

File No. 210452 Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date November 15, 2021

Board of Supervisors Meeting Date _____

Cmte Board

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Completed by: Erica Major Date November 10, 2021
Completed by: Erica Major Date _____

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 *strikethrough italics Times New Roman font*.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough 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. 210452 and is incorporated herein by reference. The Board affirms
22 this determination.

23 (b) On July 15, 2021, the Planning Commission, in Resolution No. 20940, adopted
24 findings that the actions contemplated in this ordinance are consistent, on balance, with the
25 City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board

1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
2 Board of Supervisors in File No. 210452, 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. 20940, 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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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.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

May 5, 2021

File No. 210452

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On April 27, 2021, Mayor Breed submitted the following legislation:

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.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

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

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

5/13/2021

A handwritten signature in cursive script, appearing to read "Joy Navarrete".



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

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

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

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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

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

DATE: May 5, 2021

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

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.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

- No Comment**
- Recommendation Attached**

Chairperson, Small Business Commission

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

May 5, 2021

File No. 210452

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On April 27, 2021, Mayor Breed submitted the following legislation:

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.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

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

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

BOARD of SUPERVISORS



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May 5, 2021

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On April 27, 2021, Mayor Breed introduced the following legislation:

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.

The proposed ordinance is being transmitted for review. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

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

c: Rich Hillis, Director
Scott Sanchez, Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
Adam Varat, Acting Director of Citywide Planning
AnMarie Rodgers, Legislative Affairs
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning