removed from the Planning
6 Code.

7
8 Section 3. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By: _____
22 VICTORIA WONG
23 Deputy City Attorney

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1 (~~cd~~) All other applications for a change of use from a Medical Cannabis Dispensary
2 Use to a Cannabis Retail Use shall be subject to the zoning controls for the district in which
3 the Medical Cannabis Dispensary is located.

4 (~~de~~) This Section 190 shall expire by operation of law on January 1, 2020~~1~~. Upon its
5 expiration, the City Attorney shall cause this Section 190 to be removed from the Planning
6 Code.

7
8 Section 3. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By:  FOR
22 VICTORIA WONG
Deputy City Attorney

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24
25

LEGISLATIVE DIGEST

[Planning Code - Conversion of Medical Cannabis Dispensary Uses to Cannabis Retail Uses]

Ordinance amending the Planning Code to allow Medical Cannabis Dispensaries (MCDs) with approvals from the Planning Department for a Medical Cannabis Dispensary Use as of January 5, 2018, to apply to convert to Cannabis Retail Uses under the same conditions as MCDs that held valid final permits from Department of Public Health as of January 5, 2018; exempting all such converted Cannabis Retail Uses from otherwise applicable Conditional Use Authorization requirements; clarifying that such Cannabis Retail Uses are not exempted from any minimum radius that is required by a State licensing authority for distance between a Cannabis Retailer and an existing school, day care center or youth center; allowing Equity Program or Equity Incubator Applicants who have MCD applications pending at the Planning Department to apply to convert to Cannabis Retail Uses; exempting such Cannabis Retail Uses from the minimum radius requirements between those establishments and existing Cannabis Retailers and Medical Cannabis Retailers; affirming the Planning Department’s determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making public necessity, convenience, and welfare findings under Planning Code, Section 302.

Existing Law

Planning Code Section 190 allows an establishment that holds a valid Department of Public Health (DPH) permit to operate a Medical Cannabis Dispensary (MCD), or that applied for such a permit as of July 20, 2017, and that obtains such a permit (collectively, “Grandfathered MCDs”), to convert to a Cannabis Retail Use by obtaining a building permit for a change of use. Such establishments are not subject to the locational restrictions of Planning Code Section 202.2(a), which prohibit a new Cannabis Retail use within 600 feet of an existing Cannabis Retailer or Medicinal Cannabis Retailer, with limited exceptions. In order for a Grandfathered MCD to convert to a Cannabis Retail Use pursuant to Section 190, a completed application for the change of use must be submitted to the Department of Building Inspection no later than March 31, 2018, and a first approval by the Planning Department or Planning Commission must be received on or before December 31, 2019.

Amendments to Current Law

This ordinance would amend Section 190 to allow an establishment to convert from a prior authorized use on the property to a Cannabis Retail Use as a Grandfathered MCD if it satisfies one of three criteria: (1) it holds a valid permit from DPH to operate an MCD; (2) it holds an approval for an MCD use from the Planning Department as of January 5, 2018; or (3)

it submitted an application for an MCD permit to DPH by July 20, 2017, and receives such a permit.

The amendments would also provide that a Grandfathered MCD would not be subject to a conditional use authorization requirement. In addition, the amendments would clarify that, although Grandfathered MCDs are not subject to the locational requirements of Planning Code Section 202.2(a), if a state licensing authority requires a minimum radius from an existing school, daycare center or youth center to a Cannabis Retail use, that minimum radius shall apply.

The amendments would also allow a Pending MCD Applicant to establish a Retail Cannabis use at a property where an MCD use has been proposed but not approved, by obtaining a building permit for the change of use. The amendment defines a Pending MCD Applicant as an applicant that submitted a complete application to the Department of Public Health to operate a Medical Cannabis Dispensary by July 20, 2017, but that did not receive a permit or authorization from the Planning Department to operate such Use as of January 5, 2018, and that qualifies as either an Equity Applicant or an Equity Incubator pursuant to Section 1604 of the Police Code. Such a Retail Cannabis use would be subject to all Planning Code requirements, including but not limited to the neighborhood notification requirement set forth in Section 312 and a Conditional Use Authorization if required for a Cannabis Retail use by the zoning district in which the property is located. Such a Retail Cannabis use would not be subject to the minimum radius requirement between Cannabis Retailers or between a Cannabis Retailer and a Medicinal Cannabis Retailer, as set forth in Planning Code Section 202.2(a), but would be subject to all other locational requirements for Cannabis Retail set forth in Section 202.2(a).

The amendments would eliminate the requirement that in order for a Grandfathered MCD to convert to a Cannabis Retail Use pursuant to Section 190, a completed application for the change of use must be submitted to the Department of Building Inspection no later than March 31, 2018, and a first approval by the Planning Department or Planning Commission must be received on or before December 31, 2019.

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