



SAN FRANCISCO PLANNING DEPARTMENT

October 25, 2019

Ms. Angela Calvillo, Clerk
Honorable Supervisor Mandelman
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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415.558.6377

**Re: Transmittal of Planning Department Case Number 2019-017266PCA:
One Year Extension for Cannabis Permits
Board File No. 190842
Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo and Supervisor Mandelman,

On October 24, 2019, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Mandelman that would amend the Planning Code to extend the date by which a Grandfathered Medical Cannabis Dispensary must have received a permit to operate from the Department of Public Health to be deemed a Temporary Cannabis Sales use from December 31, 2019, to December 31, 2020; and amend the Planning Code to extend the duration of a Temporary Cannabis Retail Sales Use to up to three years, to expire on January 1, 2021. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. Extend the Temporary Adult Use Cannabis Permits for four years instead of three.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Aaron D. Starr
Manager of Legislative Affairs

cc:

Sarah A. Crowley, Deputy City Attorney
Tom Temprano, Aide to Supervisor Mandelman
Erica Major, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20553

HEARING DATE OCTOBER 24, 2019

Project Name: Extension for Temporary Cannabis Permits
Case Number: 2019-017266PCA [Board File No. 190842]
Initiated by: Supervisor Mandelman/ Introduced July 30, 2019
Staff Contact: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Approval with Modifications**

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RESOLUTION APPROVING A PROPOSED ORDINANCE 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; 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; AMENDING THE PLANNING CODE TO EXTEND THE DURATION OF A TEMPORARY CANNABIS RETAIL SALES USE TO UP TO THREE YEARS, TO EXPIRE ON JANUARY 1, 2021; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1, AND FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on November 13, 2018, Supervisor Mandelman introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 190842, which would 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; 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; amending the Planning Code to extend the duration of a Temporary Cannabis Retail Sales Use to up to three years, to expire on January 1, 2021; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider how the proposed Ordinance impacts the Planning Code on October 24, 2019; and

WHEREAS, the proposed Ordinance has been determined to not be a project under CEQA; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The Commission's proposed modification is as follows:

1. Extend the Temporary Adult Use Cannabis Permits for four years instead of three.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission supports the proposed ordinance because it will allow long-standing businesses to continue to operate while the Office of Cannabis process equity applicants. MCDs and Cannabis Retail establishments provide employment to unskilled and semi-skilled workers and often provide economic opportunity to those previously impacted by the war on drugs.
2. The initial ordinance creating Section 190 and 191 was intended to allow existing MCDs to sell adult use cannabis unit the city was able to process its equity applicants. To no fault of their own,

MCDs have not been able to apply for their permanent licenses, and the Planning Department has not been able to process their conversion permits.

3. The Commission is concerned that the proposed three-year extension will not be enough, and is therefore recommending that the temporary use permit be extended for four years instead of three.
4. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 3

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.1

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

Policy 3.4

Assist newly emerging economic activities.

The proposed ordinance seeks to attract, retain and expand the newly emerging cannabis industry, which provides employment opportunities for unskilled and semi-skilled workers

OBJECTIVE 6

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

Policy 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

The proposed ordinance seeks to allow the retention of existing small businesses in the City by providing them a pathway to convert to Cannabis Retail, which permits adult use sales. As such, it allows these existing businesses the opportunity to adapt to changing market conditions initiated by the legalization of adult use cannabis.

5. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:
 1. That existing neighborhood-serving retail uses be preserved and enhanced and future

opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

6. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on October 24, 2019.



C. SILVA ON BEHALF OF

Jonas P. Ionin
Commission Secretary

AYES: Fung, Koppel, Moore, Richards

NOES: None

ABSENT: Johnson, Melgar

ADOPTED: October 24, 2019



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: OCTOBER 24, 2019
90-DAY DEADLINE: NOVEMBER 5, 2019

Project Name: Extension for Temporary Cannabis Permits
Case Number: 2019-017266PCA [Board File No. 190842]
Initiated by: Supervisor Mandelman/ Introduced July 30, 2019
Staff Contact: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Approval with Modifications**

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PLANNING CODE AMENDMENTS

The proposed ordinance amends the Planning Code to extend the date by which a Grandfathered Medical Cannabis Dispensary must have received a permit to operate from the Department of Public Health to be deemed a Temporary Cannabis Sales use from December 31, 2019, to December 31, 2020; and amend the Planning Code to extend the duration of a Temporary Cannabis Retail Sales Use to up to three years, to expire on January 1, 2021.

OTHER CODE AMENDMENTS

The proposed ordinance also renews and extends 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; amends 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; and amends 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.

The Way It Is Now:

1. All MCDs must obtain their permit to operate from DPH by December 31, 2019 in order to be eligible to sell adult use cannabis on a temporary basis.
2. Temporary Cannabis Retail Uses are only allowed to operate for one year.

The Way It Would Be:

1. MCDs would have until December 31, 2020 to obtain their permit to operate.
2. Temporary Cannabis Retail Uses would be permitted to operate for three years.

BACKGROUND

On November 8, 2016, the voters of California approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA). Prop 64 decriminalized the nonmedicinal use of cannabis by adults, created a state regulatory, licensing, and taxation system for non-medicinal cannabis businesses, and reduced penalties for marijuana-related crimes. San Franciscans overwhelmingly approved of legalized adult use cannabis with 74.3% voting yes on Proposition 64.

On November 9, 2016, the Mayor Lee issued Executive Directive 16-05, "Implementing Prop 64: Adult Use of Marijuana Act." This directed DPH and the Planning Department, in consultation with other departments, to move forward with legislation for the Board of Supervisors' consideration that would address land use, licensing, safety, and youth access issues related to adult use cannabis under Proposition 64.

On December 5, 2017, the Board of Supervisors adopted Board File 171041, the outcome of Mayor Lee's executive Directive. This ordinance amended Planning Code requirements for MCDs, created a new land use definition for Cannabis Retail to include the sale of cannabis products to non-medical consumers, and defined other cannabis land uses in the Planning Code. As part of these amendments, Section 190 was added to the Planning Code to create a process for existing MCDs to convert to Cannabis Retail uses. In addition, Section 191 was created to provide a way for MCDs to sell adult use cannabis as a temporary use until they could convert to Cannabis Retail and get a permanent license.

On March 5, 2019, the Board adopted Board File 190108, which amended Section 191 to allow existing MCDs more time to obtain their permit to operate from DPH. This was done because several MCDs that had been in the pipeline were not going to make the original cut off date of January 1, 2019 due to issues outside of their control. This ordinance also extended the expiration date of Section 191 from January 1, 2020 to January 1, 2021.

ISSUES AND CONSIDERATIONS

Pending MCD permits

MCDs are governed by Article 33 of the Health Code, and the Department of Public Health is the agency responsible for issuing permits. The Adult Use Cannabis ordinance passed by the City in 2017 anticipated that Article 33 of the Health Code would be phased out in two years, and all cannabis permits would then be handled by the Office of Cannabis. Certain provisions were included in the Health, Planning and Admin Code to allow for this transition to happen. One of those was to allow MCDs permits that had received a permit to operate from DPH by December 31, 2019 to act as a Temporary Adult Use cannabis operation. Currently there is only one site still pending a final DPH permit, at 3185 Mission Street; however, according to DPH they are on track to receive a final permit early next month.

Pending Cannabis Retail Permits

The ordinance changes the time in which Temporary Cannabis uses would be permitted to operate from one year to three years. This is intended to allow approved MCDs to continue to sell adult use cannabis until their permanent license has been approved. Currently the Office of Cannabis is only processing equity applicants, and most existing MCDs do not qualify as equity applicants. To date the Planning Department has received 19 equity applicant referrals from the Office of Cannabis that have not yet filed applications with DBI or with Planning. We have 11 equity applicants that have filed applications that are in-processing,

and 11 that have been approved by Planning. Additionally, Planning has 41 permits for conversion of existing MCDs to Cannabis Retail which are all on-hold pending an Office of Cannabis referral. These conversion permits are the primary purpose of the legislation since they must wait for Office of Cannabis and Planning to process all the equity permits first. The Department expects to be able to start processing these starting in October of 2020. In addition, there are approximately 300 other equity applications pending at Office of Cannabis for a mix of storefront and non-storefront uses which also must be processed prior to non-equity applicants.

General Plan Compliance

This legislation would support key Objectives and Policies of the General Plan:

- The Commerce and Industry Element supports providing expanded employment opportunities for city residents, particularly the unemployed and economically disadvantaged. MCDs and Cannabis Retail stores provide employment opportunities for semi-skilled and unskilled workers, and the City's equity requirements encourage or require the hiring of persons impacted by the racially impactful war on drugs into the industry. Thus, these businesses provide opportunity for residents who are disadvantaged in typical economic sectors.
- The Commerce and Industry Element also supports maintaining and strengthening viable neighborhood commercial areas easily accessible to residents, and particularly supports promoting economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship, and which are responsive to economic and technological innovation in the marketplace and society. As a new industry, MCDs and Cannabis Retail establishment can help to activate existing neighborhood commercial districts struggling with high levels of vacancies.

Racial and Social Equity Analysis

Understanding the benefits, burdens and opportunities to advance racial and social equity that proposed Planning Code and Zoning Map amendments provide is part of the Department's Racial and Social Equity Initiative. This is also consistent with the Mayor's Citywide Strategic Initiatives for equity and accountability and with the Office of Racial Equity, which will require all Departments to conduct this analysis.

The City made the decision when it adopted its adult use cannabis regulations and created the Office of Cannabis to prioritize equity applicants. This was done so that communities disproportionately impacted by the war on drugs would be able to reap the benefits of cannabis legalization. Unfortunately, the time and effort to vet and process those applicants has taken a lot longer than anticipated. While this ordinance does not directly impact equity applicants, it does allow long-standing businesses to continue to operate while the equity application process moves forward. Many of these existing MCDs are found in low income and impacted communities. Forcing them to close because they could no longer sell adult use cannabis would increase vacancies in these neighborhoods. In addition, existing MCDs frequently hire from the adjacent neighborhood, serving as a source of employment for the neighborhood's lower skilled workers. On balance this ordinance would help further the city's racial and social equity goals.

Implementation

The Department has determined that this ordinance will not impact our current implementation procedures.

RECOMMENDATION

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

1. Extend the Temporary Permits for four years instead of three.

BASIS FOR RECOMMENDATION

The Department supports the proposed ordinance because it will allow long-standing businesses to continue to operate while the Office of Cannabis process equity applicants. MCDs and Cannabis Retail establishments provide employment to unskilled and semi-skilled workers and often provide economic opportunity to those previously impacted by the war on drugs. The initial ordinance creating Section 190 and 191 was intended to allow existing MCDs to sell adult use cannabis unit the city was able to process its equity applicants. To no fault of their own, MCDs have not been able to apply for their permanent licenses, and the Planning Department has not been able to process their conversion permits. The Department is concerned that the proposed three-year extension will not be enough.

- 1. Recommendation 1: Extend the Temporary Adult Use Cannabis Permits for four years instead of three.**

In January, two years will have passed on the temporary permits. The Department will not start processing MCD applications until October of 2020, leaving just three months to process at 41 MCD conversion permits. In the likely event that the Department is not able to process all those permits by January 2021, MCDs must either stop selling adult use cannabis or the City will have to pass another ordinance extending the temporary permit.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Letters of Support/Opposition or other supporting documentation, etc.
- Exhibit C: Board of Supervisors File No. 190842