

BOARD of SUPERVISORS



City Hall
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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: August 1, 2017

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. 170865

Urgency ordinance approving an interim zoning moratorium on the approval of medical cannabis dispensaries for 45 days, in accordance with California Government Code, Section 65858; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

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

c: Menaka Mahajan, Small Business Commission

1 [Zoning - Interim Moratorium on Medical Cannabis Dispensaries]
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3 **Urgency ordinance approving an interim zoning moratorium on the approval of medical**
4 **cannabis dispensaries for 45 days, in accordance with California Government Code,**
5 **Section 65858; affirming the Planning Department’s determination under the California**
6 **Environmental Quality Act; and making findings of consistency with the General Plan,**
7 **and the eight priority policies of Planning Code, Section 101.1.**

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9 NOTE: This ordinance requires a **four-fifths vote** of the Board of Supervisors for passage.

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

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

17 Section 1. Findings.

18 **(a) General Findings.**

19 (1) In 2005, the City enacted the Medical Cannabis Act, Article 33 of the Health
20 Code, authorizing the permitting and operation of medical cannabis dispensaries (“MCDs”) in
21 the City and County of San Francisco (the “City”).

22 (2) Currently, the only businesses that lawfully may engage in the cultivation or
23 distribution of cannabis in the City are MCDs that are licensed pursuant to the Medical
24 Cannabis Act.
25

1 (3) In 2015, the Legislature enacted three bills - AB 243, AB 266, and SB 643 -
2 that collectively establish a comprehensive state licensing system for commercial activities
3 relating to medical cannabis.

4 (4) In November 2016, California voters approved Proposition 64, which, among
5 other things, establishes a comprehensive state licensing system for commercial activities
6 relating to non-medical (or "adult use") cannabis.

7 (5) On November 9, 2016, the Mayor issued Executive Directive 16-05,
8 "Implementing Prop 64: Adult Use of Marijuana Act," directing the Department of Public Health
9 and the Planning Department, in consultation with other departments, to move forward with
10 legislation for the Board of Supervisors' consideration that would address land use, licensing,
11 safety, and youth access issues related to adult use cannabis under Proposition 64. Pursuant
12 to that Executive Directive, the City is working towards the development and introduction of
13 comprehensive legislation that will establish permits for a broad range of cannabis
14 businesses, and that will identify where, and under what conditions, they may operate.

15 (6) The City enacted an ordinance, contained in Board of Supervisors File No.
16 170275, to create an Office of Cannabis that will be charged with overseeing the permitting of
17 commercial cannabis businesses in the City.

18 (7) As of July 2017, there were approximately 46 MCDs operating in the City,
19 and 16 applications for MCD permits under review by the Planning Department.

20 (8) Since the passage of Proposition 64, the City has received 9 applications for
21 permits to operate MCDs, which reflects an increase in the rate of application in previous
22 years.

23 **(b) Findings Directly Related to Imposition of an Interim Moratorium.**
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1 (1) California Government Code Section 65858 provides that local jurisdictions,
2 to protect the public safety, health, and welfare, may adopt as an urgency measure an interim
3 ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal.

4 (2) The interim zoning moratorium provided for in this ordinance is intended to
5 address and ameliorate the problems associated with the proliferation of MCDs in the City,
6 and to address the potential displacement of other types of retail outlets caused by this
7 proliferation, at a time when the cannabis industry is expanding rapidly and the state and local
8 regulatory landscape is changing. The problems to be addressed include the land use
9 impacts of MCDs that may seek to convert to adult use cannabis retail outlets, inappropriate
10 zoning for MCDs, and over-concentration of MCDs in certain areas of the City, all occurring in
11 the absence of a comprehensive system for the regulation of adult use cannabis businesses.

12 (3) There is an immediate threat to the public health, safety, and welfare caused
13 by the continued issuance of MCD permits.

14 (A) The California Attorney General's August 2008 "Guidelines for the
15 Security and Non-Diversion of Marijuana Grown for Medical Use" recognizes that the
16 operation of MCDs without adequate security may increase the risk that nearby homes or
17 businesses may be negatively impacted by nuisance activity such as loitering or crime.

18 (B) While experiences in the regulation of MCDs vary among localities,
19 several California cities have experienced an increase in loitering, vehicular traffic, and
20 congestion in the areas immediately surrounding MCDs. For example, in San Francisco, the
21 Ingleside Police Station has reported receiving complaints about MCDs along the Ocean
22 Avenue corridor. Specifically, residents and business owners have complained about youth
23 consumption of cannabis, undesirable odors, loitering, and traffic congestion.

24 (C) Due to the City's current zoning limitations, MCDs tend to be
25 clustered in a limited number of areas, such as Supervisorial Districts 3 and 6, concentrating

1 and heightening the adverse land use impacts in those areas, and creating the potential for
2 dramatic and adverse changes in neighborhood character and composition.

3 (D) Since the passage of Proposition 64, there has been an increase in
4 the number and rate of applications for MCD permits in San Francisco. This increase is
5 driven in part by the desire of prospective MCD operators to establish MCDs under the City's
6 current MCD controls, in order to convert those MCDs to non-medical cannabis retail
7 establishments once state and local licenses for such businesses are available. However, the
8 City has not yet established laws or policies regarding the potential conversion of MCDs to
9 non-medical cannabis retail outlets, and has not yet evaluated the potential land use impacts
10 of non-medical cannabis retail establishments compared to the land use impacts of MCDs. In
11 addition, the City currently has no comprehensive system for the regulation of non-medical
12 cannabis licensing or sales. The proliferation of MCDs in the absence of such comprehensive
13 controls may ultimately result in cannabis retail establishments that create negative land use
14 and other impacts, including impacts on neighborhood character, traffic, and safety, and that
15 are inconsistent with City zoning and other regulations for adult use cannabis businesses that
16 will be ultimately adopted.

17 (E) It is in the best interest of City residents for the City to establish a
18 healthy balance of MCDs and non-medical cannabis retail outlets.

19 (4) The Board of Supervisors has considered the impact on the public health,
20 safety, peace, and general welfare if the moratorium proposed herein is not imposed.

21 (5) The Board of Supervisors has determined that the public interest will be best
22 served by the imposition of this moratorium at this time, to ensure that the legislative scheme
23 that ultimately may be adopted for adult use cannabis businesses and MCDs is not
24 undermined during the planning and legislative process for permanent controls, which process
25 shall be completed within a reasonable time in light of the complexity of regulation in this area.

1 (6) A moratorium on the approval of new MCDs will provide the Board of
2 Supervisors the time to consider the adoption of ordinances that will regulate the location and
3 operation of MCDs and non-medical cannabis retail outlets, while still allowing for the
4 operation of legally permitted MCDs, to ensure that qualified patients and their caregivers
5 have access to medical cannabis, and to safeguard the public health, safety, and welfare.

6 **(c) Planning Code Section 101.1 Findings.**

7 This interim moratorium advances and is consistent with Priority Policy 1 of Planning
8 Code Section 101.1 in that the ordinance attempts to preserve and enhance existing
9 neighborhood-serving retail uses and opportunities for resident employment in and ownership
10 of such businesses; advances and is consistent with Priority Policy 2 in that the ordinance
11 attempts to conserve existing neighborhood character in order to preserve the cultural and
12 economic diversity of the City's neighborhoods; and advances and is consistent with Priority
13 Policy 4 in that the ordinance will prevent new impacts related to traffic, transit, and parking
14 caused by MCDs.

15 As to Priority Policies 3, 5, 6, 7, and 8 of Planning Code Section 101.1, the interim
16 zoning moratorium would not, at this time, have an effect upon these policies, and thus, will
17 not conflict with them.

18 **(d) Environmental Findings.**

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

24 Section 2. The following interim zoning moratorium shall be adopted as an Urgency
25 Ordinance:

1 (a) Neither the Planning Department nor the Planning Commission shall issue an
2 approval or authorization for any Medical Cannabis Dispensary use, as defined in Planning
3 Code Section 102. Any project that, as of the effective date of this ordinance, has received
4 approval or authorization from the Planning Department or the Planning Commission for use
5 as a Medical Cannabis Dispensary, is not subject to this ordinance.

6 (b) This interim zoning moratorium shall remain in effect for 45 days, unless (1)
7 extended in accordance with California Government Code Section 65858 or (2) permanent
8 controls are adopted to address the proliferation of Medical Cannabis Dispensaries and the
9 regulation of non-medical cannabis retail outlets, whichever comes first.

10 (c) Due to the urgency of establishing this interim zoning moratorium and
11 notwithstanding the requirements of Planning Code Section 306.7(g), the Board of
12 Supervisors finds that the standard public notice for Board of Supervisors hearings is
13 adequate to inform the public of any hearing(s) on this ordinance.

14
15 Section 3. Within 25 days of the Board's adoption of this ordinance, the Planning
16 Department shall submit to the Clerk of the Board of Supervisors a written report describing
17 the measures taken to alleviate the conditions that led to the adoption of the ordinance. Upon
18 receipt of the report, the Clerk shall calendar a motion for the full Board of Supervisors to
19 consider and approve said report. Said hearing and action taken thereon shall occur no later
20 than 35 days after this ordinance is effective.

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22 Section 4. Effective Date. This ordinance shall become effective immediately upon
23 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

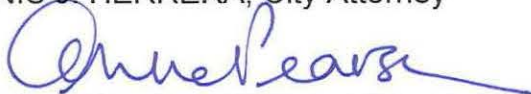
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1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance by a 4/5ths vote.

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

By: 
ANNE PEARSON
Deputy City Attorney

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LEGISLATIVE DIGEST

[Zoning - Interim Moratorium on Medical Cannabis Dispensaries]

Urgency ordinance approving an interim zoning moratorium on the approval of medical cannabis dispensaries for 45 days, in accordance with California Government Code, Section 65858; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

Article 33 of the Health Code authorizes the permitting and operation of medical cannabis dispensaries (“MCDs”) in the City and County of San Francisco. All applications for MCD permits must be referred to and approved by the Planning Department prior to the issuance of an MCD permit to ensure that the project complies with the Planning Code. The review process for MCDs varies depending on the district in which the project is located: some projects require a mandatory discretionary review while other projects require a conditional use permit. Currently, there is no ban on the approval of MCD applications by the Planning Department or Planning Commission.

California Government Code Section 65858 (“Section 65858”) authorizes and establishes procedures for a local government to impose an interim zoning moratorium. An interim moratorium takes the form of an urgency ordinance, has only one reading of the Board of Supervisors, requires a 4/5ths vote of the Board of Supervisors for approval, and is effective under the same terms as a Board of Supervisors resolution.

Amendments to Current Law

Pursuant to Section 65858, the proposed ordinance would temporarily prohibit the Planning Commission and the Planning Department from approving or authorizing any medical cannabis dispensary use. This interim zoning moratorium would remain in effect for 45 days unless (1) extended in accordance with Section 65858 or (2) permanent controls are adopted to address the proliferation of MCDs and the regulation of non-medical cannabis outlets. MCD projects that have been approved by the Planning Department or the Planning Commission as of the effective date of the ordinance are not subject to the moratorium.

The proposed ordinance also adopts findings relating to the threat to public health, safety, and welfare that is presented by the continued approval of MCD applications, and affirms the Planning Department’s determination under the California Environmental Quality Act. The ordinance requires the Planning Department to prepare a report describing the measures

taken to alleviate the conditions that led to the adoption of the moratorium and the Clerk to schedule a hearing on the Department's report.

Background Information

In 2005, the City enacted the Medical Cannabis Act, Article 33 of the Health Code, authorizing the permitting and operation of MCDs in the City and County of San Francisco. Currently, the only businesses that lawfully may engage in the cultivation or distribution of cannabis in the City are MCDs that are licensed pursuant to the Medical Cannabis Act.

In November 2016, California voters approved Proposition 64, which, among other things, establishes a comprehensive state licensing system for commercial activities relating to non-medical (or "adult use") cannabis. Immediately following the passage of Proposition 64, the Mayor issued Executive Directive 16-05, "Implementing Prop 64: Adult Use of Marijuana Act," directing the Department of Public Health 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 is working towards the development and introduction of comprehensive legislation that will establish permits for a broad range of cannabis businesses, and that will identify where, and under what conditions, they may operate.

As of July 2017, there were approximately 46 MCDs operating in the City, and 16 applications for MCD permits under review by the Planning Department.

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