

BOARD of SUPERVISORS



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MEMORANDUM

TO: Marisa Rodriguez, Director, Office of Cannabis
Dr. Grant Colfax, Director, Department of Public Health

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

DATE: May 5, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Breed on April 27, 2021:

File No. 210452

Ordinance amending the Planning Code to exempt Grandfathered Medical Cannabis Dispensaries that convert to Cannabis Retail Uses from neighborhood notification and review requirements; 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.

cc: Ray Law, Office of Cannabis
Greg Wagner, Department of Public Health
Dr. Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Arielle Fleisher, Department of Public Health

1 [Planning Code - Exemption from Neighborhood Notification and Review Requirements for
2 Grandfathered Medical Cannabis Dispensaries Converting to Cannabis Retail]

3 **Ordinance amending the Planning Code to exempt Grandfathered Medical Cannabis**
4 **Dispensaries that convert to Cannabis Retail Uses from neighborhood notification and**
5 **review requirements; affirming the Planning Department’s determination under the**
6 **California Environmental Quality Act; making findings of consistency with the General**
7 **Plan, and the eight priority policies of Planning Code, Section 101.1; and making public**
8 **necessity, convenience, and welfare findings under Planning Code, Section 302.**

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

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

17 Section 1.

18 (a) The Planning Department has determined that the actions contemplated in this
19 ordinance comply with the California Environmental Quality Act (California Public Resources
20 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
21 Supervisors in File No. ____ and is incorporated herein by reference. The Board affirms this
22 determination.

23 (b) On _____, the Planning Commission, in Resolution No. _____,
24 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
25 with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
2 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that the
4 actions contemplated in this ordinance will serve the public necessity, convenience, and
5 welfare for the reasons set forth in Planning Commission Resolution No. _____, which are
6 incorporated herein by reference.

7
8 Section 2. The Planning Code is hereby amended by revising Sections 190 and 311,
9 to read as follows:

10 **SEC. 190. CONVERSION OF MEDICAL CANNABIS DISPENSARIES TO**
11 **CANNABIS RETAIL ESTABLISHMENTS.**

12 (a) **Conversion of MCDs with Planning Commission Approval to Cannabis Retail**
13 **Uses.**

14 (1) An establishment may convert from the prior authorized Use at the property
15 to a Cannabis Retail Use by obtaining a building permit authorizing the change of Use, if the
16 establishment (to be termed a “Grandfathered MCD”) satisfies one of the following three
17 criteria:

18 (A) holds a valid final permit from the Department of Public Health to
19 operate as a Medical Cannabis Dispensary, pursuant to Section 3307 of the Health Code, as
20 of January 5, 2018;

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

23 (C) submitted a complete application for a permit from the Department
24 of Public Health to operate as a Medical Cannabis Dispensary by July 20, 2017, and receives
25 a final permit.

1 (2) A Grandfathered MCD converting to a Cannabis Retail Use pursuant to this
2 Section 190 is not subject to

3 (A) a Conditional Use Authorization requirement for Cannabis Retail
4 Uses in the zoning district in which it is located;~~or~~

5 (B) the locational restrictions for Cannabis Retail set forth in Section
6 202.2(a);~~;~~

7 (C) the requirements of Section 311; or

8 (D) an application for discretionary review; provided however, that the Planning
9 Commission or Planning Department staff may initiate discretionary review.

10 (3) A Grandfathered MCD is subject to all other Planning Code requirements;
11 ~~including but not limited to the neighborhood notification requirement of Section 311.~~

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

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

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

23 (3) Except as specified in this subsection (b), a Pending MCD Applicant that
24 obtains a change of use permit for a Cannabis Retail Use is subject to all Planning Code
25 requirements, including but not limited to the neighborhood notification requirement set forth in

1 Section ~~312~~311 and Conditional Use Authorization if required for a Cannabis Retail Use by the
2 zoning district in which the property is located.

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

7 * * * *

8
9 **SEC. 311. PERMIT REVIEW PROCEDURES.**

10 (a) **Purpose.** The purpose of this Section 311 is to establish procedures for reviewing
11 building permit applications to determine compatibility of the proposal with the neighborhood
12 and for providing notice to property owners and residents on the site and neighboring the site
13 of the proposed project and to interested neighborhood organizations, so that concerns about
14 a project may be identified and resolved during the review of the permit.

15 (b) **Applicability.** Except as indicated *herein in this subsection (b)*, all building permit
16 applications in Residential, NC, NCT, and Eastern Neighborhoods Mixed Use Districts for a
17 change of use; establishment of a Micro Wireless Telecommunications Services Facility;
18 establishment of a Formula Retail Use; demolition, new construction, or alteration of buildings;
19 and the removal of an authorized or unauthorized residential unit, shall be subject to the
20 notification and review procedures required by this Section 311. In addition, *with the exception*
21 *of Grandfathered MCDs converting to Cannabis Retail use pursuant to Section 190(a)*, all building
22 permit applications that would establish Cannabis Retail or Medical Cannabis Dispensary
23 uses, regardless of zoning district, shall be subject to the *notification and* review procedures
24 required by this Section 311. Notwithstanding the foregoing or any other requirement of this
25 Section 311, a change of use to a Child Care Facility, as defined in Section 102, shall not be

1 subject to the review requirements of this Section 311. Notwithstanding the foregoing or any
2 other requirement of this Section 311, building permit applications to construct an Accessory
3 Dwelling Unit pursuant to Section 207(c)(6) shall not be subject to the notification or review
4 requirements of this Section 311. Notwithstanding the foregoing or any other requirement of
5 this Section 311, a change of use to a principally permitted use in an NC or NCT District, or in
6 a limited commercial use or a limited corner commercial use, as defined in Sections 186 and
7 231, respectively, shall not be subject to the review or notice requirements of this Section 311.

8 (1) **Change of Use.** Subject to the foregoing provisions of subsection (b), ~~For~~
9 purposes of this Section 311, a change of use is defined as follows:

10 (A) **Residential, NC, and NCT Districts.** For all Residential, NC, and
11 NCT Districts, a change of use is defined as a change to, or the addition of, any of the
12 following land uses as defined in Section 102 of this Code: Adult Business, Bar, Cannabis
13 Retail, General Entertainment, Group Housing, Limited Restaurant, Liquor Store, Massage
14 Establishment, Medical Cannabis Dispensary, Nighttime Entertainment, Outdoor Activity Area,
15 Post-Secondary Educational Institution, Private Community Facility, Public Community
16 Facility, Religious Institution, Residential Care Facility, Restaurant, School, Tobacco
17 Paraphernalia Establishment, Trade School, and Wireless Telecommunications Facility. A
18 change of use from a Restaurant to a Limited-Restaurant shall not be subject to the provisions
19 of this Section 311. Any accessory massage use in the Ocean Avenue Neighborhood
20 Commercial Transit District shall be subject to the provisions of this Section 311. A change of
21 use to a principally permitted use in an NC or NCT District, or in a limited commercial use or a
22 limited corner commercial use, as defined in Sections 186 and 231, respectively, shall not be
23 subject to the provisions of this Section 311.

24 (i) **Exception.** Notwithstanding subsection 311(b)(1)(A), in the
25 geographic areas identified in subsection 311(b)(1)(A)(ii), building permit applications for a

1 change of use to the following uses shall be excepted from the provisions of subsections
2 311(d) and 311(e): Bar, General Entertainment, Limited Restaurant, Liquor Store, Massage
3 Establishment, Nighttime Entertainment, Outdoor Activity Area, Private Community Facility,
4 Public Community Facility, Restaurant, and Tobacco Paraphernalia Establishment.

5 (ii) Subsection 311(b)(1)(A)(i) shall apply to Neighborhood
6 Commercial Districts in the following geographic areas:

7 **Area 1:** shall comprise all of that portion of the City and County commencing at the
8 point of the intersection of the shoreline of the Pacific Ocean and a straight-line extension of
9 Lincoln Way, and proceeding easterly along Lincoln Way to 17th Avenue, and proceeding
10 southerly along 17th Avenue to Judah Street, and proceeding westerly along Judah Street to
11 19th Avenue, and proceeding southerly along 19th Avenue to Sloat Boulevard, and
12 proceeding westerly along Sloat Boulevard, and following a straight-line extension of Sloat
13 Boulevard to the shoreline of the Pacific Ocean and proceeding northerly along said line to the
14 point of commencement.

15 **Area 2:** shall comprise all of that portion of the City and County commencing at the
16 point of the intersection of Junipero Serra Boulevard and Brotherhood Way, and proceeding
17 northerly along the eastern edge of Junipero Serra Boulevard to Garfield Street, and
18 proceeding easterly along Garfield Street to Grafton Avenue, and continuing easterly along
19 Grafton Avenue to Mount Vernon Avenue, and proceeding easterly along Mount Vernon
20 Avenue to Howth Street, and proceeding northerly along Howth Street to Geneva Avenue,
21 and proceeding easterly along Geneva Avenue to Interstate 280, and proceeding northerly
22 along Interstate 280 to the straight-line extension of Tingley Street, and proceeding southerly
23 along said line to Tingley Street, and proceeding southerly along Tingley Street to Alemany
24 Boulevard, and proceeding easterly along Alemany Boulevard to Congdon Street, and
25 proceeding southerly along Congdon Street to Silver Avenue, and proceeding easterly along

1 Silver Avenue to Madison Street, and proceeding southerly along Madison Street to Burrows
2 Street, and proceeding westerly along Burrows Street to Prague Street, and proceeding
3 southerly along Prague Street to Persia Avenue, and proceeding westerly along Persia
4 Avenue to Athens Street, and proceeding southerly along Athens Street to Geneva Avenue,
5 and proceeding easterly along Geneva Avenue to the intersection of Geneva Avenue and
6 Carter Street, and proceeding westerly along the southeastern boundary of Census Tract
7 0263.02, Block 3005 to the San Francisco/San Mateo county border, and proceeding westerly
8 along the San Francisco/San Mateo county border to Saint Charles Avenue, and proceeding
9 northerly along Saint Charles Avenue to Interstate 280, and proceeding northeasterly along
10 Interstate 280 to a northerly straight-line extension to Orizaba Avenue, and proceeding
11 northerly along said line to Alemany Boulevard, and proceeding westerly along Alemany
12 Boulevard to Brotherhood Way, and proceeding westerly along Brotherhood Way to the point
13 of commencement.

14 (iii) **Exception for the Ocean Avenue Neighborhood**

15 **Commercial Transit District.** Notwithstanding subsection 311(b)(1)(A), building permit
16 applications in the Ocean Avenue Neighborhood Commercial Transit District for a change of
17 use to the following uses shall be excepted from the provisions of subsections 311(d) and
18 311(e): General Entertainment, Limited Restaurant, Nighttime Entertainment, Outdoor Activity
19 Area, Private Community Facility, Public Community Facility, Restaurant, and Tobacco
20 Paraphernalia Establishment.

21 (B) **Eastern Neighborhood Mixed Use Districts.** In all Eastern
22 Neighborhood Mixed Use Districts a change of use shall be defined as a change in, or
23 addition of, a new land use category. A “land use category” shall mean those categories used
24 to organize the individual land uses that appear in the use tables, immediately preceding a
25 group of individual land uses, including but not limited to the following: Residential Use;

1 Institutional Use; Retail Sales and Service Use; Assembly, Recreation, Arts and
2 Entertainment Use; Office Use; Live/Work Units Use; Motor Vehicle Services Use; Vehicle
3 Parking Use; Industrial Use; Home and Business Service Use; or Other Use.

4 * * * *

5
6 Section 3. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
9 of Supervisors overrides the Mayor's veto of the ordinance.

10
11 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
15 additions, and Board amendment deletions in accordance with the "Note" that appears under
16 the official title of the ordinance.

17
18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By: /s/ Victoria Wong
22 VICTORIA WONG
23 Deputy City Attorney

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25

LEGISLATIVE DIGEST

[Planning Code - Exemption from Neighborhood Notification and Review Requirements for Grandfathered Medical Cannabis Dispensaries Converting to Cannabis Retail]

Ordinance amending the Planning Code to exempt Grandfathered Medical Cannabis Dispensaries that convert to Cannabis Retail Uses from neighborhood notification and review requirements; 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

Section 190 of the Planning Code provides that Grandfathered Medical Cannabis Dispensaries applying to convert to a Cannabis Retail use are subject to the requirements of Section 311 of the Planning Code.

Section 311 of the Planning Code provides that a change of use to Cannabis Retail is subject to the notification and review requirements of Section 311.

Amendments to Current Law

The ordinance would amend Section 190 of the Planning Code to exempt Grandfathered Medical Cannabis Dispensaries applying to convert to Retail Cannabis use from the requirements of Section 311 and from applications for discretionary review; however, the Planning Commission and Planning Department staff may still initiate discretionary review.

The ordinance would also amend Section 311 of the Planning Code to exempt Grandfathered Medical Cannabis Dispensaries applying to convert to Cannabis Retail use from the requirements of Section 311.