

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 DPH as of January 5, 2018; exempting all such converted Cannabis Retail Uses from otherwise applicable Conditional Use Authorization requirements; 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.

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. Except as noted below, 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.

Background Information

This Legislative Digest reflects an amendment made by the Land Use Committee of the Board of Supervisors on January 7, 2019. This amendment would delete the proposed amendment that would have clarified 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. Even without this clarifying amendment, a Grandfathered MCD seeking to convert to a Cannabis Retail Use and obtain a state license would be subject to any minimum radius to an existing school, daycare center or youth center that is specified by the Bureau of Cannabis Control, pursuant to California Business & Professions Code Section 26054(b).

n:\legana\as2019\1900068\01332415.docx