

BOARD of SUPERVISORS



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MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection
Sonya Harris, Secretary, Building Inspection Commission

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: August 9, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by Supervisor Rafael Mandelman on July 30, 2019:

File No. 190842

Ordinance renewing and extending a prior waiver and refund of investigation fees imposed by Building Code, Section 107A.5, for persons registered with the Office of Cannabis through December 31, 2020; amending the Health Code to extend the date beyond which temporary Medical Cannabis Dispensary Permits issued under Article 33 of the Health Code are rendered invalid, from December 31, 2019, to December 31, 2020; amending the Police Code to extend the date beyond which Temporary Cannabis Business Permits issued under Article 16 of the Police Code cannot be extended from December 31, 2019, to December 31, 2020; and amending the Planning Code to extend the date by which a Grandfathered Medical Cannabis Dispensary, as defined in the Planning Code, must have received a permit to operate from the Department of Public Health to be deemed a Temporary Cannabis Sales use, as defined in the Planning Code, from December 31, 2019, to December 31, 2020.

The proposed ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. It is pending before the Budget and Finance Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection

1 [Various Codes - Renewing and Extending Waiver and Refund of Investigation Fee - Persons
2 Registered with the Office of Cannabis - One-Year Extension of Medical Cannabis Dispensary
3 Permits and Temporary Cannabis Business Permits]

4 **Ordinance renewing and extending a prior waiver and refund of investigation fees**
5 **imposed by Building Code, Section 107A.5, for persons registered with the Office of**
6 **Cannabis through December 31, 2020; amending the Health Code to extend the date**
7 **beyond which temporary Medical Cannabis Dispensary Permits issued under Article 33**
8 **of the Health Code are rendered invalid, from December 31, 2019, to December 31,**
9 **2020; amending the Police Code to extend the date beyond which Temporary Cannabis**
10 **Business Permits issued under Article 16 of the Police Code cannot be extended from**
11 **December 31, 2019, to December 31, 2020; and amending the Planning Code to extend**
12 **the date by which a Grandfathered Medical Cannabis Dispensary, as defined in the**
13 **Planning Code, must have received a permit to operate from the Department of Public**
14 **Health to be deemed a Temporary Cannabis Sales use, as defined in the Planning**
15 **Code, from December 31, 2019, to December 31, 2020.**

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

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

24 Section 1. Background, Findings, and Purpose.

25 (a) Waiver of Department of Building Inspection Investigation Fee.

1 (1) To ensure that the cannabis industry in San Francisco operates in a
2 manner that promotes health and safety, and that otherwise conforms to applicable regulatory
3 standards, the City requires potential participants in that industry to register with the Office of
4 Cannabis to obtain a Temporary Cannabis Business Permit. Persons (as defined in Police
5 Code Section 1602) who register with the Office of Cannabis are required to submit to
6 inspections of the proposed Cannabis Business's premises by the Department of Building
7 Inspection, in addition to certain other City departments, agencies, and offices.

8 (2) Building Code Section 107A.5 imposes an investigation fee for any work
9 performed without a required Building Code permit ("Investigation Fee"). As described in
10 Building Code Table 1A-K ("Penalties, Hearings, Code Enforcement Assessments"), the
11 amount of the Investigation Fee is generally "9 times the Permit Issuance Fee plus the original
12 permit fee."

13 (3) In Ordinance No. 48-18, enacted March 21, 2018, the Board of
14 Supervisors ("Board") found that imposing the Investigation Fee on Persons registered with
15 the Office of Cannabis would likely be perceived as unfair or punitive by applicants who have
16 cooperated with the City's efforts to regulate the cannabis industry. Likewise, the Board found
17 that imposing the Investigation Fee might discourage similar cooperation by such Persons in
18 the future. Accordingly, Ordinance No. 48-18 waived the Investigation Fee as to Persons
19 registered with the Office of Cannabis, retroactively to September 26, 2017, the date on which
20 Ordinance No. 230-17 (the Article 16 ordinance) was introduced, and ordered a refund of
21 Investigation Fees previously collected on or after September 26, 2017.

22 (4) Ordinance No. 48-18 became inoperative after December 31, 2018.
23 Unforeseen delays, however, have hindered Persons registered with the Office of Cannabis
24 from correcting by December 31, 2018 all preexisting Building Code violations subject to the
25 Investigation Fee. But for these unforeseen delays, the Investigation Fee would have been

1 waived and refunded as to such violations. Accordingly, the Board finds that the policy goals
2 embodied in Ordinance No. 48-18 support a retroactive renewal and extension of the fee-
3 waiver and refund provisions of Ordinance No. 48-18.

4 (b) Extension of Expiration Dates for Medical Cannabis Dispensary Permits and
5 Temporary Cannabis Business Permits.

6 (1) Ordinance No. 230-17, enacted December 6, 2017, created Article 16 of
7 the Police Code, establishing a comprehensive City process for regulating Cannabis Business
8 activity, and created the Office of Cannabis to oversee the regulatory scheme. To facilitate
9 the transfer of all regulation of Cannabis Business activity to the Office of Cannabis after a
10 transition period, Ordinance No. 230-17 provided for the expiration, after December 31, 2019,
11 of Medical Cannabis Dispensary permits previously issued by the Department of Public
12 Health. To enable other cannabis businesses not holding Medical Cannabis Dispensary
13 permits to operate during the period when the Office of Cannabis processed applications for
14 permanent Cannabis Business Permits, Ordinance No. 230-17 also established within Article
15 16 a Temporary Cannabis Business Permit, with a final expiration date of December 31, 2019.

16 (2) Unforeseen delays have extended the length of time required by the
17 Office of Cannabis to process applications for Cannabis Business Permits. As a result, the
18 current expiration dates for Medical Cannabis Dispensary permits and Temporary Cannabis
19 Business Permits will pass before many holders of these permits who have already submitted
20 applications for permanent Cannabis Business Permits will have completed the process for
21 obtaining such a permit from the Office of Cannabis. The Board finds that the policy goals
22 embodied in Ordinance No. 230-17 and Article 16 support a one-year extension of the
23 expiration dates for Medical Cannabis Dispensary permits and Temporary Cannabis Business
24 Permits from December 31, 2019, to December 31, 2020, to allow current holders of those
25

1 permits to continue lawful operation of their cannabis businesses while the Office of Cannabis
2 completes its processing of their Cannabis Business Permit applications.

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4 Section 2. Renewal and Extension of Waiver of Investigation Fee; Refund of Fees
5 Previously Collected.

6 (a) The Investigation Fee referenced in subsection (a) of Section 1 of this ordinance
7 is hereby waived with respect to Persons who are currently registered with the Office of
8 Cannabis. Accordingly, neither the Department of Building Inspection, nor any other City
9 department, agency, or office may collect this fee from any Person who is currently registered
10 with the Office of Cannabis.

11 (b) This Section 2 is retroactive to September 26, 2017. Accordingly, the
12 Department of Building Inspection, and, if applicable, any other City department, agency, or
13 office, shall refund any fees described in subsection (a) that have, as of the effective date of
14 this ordinance, already been collected, including but not limited to fees collected on or
15 between January 1, 2019, and the effective date of this ordinance.

16 (c) This Section 2 shall be inoperative after December 31, 2020. After that date,
17 Persons registered with the Office of Cannabis shall again be subject to the Investigation Fee.
18 After that date, the Department of Building Inspection, and, as applicable, other City
19 departments, agencies, or offices, may impose the Investigation Fee on Persons registered
20 with the Office of Cannabis for unpermitted work that occurs, or other Building Code violations
21 that exist.

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1 Section 3. Article 33 of the Health Code is hereby amended by revising Section 3323,
2 to read as follows:

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4 **SEC. 3323. SUNSET PROVISION.**

5 This Article 33 shall expire by operation of law on December 31, ~~2019~~2020. All permits
6 authorizing the operation of a Medical Cannabis Dispensary issued under this Article 33 shall
7 be rendered invalid after December 31, 2018, except for those permits issued under this
8 Article 33 where the permit holder has applied for a Police Code Article 16 permit, which shall
9 be rendered invalid on December 31, ~~2019~~2020. Upon expiration of the Article, the City
10 Attorney shall cause it to be removed from the Health Code.

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12 Section 4. Article 1.7 of the Planning Code is hereby amended by revising Section
13 191, to read as follows:

14
15 **SEC. 191. AUTHORIZATION OF TEMPORARY CANNABIS SALES USES.**

16 (a) A Grandfathered MCD, as defined in Section 190, that receives a permit to
17 operate as a Medical Cannabis Dispensary from the Department of Public Health before
18 December 31, ~~2019~~2020 shall be deemed a Temporary Cannabis Sales Use, as defined in
19 Section 205.2. Upon expiration of the Temporary Cannabis Sales Use authorization, the land
20 use authorization for the parcel will revert to the original authorization to operate as a Medical
21 Cannabis Dispensary Use, unless the Planning Department or Planning Commission has
22 issued a permanent authorization for a Cannabis Retail Use.

23 (b) This Section 191 shall expire by operation of law on January 1, 2021. Upon its
24 expiration, the City Attorney shall cause this Section 191 to be removed from the Planning
25 Code.

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2 Section 5. Article 16 of the Police Code is hereby amended by revising Section 1605,
3 to read as follows:

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5 **SEC. 1605. TRANSITION PROVISION.**

6 * * * *

7 (h) **Duration.** A Temporary Cannabis Business Permit issued under this Section
8 1605 shall be valid for a period of 120 days and may be extended for additional 120-day
9 periods at the discretion of the Director. Notwithstanding the prior sentence, the Director shall
10 not issue a new temporary permit after January 1, 2019, and shall not extend the term of a
11 Temporary Cannabis Business Permit issued to an applicant for a Cannabis Business Permit
12 under this Article 16 past December 31, ~~2019~~2020.

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15 Section 6. Effective Date; Retroactivity.

16 (a) This ordinance shall become effective 30 days after enactment. Enactment
17 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or
18 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
19 overrides the Mayor's veto of the ordinance.

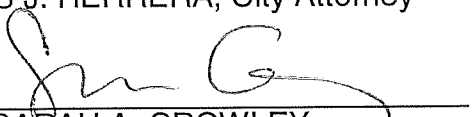
20 (b) Upon the effective date of this ordinance, as stated in subsection (b) of Section
21 2, the fee waiver described in Section 2 shall be retroactive to September 26, 2017.

22
23 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

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Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

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

By: 
SARAH A. CROWLEY
Deputy City Attorney

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LEGISLATIVE DIGEST

[Various Codes - Waiver and Refund of Investigation Fee for Persons Registered with the Office of Cannabis; One-Year Extension of Medical Cannabis Dispensary Permits and Temporary Cannabis Business Permits]

Ordinance renewing and extending a prior waiver and refund of investigation fees imposed by Building Code, Section 107A.5, for persons registered with the Office of Cannabis through December 31, 2020; amending the Health Code to extend the date beyond which temporary Medical Cannabis Dispensary Permits issued under Article 33 of the Health Code are rendered invalid, from December 31, 2019, to December 31, 2020; amending the Police Code to extend the date beyond which Temporary Cannabis Business Permits issued under Article 16 of the Police Code cannot be extended from December 31, 2019, to December 31, 2020; and amending the Planning Code to extend the date by which a Grandfathered Medical Cannabis Dispensary, as defined in the Planning Code, must have received a permit to operate from the Department of Public Health to be deemed a Temporary Cannabis Sales use, as defined in the Planning Code, from December 31, 2019, to December 31, 2020.

Existing Law

1. Any business or individual seeking to operate a cannabis business in San Francisco must register with the Office of Cannabis (“OOC”) and apply to OOC for a Temporary Cannabis Business Permit, and as part of that process, submit to inspections of the business’s premises by the Department of Building Inspection. The Building Code imposes an investigation fee for any work performed without a required Building Code permit (“Investigation Fee”). Ordinance No. 48-18 retroactively waived the Investigation Fee as to persons registered with the OOC, and ordered a refund of Investigation Fees previously collected, but that ordinance became inoperative after December 31, 2018.
2. Medical Cannabis Dispensary permits (issued under Article 33 of the Health Code) and Temporary Cannabis Business Permits (issued under Article 16 of the Police Code) will no longer be effective after December 31, 2019.

Amendments to Current Law

1. This ordinance would waive any Investigation Fee with respect to persons now registered with the OOC, retroactive to September 26, 2017, and would require reimbursement of Investigation Fees that have already been collected. This section of the ordinance would be inoperative after December 31, 2020, so that after that date, persons registered with the OOC will again be subject to the Investigation Fee.

2. This ordinance would extend the date beyond which Medical Cannabis Dispensary Permits and Temporary Cannabis Business Permits can no longer be effective to December 31, 2020.

Background Information

1. The City enacted Ordinance No. 48-18 in March 2018 to incentivize participants in the cannabis industry to cooperate with the OOC's cannabis permitting scheme. Since the enactment of that ordinance, unforeseen delays have hindered persons registered with the OOC from correcting all preexisting Building Code violations subject to the Investigation Fee before the sunset of Ordinance No. 48-18. But for these unforeseen delays, the Investigation Fee would have been waived and refunded as to such violations under Ordinance No. 48-18. This ordinance would ensure that all persons registered with the OOC have an equal opportunity to remedy Building Code violations while avoiding payment of an Investigation Fee.

2. The City enacted Ordinance No. 230-17 (effective January 2018) to comprehensively regulate Cannabis Business activity in San Francisco under Article 16 of the Police Code and under the oversight of the OOC. It provided for a transition to Article 16 regulation by imposing a sunset date of December 31, 2019, for Medical Cannabis Dispensary permits issued under Article 33 of the Health Code, and by establishing Temporary Cannabis Business Permits to be issued by the OOC, not to be effective beyond December 31, 2019. Unforeseen delays have extended the length of time required by the OOC to process applications for Cannabis Business Permits, necessitating a one-year extension of the sunset dates for both Medical Cannabis Dispensary permits and Temporary Cannabis Business Permits.

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