



August 18, 2021

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

Re: Transmittal of Planning Department Case Number 2021-004740PCA:
Grandfathered Medical Cannabis Dispensaries
Board File No. 210452

Planning Commission Recommendation: Approval

Dear Ms. Calvillo and Mayor Breed,

On July 15, 2021, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Mayor London Breed that would amend Planning Code Sections 190(a) and 311. At the hearing the Planning Commission recommended approval.

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,

Aaron D. Starr
Manager of Legislative Affairs

cc: Victoria Wong, Deputy City Attorney
Sophia Kittler, Office of Mayor London N. Breed
Erica Major, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution

Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 20940

HEARING DATE: JULY 15, 2021

Project Name: Grandfathered Medical Cannabis Dispensaries
Case Number: 2021-004740PCA [Board File No. 210452]
Initiated by: Mayor London Breed / Introduced April 27, 2021
Staff Contact: Michael Christensen, Senior Planner
Michael.Christensen@sfgov.org, 628-652-7567
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTIONS 190(A) and 311 TO EXEMPT GRANDFATHERED MEDICAL CANNABIS DISPENSARIES THAT CONVERT TO CANNABIS RETAIL USES FROM NEIGHBORHOOD NOTIFICATION AND REVIEW REQUIREMENTS; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on April 27, 2021, Mayor London Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 210452, which would amend Planning Code Section 190(a) (Conversion of MCDs with Planning Commission Approval to Cannabis Retail Uses) and Planning Code Section 311 (Permit Review Procedures) to exempt Grandfathered Medical Cannabis Dispensaries that convert to Cannabis Retail Uses from neighborhood notification and review requirements;

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on July 15, 2021; and,

WHEREAS, the proposed Ordinance has been determined to not be defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment; 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 49 South Van Ness Avenue, Suite 1400, 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 **ap**proves the proposed ordinance.

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:

The Commission finds that proposed ordinance would reduce cost and permitting timeline for Medical Cannabis Dispensaries, which are typically small businesses, and which are struggling to remain viable due to existing regulatory and tax burdens. While reducing neighborhood notice, the Department has not received any complaints regarding these establishments in the three and a half years in which they have been operating with temporary authorization.

General Plan Compliance

The proposed Ordinance is 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.

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 easing the regulatory burden for permanent conversion 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. Medical Cannabis Dispensaries provide for employment improvement opportunities for low-skilled and semi-skilled workers, so maintaining the viability of these businesses furthers the goals of the General Plan.

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. The proposed Ordinance would assist in retaining existing neighborhood service small business retail uses in the City.

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.

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 the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on July 15, 2021.



Jonas P. Ionin
Commission Secretary

AYES: Tanner, Diamond, Fung, Imperial, Moore

NOES: None

ABSENT: Chan, Koppel

ADOPTED: July 15, 2021



EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: JULY 15, 2021

90-Day Deadline: August 3, 2021

Project Name: Grandfathered Medical Cannabis Dispensaries
Case Number: 2021-004740PCA [Board File No. 210452]
Initiated by: Mayor London Breed / Introduced April 27, 2021
Staff Contact: Michael Christensen, Senior Planner
Michael.Christensen@sfgov.org, 628-652-7567
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

Recommendation: Approval

Planning Code Amendment

The proposed Ordinance would amend Planning Code Section 190(a) (Conversion of MCDs with Planning Commission Approval to Cannabis Retail Uses) and Planning Code Section 311 (Permit Review Procedures) to exempt Grandfathered Medical Cannabis Dispensaries that convert to Cannabis Retail Uses from neighborhood notification and review requirements.

The Way It Is Now:

A “Grandfathered Medical Cannabis Dispensary” can convert to a Cannabis Retail use by filing a Building Permit Application for the change in use. The change in use is subject to neighborhood notification under Planning Code Section 311.

The Way It Would Be:

A “Grandfathered Medical Cannabis Dispensary” would still be able to convert to a Cannabis Retail use by filing a Building Permit Application for the change in use; however, the change in use would not be subject to neighborhood notification under Planning Code Section 311. Any other required notification, such as Block Book Notice, would still apply.

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, Mayor Ed 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. Pursuant to that Executive Directive, the City developed this comprehensive legislation that will establish a complete regulatory framework for a broad range of cannabis businesses, and that will identify where, and under what conditions, they may operate.

On June 27, 2017, Governor Brown signed into law the Medicinal and Adult-Use Cannabis Regulations and Safety Act (MAUCRSA), which reconciled MCRSA and Proposition 64, and established a unified state regulatory scheme for commercial activities relating to both medicinal and adult use cannabis. Under MAUCRSA, businesses that engage in commercial cannabis activities will be required to obtain a state cannabis license and comply with strict operating conditions. MAUCRSA requires that state agencies begin issuing state cannabis business licenses by January 1, 2018. Under MAUCRSA, local jurisdictions may adopt and enforce ordinances to further regulate cannabis businesses, including but not limited to zoning and permitting requirements.

On December 5, 2017, the Board of Supervisors adopted Ordinance No. 171041. This ordinance amended Planning Code requirements for Medical Cannabis Dispensaries (hereinafter 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. Medical Cannabis Dispensaries were provided temporary authorization to conduct adult-use sales. This temporary authorization ends when the request to change the use of a site from Medical Cannabis Dispensary to Cannabis Retail is processed. If denied, or if the permit is never completed, this temporary authorization is revoked. If approved, the site gains permanent licensing, though this licensing may be revoked for other reasons such as non-compliance with City requirements.

Issues and Considerations

Grandfathered MCDs

A "Grandfathered Medical Cannabis Dispensary" is a MCD that holds a valid final permit from the Department of Public Health to operate as a Medical Cannabis Dispensary, pursuant to Section 3307 of the Health Code, as of January 5, 2018; holds an approval for a MCD Use from the Planning Department as of January 5, 2018; or submitted a complete application for a permit from the Department of Public Health to operate as a MCD by

July 20, 2017, and receives a final permit. There is a total of 35 locations in the City authorized to operate as an MCD, and no additional locations are in processing.

Temporary Uses Became Permanent

At the time of adoption, temporary authorization was intended to provide residents an opportunity to see first-hand how well an establishment could manage adult-use sales. After operating as an adult use dispensary for a few months as a temporary use, neighborhood notification would provide residents an opportunity to request Discretionary Review for disruptive or incompatible businesses. Unfortunately, due to the complex requirements promulgated in the 2017 regulations, the Office of Cannabis only started to authorize the processing of these permits in June of 2021. At this point, the sites have had 'temporary' authorization for three and a half years, well past what was intended when the legislation was first adopted. Since that time, the Department has not received any complaints regarding Medical Cannabis Dispensaries operating with this 'temporary' authorization to conduct adult-use sales.

Financial and Process Considerations

The proposed amendments would reduce the permitting costs for MCDs, which have struggled to remain viable due to high regulatory and taxation costs. Cannabis businesses are precluded from using tax deductions at the federal level that are provided to most businesses, and at the state level they must pay excise taxes and licensing fees on top of typical sales and income taxes. Reducing costs for these applicants will increase the viability of these existing businesses and will allow them to better compete with the illicit market, which thrives due to not being subject to these taxes and fees. The illicit market still comprises a large portion of sales in San Francisco and transitioning the market into the regulated industry is a goal of the City. With respect to removing noticing, the main fee is the cost of mailing the notices. For example, the permit at 527 Howard Street would require mailing the change of use notice to 969 addresses. This mailing will cost the business an additional **\$3,649.92** above the base permit fee and inspection costs. The cost of the notice for other sites will vary based on the density of addresses.

Additionally, the removal of the requirement for neighborhood notification would reduce the overall timeline for the Planning Department to process the permits. Once a referral for each site is received from the Office of Cannabis, the Planning Department would be able to immediately approve the conversion and route the permits to the Department of Building Inspection for processing. Receiving a permanent license is essential for these businesses to receive additional investment, which is necessary for some sites to remain operational.

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

The proposed amendments help preserve long-standing businesses throughout the City by reducing permitting cost and overall permitting time. The proposed ordinance would not cause any change in the operation of these uses from how they have operated since 2018. MCDs are concentrated in the City's Mission and South of Market neighborhoods, and by providing regulatory relief to these businesses the City can help them to remain viable and operational, avoiding shutting down additional businesses in these neighborhoods.

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. For many employees of cannabis businesses, their work provides them a pathway to stability and gainful employment that is increasingly difficult to find in San Francisco, where many jobs which pay living wages require advanced degrees and specific experience that non-white persons face more difficulty in obtaining due to institutional racism. Additionally, many of the Equity Applicants that now own businesses in the City got their start in the industry through apprenticeship programs that are common in the cannabis industry but have been eliminated in many other industries.

These MCDs have had their permanent licensing on-hold for over three years because the City prioritized Equity Applicants and Equity Incubators ahead of these conversions. Only now that we have processed all of the pending applications in those tiers are these sites eligible to proceed.

Implementation

The Department has determined that this Ordinance will impact our current implementation procedures; however, the proposed changes would reduce overall staff time necessary to process the requested permits.

Recommendation

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

Basis for Recommendation

The Department supports the proposed ordinance because it would reduce cost and permitting timeline for Medical Cannabis Dispensaries. MCDs are typically small businesses and given current regulatory and tax burdens are struggling to remain viable. While reducing neighborhood notice, the Department has not received

any complaints regarding these establishments in the three and a half years in which they have been operating with temporary authorization.

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: Board of Supervisors File No. 210452