



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Amendment

HEARING DATE: NOVEMBER 15, 2018  
90-DAY DEADLINE: FEBRUARY 11, 2019

*Project Name:* CANNABIS GRANDFATHERING UPDATE  
*Case Number:* 2018-008367PCA [Board File No. tbd]  
*Initiated by:* City Administrator / Introduced November 13, 2018  
*Staff Contact:* Michael Christensen, Current Planning  
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*Reviewed by:* Aaron Starr, Manager of Legislative Affairs  
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*Recommendation:* **Approval with Modifications**

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### PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to allow Medical Cannabis Dispensaries (MCDs) with approvals from the Planning Department for a MCD Use as of January 5, 2018 to apply to convert to Cannabis Retail Uses under the same conditions as MCDs that held valid final permits from DPH as of January 5, 2018; exempting all such converted Cannabis Retail Uses from otherwise applicable Conditional Use Authorization requirements; clarifying that such Cannabis Retail Uses are not exempted from any minimum radius that is required by a State licensing authority for distance between a Cannabis Retailer and an existing School, day care center or youth center; allowing Equity Program or Equity Incubator Applicants who have MCD applications pending at the Planning Department to apply to convert to Cannabis Retail Uses; exempting such Cannabis Retail Uses from the minimum radius requirements between those establishments and existing Cannabis Retailers and Medical Cannabis Retailers.

#### The Way It Is Now:

1. For existing MCDs to convert to Cannabis Retail under Planning Code Section 190, they must first obtain a final permit to operate from the Department of Public Health (DPH).
2. For existing MCDs to convert to Cannabis Retail under Planning Code Section 190, they must have submitted a Building Permit Application to change the use by March 31<sup>st</sup>, 2018.
3. A site with a pending Building Permit Application to operate a MCD that is within 600' of another MCD or Cannabis Retail establishment is not compliant with the Planning Code and unable to be approved, even though the application was submitted by the June 20, 2017 deadline.

#### The Way It Would Be:

1. For existing MCDs to convert to Cannabis Retail under Planning Code Section 190, they must first obtain a final permit to operate from the DPH or obtain Planning Department approval to operate a MCD.

2. For existing MCDs to convert to Cannabis Retail under Planning Code Section 190, they must still submit a Building Permit Application to change the use; however, the application would not need to have been submitted by March 31<sup>st</sup>, 2018.
3. A site with a pending Building Permit Application to operate a MCD will be compliant with the Planning Code and able to be approved even if it is within 600' of another MCD or Cannabis Retail establishment if all other Planning Code requirements are met and if the proposed operator is a qualified Equity Applicant or Equity Incubator pursuant to Section 1604 of the Police Code.

## **BACKGROUND**

On October 9, 2015, Governor Brown signed into law the Medical Marijuana Regulation and Safety Act<sup>1</sup> ("MMRSA"), which established a comprehensive state licensing and regulatory framework for medicinal cannabis. This law also recognized the authority of local jurisdictions to prohibit or impose additional restrictions on commercial activities relating to medicinal cannabis. MMRSA was later renamed the Medical Cannabis Regulation and Safety Act ("MCRSA").

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 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 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. Section 190 requires that a Building Permit Application for the change of use to Cannabis Retail be submitted by March 31, 2018 to qualify for the conversion; however, due to delays in creating the Office of Cannabis's application process and confusion

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<sup>1</sup> MMRSA became effective on January 1, 2016.

on the part of dispensary operators, four existing MCDs did not file applications by the March 31, 2018 deadline. These four applicants are not eligible to convert to Cannabis Retail. Additionally, the legislative amendments created a new 600' buffer requirement between any proposed MCD or Cannabis Retail establishment and any existing MCD or Cannabis Retail establishment. Applications in processing were not provided any grandfathering from that requirement and were rendered non-compliant with the Planning Code if they were within 600' of an existing MCD or Cannabis Retail establishment.

## **ISSUES AND CONSIDERATIONS**

### **Ordinance Intent**

The initial ordinance was intended to allow sites in processing to continue processing. As such, Section 190 was written broadly to allow sites to convert from an MCD to Cannabis Retail using the Section even if they were not yet approved as of the date of the ordinance (if the applications had been submitted by July 20, 2017). However, this exemption was written to apply only to the conversion from an MCD to a Cannabis Retail establishment and cannot be applied to the initial establishment of an MCD use. Without first being able to establish as an MCD, the conversion procedure can never be used, which was not the intent of the ordinance. Providing the flexibility proposed in this ordinance would bring the code into greater consistency with the City's initial intent.

### **Obtaining a Full Permit to Operate**

To qualify for conversion under Section 190, a site must obtain a full permit to operate from DPH. To obtain a full permit to operate, a site must 1) obtain Planning Department approval; 2) obtain a full building permit from the Department of Building Inspection (DBI); 3) complete the buildout of the space; and 4) receive a final inspection from DBI and DPH. Numerous sites were fully approved by the Planning Commission as MCDs at the end of 2017, but due to a competitive construction market may not fully complete their buildout prior to December 31, 2018. As such, they may not qualify for conversion to Cannabis Retail despite being authorized by the Planning Commission as MCDs only a year ago. By changing this requirement from "a full permit to operate from DPH" to "a full permit to operate from DPH or obtaining a Planning Department authorization for the use", these sites will remain qualified for conversion under Section 190 regardless of their construction timeline.

The Department has identified the following locations which may be impacted by this issue:

1. 2165 Irving Street (District 4)
2. 761 Bryant Street (District 6)
3. 1276 Market Street (District 6)
4. 3015 San Bruno Avenue (District 11)

### **Missing the March 31st Deadline**

The March 31<sup>st</sup> deadline was selected to allow time for the Office of Cannabis to establish their permitting process, and to provide the Planning Department enough time to process these permits by the end-of-

year deadline<sup>2</sup>. However, due to the complexity of creating the regulatory framework for verifying equity applicants, the Office of Cannabis was not able to start accepting applications until May 22, 2018. Further, a total of five sites did not submit Building Permit Applications by March 31, 2018 due to confusion stemming from the Office of Cannabis not accepting applications. As such, those sites currently cannot convert to Cannabis Retail using the process afforded to all other existing MCDs in the City.

These five locations were approved in prior years as MCDs and are small businesses providing economic activity and opportunity in the City. Not allowing them to convert to Cannabis Retail will cause them to cease adult use sales when the temporary authorization for adult use sales expires on January 1, 2020<sup>3</sup>. This will cause these businesses to be less competitive with other cannabis businesses that can sell adult use cannabis, likely causing them to go out of business. As the Priority General Plan Findings (detailed below) contain a policy that existing neighborhood-serving retail uses be preserved and enhanced, providing additional flexibility to these businesses to allow their conversion to Cannabis Retail is consistent with City policy.

The Department has identified the following locations which have been impacted by this issue:

1. 1328 Grove Street (District 5)
2. 79 9<sup>th</sup> Street (District 6)
3. 122 10<sup>th</sup> Street (District 6)
4. 3139 Mission Street (District 9)
5. 5258 Mission Street (District 10)

### **The 600' Buffer Rule**

When the ordinance was adopted, Planning Code Section 202.2 was amended to require a 600' buffer between any new MCD or Cannabis Retail establishment and any existing MCD or Cannabis Retail establishment. Applications in processing were not afforded a grandfathering provision from this requirement. Unlike the sites identified above, these sites have never received any approval for an MCD or Cannabis Retail use and it would not be appropriate to exempt them from any CUA requirement for the establishment of the use; however, as these sites were in processing when the Board adopted the 600' rule and it was the City's intention to allow applications in process at the time to move forward. Providing an exemption for these sites from the 600' rule from other MCDs and Cannabis Retail establishments (but not from schools) would provide the Planning Commission flexibility to review these sites based on the merit of their applications.

Two of the three sites require a CUA to establish a Cannabis Retail establishment in their respective zoning districts; therefore, the Planning Commission retains its ability to deny those applications if they don't meet the conditional use findings. The only site that does not require a CUA is 443 Folsom Street, listed below, and is approximately 599 feet from the nearest existing MCD. The Department's

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<sup>2</sup> The regulatory framework of Article 33 of the Health Code is scheduled to expire on December 31, 2018. Article 33 provides the authority for MCD to operate, and when it expires so does their ability to operate as an MCD.

<sup>3</sup> Per Planning Code Section 191

recommended modifications (detailed later in the document) address providing more flexibility to the Commission during its review of these sites.

The Department has identified the following locations which have been impacted by this issue:

1. 443 Folsom Street (District 6), 599 feet from nearest cannabis business at 527 Howard
2. 2057 Market Street (District 8), 78 feet from nearest cannabis business at 2029 Market Street
3. 5 Leland Avenue (District 10), 68 feet from nearest cannabis business at 2442 Bayshore Boulevard

### **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.

### **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. The Department's proposed recommendations are as follows:

1. **Amend Section 190(b)(1).** Modify the Ordinance so that to qualify as a 'Pending MCD applicant,' the applicant would need to have had a complete application submitted to the Department of Public Health by July 20, 2017 AND in active processing status as of January 5, 2018.
2. **Amend Section 190(b)(3).** Modify the Ordinance so that a 'Pending MCD applicant' utilizing an exemption from the locational requirements of Section 202.2(a) obtain Conditional Use Authorization to establish the Cannabis Retail use. Additionally, require that in addition to the findings of Section 303, the Commission shall consider the overall availability of MCD and Cannabis Retail establishments in the district where the proposed Cannabis Retail use is located

and whether the approval of the Cannabis Retail use would create a noticeable overconcentration of Cannabis Retail uses in the district.

## **BASIS FOR RECOMMENDATION**

The Department supports the overall goals of this Ordinance because of policies of the Commerce and Industry element to support maintaining and strengthening viable neighborhood commercial areas and to support providing employment opportunities for city residents, particularly the unemployed and economically disadvantaged. MCDs and Cannabis Retail establishments provide economic activity to areas struggling with high vacancy rates by providing a destination retail outlet that can spur activity for nearby businesses. In addition, 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, which severely disproportionately impacted black and brown persons in the United States. As the initial ordinance creating Section 190 was intended to allow existing applications to proceed with review even if they did not meet the new requirements of the ordinance, the changes to the text proposed in this ordinance will bring the code into greater consistency with the initial intent for Section 190.

**Recommendation 1: Amend Section 190(b)(1).** The intent of this section is to provide a grandfathering clause to applications in processing at the time of the adoption of the ordinance that established the 600' rule. The proposed language is ambiguous and could apply to a site that had an application in prior years that was not in processing as of January 5, 2018, which is not the intent of the Section.

**Recommendation 2: Amend Section 190(b)(3).** Conditional Use Authorization is already required for two of the three sites that could utilize the proposed exemption from the 600' rule. Requiring Conditional Use Authorization would allow an additional finding for approval to be added so that the Commission can consider the relative availability of cannabis in the area and the impact that the exemption would have on the overall concentration of Cannabis Retail storefronts in the district.

## **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. XXXXX



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Resolution

HEARING DATE NOVEMBER 15, 2018

*Project Name:* CANNABIS GRANDFATHERING UPDATE  
*Case Number:* 2018-008367PCA [Board File No. tbd]  
*Initiated by:* City Administrator / Introduced November 13, 2018  
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**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO ALLOW MEDICAL CANNABIS DISPENSARIES (MCDS) WITH APPROVALS FROM THE PLANNING DEPARTMENT FOR A MEDICAL CANNABIS DISPENSARY USE AS OF JANUARY 5, 2018 TO APPLY TO CONVERT TO CANNABIS RETAIL USES UNDER THE SAME CONDITIONS AS MCDS THAT HELD VALID FINAL PERMITS FROM DPH AS OF JANUARY 5, 2018; EXEMPTING ALL SUCH CONVERTED CANNABIS RETAIL USES FROM OTHERWISE APPLICABLE CONDITIONAL USE AUTHORIZATION REQUIREMENTS; CLARIFYING THAT SUCH CANNABIS RETAIL USES ARE NOT EXEMPTED FROM ANY MINIMUM RADIUS THAT IS REQUIRED BY A STATE LICENSING AUTHORITY FOR DISTANCE BETWEEN A CANNABIS RETAILER AND AN EXISTING SCHOOL, DAY CARE CENTER OR YOUTH CENTER; ALLOWING EQUITY PROGRAM OR EQUITY INCUBATOR APPLICANTS WHO HAVE MCD APPLICATIONS PENDING AT THE PLANNING DEPARTMENT TO APPLY TO CONVERT TO CANNABIS RETAIL USES; EXEMPTING SUCH CANNABIS RETAIL USES FROM THE MINIMUM RADIUS REQUIREMENTS BETWEEN THOSE ESTABLISHMENTS AND EXISTING CANNABIS RETAILERS AND MEDICAL CANNABIS RETAILERS; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; 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 November 13, 2018, the City Administrator's Office introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number tbd, which would amend Section 190 of the Planning Code to clarify and alter requirements for conversion of existing Medical Cannabis Dispensaries (MCDs) to Cannabis Retail establishments and to provide a grandfathering provision from the locational requirements of Section 202.2(a) for applications in processing as of January 5, 2018;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on November 15, 2018; 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 recommended modifications are to include all the changes listed under the “Issues and Considerations” of the Executive Summary, which are also listed here:

1. **Amend Section 190(b)(1).** Modify the Ordinance so that to qualify as a ‘Pending MCD applicant,’ the applicant would need to have had a complete application submitted to the Department of Public Health by July 20, 2017 AND in active processing status as of January 5, 2018.
2. **Amend Section 190(b)(3).** Modify the Ordinance so that a ‘Pending MCD applicant’ utilizing an exemption from the locational requirements of Section 202.2(a) obtain Conditional Use Authorization to establish the Cannabis Retail use. Additionally, require that in addition to the findings of Section 303, the Commission shall consider the overall availability of MCD and Cannabis Retail establishments in the district where the proposed Cannabis Retail use is located and whether the approval of the Cannabis Retail use would create a noticeable overconcentration of Cannabis Retail uses in the district.

## 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 overall goals of this Ordinance because of policies of the Commerce and Industry element to support maintaining and strengthening viable neighborhood commercial areas and to support providing employment opportunities for city residents, particularly the unemployed and economically disadvantaged. MCDs and Cannabis Retail establishments provide economic activity to areas struggling with high vacancy rates by providing a destination retail outlet that can spur activity for nearby businesses. In addition, 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, which severely disproportionately impacted black and brown persons in the United States.



As the initial ordinance creating Section 190 was intended to allow existing applications to proceed with review even if they did not meet the new requirements of the ordinance, the changes to the text proposed in this ordinance will bring the code into greater consistency with the initial intent for Section 190.

2. **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.*

3. **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.*

4. **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 November 15, 2018.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: November 15, 2018

[Planning Code - Conversion of Medical Cannabis Dispensary Uses to Cannabis Retail Uses]

**Ordinance amending the Planning Code to allow Medical Cannabis Dispensaries (MCDs) with approvals from the Planning Department for a Medical Cannabis Dispensary Use as of January 5, 2018 to apply to convert to Cannabis Retail Uses under the same conditions as MCDs that held valid final permits from DPH as of January 5, 2018; exempting all such converted Cannabis Retail Uses from otherwise applicable Conditional Use Authorization requirements; clarifying that such Cannabis Retail Uses are not exempted from any minimum radius that is required by a State licensing authority for distance between a Cannabis Retailer and an existing School, day care center or youth center; allowing Equity Program or Equity Incubator Applicants who have MCD applications pending at the Planning Department to apply to convert to Cannabis Retail Uses; exempting such Cannabis Retail Uses from the minimum radius requirements between those establishments and existing Cannabis Retailers and Medical Cannabis Retailers; 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.**

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

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

1  
2           Section 1.

3           (a) The Planning Department has determined that the actions contemplated in this  
4 ordinance comply with the California Environmental Quality Act (California Public Resources  
5 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
6 Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference. The Board affirms this  
7 determination.

8           (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
9 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
10 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The  
11 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
12 the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

13           (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that these  
14 Planning Code Amendments will serve the public necessity, convenience, and welfare for the  
15 reasons set forth in Planning Commission Resolution No. \_\_\_\_\_, and the Board  
16 incorporates such reasons herein by reference.  
17

18           Section 2. Article 1.7 of the Planning Code is hereby amended by revising Section  
19 190, to read as follows:  
20

21           **SEC. 190. CONVERSION OF MEDICAL CANNABIS DISPENSARIES TO**  
22 **CANNABIS RETAIL ESTABLISHMENTS.**

23           (a) *Conversion of MCDs with Planning Commission Approval to Cannabis Retail Uses.*  
24  
25

1                   (1) An establishment *may convert from the prior authorized Use at the property to a*  
2 *Cannabis Retail Use by obtaining a building permit authorizing the change of Use, if the establishment*  
3 *(to be termed a “Grandfathered MCD”) satisfies one of the following three criteria: ~~that either~~*

4                   \_\_\_\_\_ (A) holds a valid *final* permit from the Department of Public Health to  
5 operate as a Medical Cannabis Dispensary, *pursuant to Section 3307 of the Health Code, as of ~~the~~*  
6 *effective date of the ordinance in Board File No. 171042 January 5, 2018;*

7                   \_\_\_\_\_ (B) holds an approval for a Medical Cannabis Dispensary Use from the  
8 *Planning Department as of January 5, 2018; or ~~that~~*

9                   \_\_\_\_\_ (C) submitted a complete application for ~~*such*~~ a permit *from the Department*  
10 *of Public Health to operate as a Medical Cannabis Dispensary* by July 20, 2017, and receives ~~*such*~~  
11 *a final permit from the Department of Public Health (“Grandfathered MCD”). ~~may convert to a~~*  
12 *Cannabis Retail Use by obtaining a building permit authorizing the change of use, as set forth below.*  
13 *Such permits are subject to neighborhood notification pursuant to Section 312, regardless of zoning*  
14 *district.*

15               (b)     (2) A Grandfathered MCD converting to a Cannabis Retail Use pursuant to this  
16 Section 190 is not subject to:

17                   \_\_\_\_\_ (A) *a Conditional Use Authorization requirement for Cannabis Retail Uses in*  
18 *the zoning district in which it is located; or*

19                   \_\_\_\_\_ (B) *the locational restrictions for Cannabis Retail set forth in subsection*  
20 *202.2(a), except that if a State licensing authority specifies a minimum radius from an existing School,*  
21 *public or private, or from an existing day care center or youth center, that minimum radius shall apply.*

22                   \_\_\_\_\_ (3) *A Grandfathered MCD is subject to all other Planning Code requirements,*  
23 *including but not limited to the neighborhood notification requirement of Section 312.*

24               (c) *In order for a Grandfathered MCD to convert to a Cannabis Retail Use pursuant to this*  
25 *Section 190, a completed application for the change of use must be submitted to the Department of*

1 ~~Building Inspection no later than March 31, 2018, and a first approval by the Planning Department or~~  
2 ~~Planning Commission must be received on or before December 31, 2019. An application will be~~  
3 ~~deemed to have received its first approval from the Planning Department or Planning Commission~~  
4 ~~when that body issues its decision, regardless of whether any appeal or lawsuit is subsequently filed~~  
5 ~~challenging any City approval related to the application.~~

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

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

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

16 (3) Except as specified in this subsection (b), a Pending MCD Applicant that obtains a  
17 change of use permit for a Cannabis Retail Use is subject to all Planning Code requirements, including  
18 but not limited to the neighborhood notification requirement set forth in Section 312 and Conditional  
19 Use Authorization if required for a Cannabis Retail Use by the zoning district in which the property is  
20 located.

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

1           (~~c~~) All other applications for a change of use from a Medical Cannabis Dispensary  
2 Use to a Cannabis Retail Use shall be subject to the zoning controls for the district in which  
3 the Medical Cannabis Dispensary is located.

4           (~~d~~e) This Section 190 shall expire by operation of law on January 1, 2020~~1~~. Upon its  
5 expiration, the City Attorney shall cause this Section 190 to be removed from the Planning  
6 Code.

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

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

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

21 By: \_\_\_\_\_  
22 VICTORIA WONG  
23 Deputy City Attorney

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