

FILE NO. 081199

ORDINANCE NO.

1 [Medical Cannabis Act Revisions.]

2

3 **Ordinance approving amendments to the Medical Cannabis Act to clarify that a medical**
4 **cannabis dispensary shall be a cooperative or collective and shall operate as a non-**
5 **profit.**

6 Note: Additions are *single-underline italics Times New Roman*;
7 deletions are *strikethrough italics Times New Roman*.
8 Board amendment additions are double underlined.
9 Board amendment deletions are ~~strikethrough normal~~.

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

10 Section 1. The San Francisco Health Code Section 3301 et seq. is hereby amended
11 by amending Sections 3301 and 3308, to read as follows:

12 SEC. 3301. DEFINITIONS.

13 For the purposes of this Article:

14 (a) "Cannabis" means marijuana and all parts of the plant Cannabis, whether growing
15 or not; the seeds thereof; the resin extracted from any part of the plant; and every compound,
16 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes
17 marijuana infused in foodstuff. It does not include the mature stalks of the plant, fiber
18 produced from the stalks, oil or cake made from the seeds of the plant, any other compound,
19 manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin
20 extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant are incapable of
21 germination.

22 (b) "City" means the City and County of San Francisco.

23 (c) "Convicted" means having pled guilty or having received a verdict of guilty,
24 including a verdict following a plea of nolo contendere, to a crime.

25

1 (d) "Director" means the Director of Public Health or any individual designated by the
2 Director to act on his or her behalf, including but not limited to inspectors.

3 ~~(e) "Excessive profits" means the receipt of consideration of a value substantially higher than
4 the reasonable costs of operating the facility. Such reasonable costs shall include expenses for rent or
5 mortgage, utilities, employee costs, furniture, maintenance, or reserves maintained in a segregated
6 account set aside exclusively for potential financial or legal liability.~~

7 (f) "Medical cannabis dispensary" means ~~any association,~~ a cooperative or collective of
8 ten or more qualified patients or primary caregivers that facilitates the lawful cultivation and
9 distribution of medical cannabis for medical purposes and operates not for profit, consistent with
10 California Health & Safety Code Sections 11362.5 et seq., with the Guidelines for the Security and Non-
11 diversion of Marijuana Grown for Medical Use issued by the California Attorney General in August
12 2008, and with this ordinance. A cooperative must be organized and registered as a Consumer
13 Cooperative Corporation under the Corporations Code, Sections 12300, et seq., or a Nonprofit
14 Cooperative Association under the Food and Agricultural Code, Sections 54002, et seq. A collective
15 may be organized as a corporation, partnership or other legal entity under state law but must be jointly
16 owned and operated by its members. As set forth in Section 3308(q), a medical cannabis dispensary may
17 purchase or obtain cannabis only from members of the cooperative or collective and may sell or
18 distribute cannabis only to members of the cooperative or collective. As set forth in Section 3308(c), a
19 medical cannabis dispensary may operate only on a not for profit basis and pay only reasonable
20 compensation to itself and its members and pay only reasonable out-of-pocket expenses. ~~not~~
21 earn profits for itself or its members.

22 (g) "Medical Cannabis Identification Card" or "Identification Card" means a document
23 issued by the State Department of Health Services pursuant to California Health and Safety
24 Code Sections 11362.7 et seq. or the City pursuant to Health Code Article 28 that identifies a
25 person authorized to engage in the medical use of cannabis and the person's designated

1 primary caregiver, if any, or identifies a person as a primary caregiver for a medical cannabis
2 patient.

3 (h) "Permittee" means the owner, proprietor, manager, or operator of a medical
4 cannabis dispensary or other individual, corporation, or partnership who obtains a permit
5 pursuant to this Article.

6 (i) "Primary caregiver" shall have the same definition as California Health and Safety
7 Code Section 11362.7 et seq., and as may be amended, and which defines "primary
8 caregiver" as an individual, designated by a qualified patient or by a person with an
9 identification card, who has consistently assumed responsibility for the housing, health, or
10 safety of that patient or person, and may include a licensed clinic, a licensed health care
11 facility, a residential care facility, a hospice, or a home health agency as allowed by California
12 Health and Safety Code Section 11362.7(d)(1-3).

13 (j) "Qualified patient" shall have the same definition as California Health and Safety
14 Code Section 11362.7 et seq., and as may be amended, and which states that a "qualified
15 patient" means a person who is entitled to the protections of California Health and Safety
16 Code Section 11362.5, but who does not have a valid medical cannabis identification card.
17 For the purposes of this Article, a "qualified patient who has a valid identification card" shall
18 mean a person who fulfills all of the requirements to be a "qualified patient" under California
19 Health and Safety Code Section 11362.7 et seq. and also has a valid medical cannabis
20 identification card

21 **SEC. 3302. MEDICAL CANNABIS GUIDELINES.**

22 Pursuant to the authority granted under Health and Safety Code section 11362.77, the
23 City and County of San Francisco enacts the following medical cannabis guidelines:

24 (a) A qualified patient, person with a valid identification card, or primary caregiver may
25 possess no more than eight ounces of dried cannabis per qualified patient. In addition, a

1 qualified patient, person with a valid identification card, or primary caregiver may also
2 maintain no more than twenty-four (24) cannabis plants per qualified patient or up to 25
3 square feet of total garden canopy measured by the combined vegetative growth area.

4 (b) If a qualified patient, person with an identification card, or primary caregiver has a
5 doctor's recommendation that this quantity does not meet the qualified patient's medical
6 needs, the qualified patient, person with an identification card, or primary caregiver may
7 possess an amount of cannabis consistent with the patient's needs.

8 (c) Only the dried mature processed flowers of female cannabis plant or the plant
9 conversion shall be considered when determining allowable quantities of cannabis under this
10 section.

11 **SEC. 3303. PERMIT REQUIRED FOR MEDICAL CANNABIS DISPENSARY.**

12 Except for research facilities, it is unlawful to operate or maintain, or to participate
13 therein, or to cause or to permit to be operated or maintained, any medical cannabis
14 dispensary without first obtaining a final permit pursuant to this Article. It is unlawful to operate
15 or maintain, or to participate therein, or to cause or to permit to be operated or maintained,
16 any medical cannabis dispensary with a provisional permit issued pursuant to this Article.

17 **SEC. 3304. APPLICATION FOR MEDICAL CANNABIS DISPENSARY PERMIT.**

18 (a) Every applicant for a medical cannabis dispensary permit shall file an application
19 with the Director upon a form provided by the Director and pay a non-refundable permit
20 application fee of \$6691.00 to cover the costs to all City departments of investigating and
21 processing the application and any applicable surcharges, exclusive of filing fees for appeals
22 before the Board of Appeals. Beginning with fiscal year 2006-2007, the application fee may be
23 adjusted each year, without further action by the Board of Supervisors, to reflect changes in
24 the relevant Consumer Price Index, as determined by the Controller. No later than April 15th
25 of each year, the Health Department shall, in collaboration with the Tax Collector's Office,

1 submit the application fee to the Controller, who shall apply the price index adjustment to
2 produce a new application fee for the following year. No later than May 15th of each year, the
3 Controller shall file a report with the Board of Supervisors reporting the new application fee
4 and certifying that: (a) the application fee produces sufficient revenue to support the costs of
5 providing the services for which the annual fee is being charged and (b) the application fee
6 does not produce revenue that exceeds the costs of providing the services for which the
7 application fee is charged. Notwithstanding the procedures set forth in this Section, the Board
8 of Supervisors, in its discretion, may modify the application fee by ordinance at any time.

9 (b) The permit application form shall provide clear notice to applicants that the
10 California Fire Code includes a requirement, among others that may apply, that an
11 establishment obtain a place of assembly permit if it will accommodate 50 or more persons
12 based on its square footage.

13 (c) The applicant for a medical cannabis dispensary permit shall set forth, under
14 penalty of perjury, following on the permit application:

15 (1) The proposed location of the medical cannabis dispensary;

16 (2) The name and residence address of each person applying for the permit and any
17 other person who will be engaged in the management of the medical cannabis dispensary;

18 (3) A unique identifying number from at least one government-issued form of
19 identification, such as a social security card, a state driver's license or identification card, or a
20 passport for of each person applying for the permit and any other person who will be engaged
21 in the management of the medical cannabis dispensary;

22 (4) Written evidence that each person applying for the permit and any other person
23 who will be engaged in the management of the medical cannabis dispensary is at least 18
24 years of age;

25

1 (5) All felony convictions of each person applying for the permit and any other person
2 who will be engaged in the management of the medical cannabis dispensary;

3 (6) Whether cultivation of medical cannabis shall occur on the premises of the medical
4 cannabis dispensary;

5 (7) Whether smoking of medical cannabis shall occur on the premises of the medical
6 cannabis dispensary;

7 (8) Whether food will be prepared, dispensed or sold on the premises of the medical
8 cannabis dispensary; and

9 (9) Proposed security measures for the medical cannabis dispensary, including
10 lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

11 (e) Applicants must be a cooperative or a collective. If the applicant is a cooperative
12 organized under the Corporations Code, Sections 12300, et seq., or the Food and Agricultural Code,
13 Sections 54002, et seq., the applicant shall set forth the name of the cooperative exactly as shown in its
14 articles of incorporation, and the names and residence addresses of each of the officers, directors and
15 each stockholder owning more than 10 percent of the stock of the corporation. If the applicant is a
16 collective organized as a corporation, the applicant shall set forth the name of the corporation
17 exactly as shown in its articles of incorporation, and the names and residence addresses of
18 each of the officers, directors and each stockholder owning more than 10 percent of the stock
19 of the corporation. If the applicant is a collective organized as a partnership, the application shall
20 set forth the name and residence address of each of the partners, including the general partner
21 and any limited partners. If ~~one or more of the partners is~~ a corporation or a partnership is a
22 stockholder owning more than 10 percent of the stock of a corporation or is one or more of the partners
23 in a partnership, the provisions of this Section pertaining to ~~a corporation apply~~ the disclosure
24 required for a corporation or partnership, as applicable, shall also apply to that entity.

1 (f) The Director is hereby authorized to require in the permit application any other
2 information including, but not limited to, any information necessary to discover the truth of the
3 matters set forth in the application.

4 (g) The Department of Public Health shall make reasonable efforts to arrange with the
5 Department of Justice and with DOJ-certified fingerprinting agencies for fingerprinting services
6 and criminal background checks for the purposes of verifying the information provided under
7 Section 3304(c)(5) and certifying the listed individuals as required by Section 3307(c)(4). The
8 applicant or each person listed in Section 3304(c)(5) shall assume the cost of fingerprinting
9 and background checks, and shall execute all forms and releases required by the DOJ and
10 the DOJ-certified fingerprinting agency.

11 SEC. 3305. REFERRAL TO OTHER DEPARTMENTS.

12 (a) Upon receiving a completed medical cannabis dispensary permit application and
13 permit application fee, the Director shall immediately refer the permit application to the City's
14 Planning Department, Department of Building Inspection, Mayor's Office on Disability, and
15 Fire Department.

16 (b) Said departments shall inspect the premises proposed to be operated as a
17 medical cannabis dispensary and confirm the information provided in the application and shall
18 make separate written recommendations to the Director concerning compliance with the
19 codes that they administer.

20 SEC. 3306. NOTICE OF HEARING ON PERMIT APPLICATION.

21 (a) After receiving written approval of the permit application from other City
22 Departments as set out in Section 3305, and notice from the Department of Building
23 Inspection that it has approved a building permit, the Director shall fix a time and place for a
24 public hearing on the application, which date shall not be more than 45 days after the
25 Director's receipt of the written approval of the permit application from other City Departments.

1 (b) No fewer than 10 days before the date of the hearing, the permit applicant shall
2 cause to be posted a notice of such hearing in a conspicuous place on the property at which
3 the proposed medical cannabis dispensary is to be operated. The applicant shall comply with
4 any requirements regarding the size and type of notice specified by the Director. The
5 applicant shall maintain the notice as posted the required number of days.

6 SEC. 3307. ISSUANCE OF MEDICAL CANNABIS DISPENSARY PERMIT.

7 (a) Within 14 days following a hearing, the Director shall either issue a provisional
8 permit or mail a written statement of his or her reasons for denial thereof to the applicant.

9 (b) In recommending the granting or denying of a provisional permit and in granting or
10 denying the same, the Director shall give particular consideration to the capacity,
11 capitalization, complaint history of the applicant and any other factors that in their discretion
12 he or she deems necessary to the peace and order and welfare of the public. In addition, prior
13 to granting a provisional permit, the Director shall review criminal history information provided
14 by the Department of Justice for the purpose of certifying that each person applying for the
15 permit and any other person who will be engaged in the management of the medical cannabis
16 dispensary has not been convicted of a violent felony within the State of California, as defined
17 in Penal Code section 667.5(c), or a crime that would have constituted a violent felony as
18 defined in Penal Code section 667.5(c) if committed within the State of California. However,
19 the Director may certify and issue a medical cannabis dispensary provisional permit to any
20 individual convicted of such a crime if the Director finds that the conviction occurred at least
21 five years prior to the date of the permit application or more than three years have passed
22 from the date of the termination of a penalty for such conviction to the date of the permit
23 application and, that no subsequent felony convictions of any nature have occurred.

24 (c) No medical cannabis dispensary provisional permit shall be issued if the Director
25 finds:

- 1 (1) That the applicant has provided materially false documents or testimony; or
- 2 (2) That the applicant has not complied fully with the provisions of this Article; or
- 3 (3) That the operation as proposed by the applicant, if permitted, would not have
- 4 complied will all applicable laws, including, but not limited to, the Building, Planning, Housing,
- 5 Police, Fire, and Health Codes of the City, including the provisions of this Article and
- 6 regulations issued by the Director pursuant to this Article; or
- 7 (4) That the permit applicant or any other person who will be engaged in the
- 8 management of the medical cannabis dispensary has been convicted of a violent felony as
- 9 defined in Penal Code section 667.5(c) within the State of California or a crime that would
- 10 have constituted a violent felony as defined in Penal Code section 667.5(c) if committed within
- 11 the State of California. However, the Director may issue a medical cannabis dispensary
- 12 provisional permit to any individual convicted of such a crime if the Director finds that the
- 13 conviction occurred at least five years prior to the date of the permit application or more than
- 14 three years have passed from the date of the termination of a penalty for such conviction to
- 15 the date of the permit application and, that no subsequent felony convictions of any nature
- 16 have occurred; or
- 17 (5) That a permit for the operation of a medical cannabis dispensary, which permit
- 18 had been issued to the applicant or to any other person who will be engaged in the
- 19 management of the medical cannabis dispensary, has been revoked, unless more than five
- 20 years have passed from the date of the revocation to the date of the application; or
- 21 (6) That the City has revoked a permit for the operation of a business in the City which
- 22 permit had been issued to the applicant or to any other person who will be engaged in the
- 23 management of the medical cannabis dispensary unless more than five years have passed
- 24 from the date of the application to the date of the revocation.
- 25

1 (d) Applicants with provisional permits shall secure a Certificate of Final Completion
2 and Occupancy as defined in San Francisco Building Code Section 307 and present it to the
3 Director, and the Director shall issue the applicant a final permit.

4 (e) The Director shall notify the Police Department of all approved permit applications.

5 (f) The final permit shall contain the following language: "Issuance of this permit by
6 the City and County of San Francisco is not intended to and does not authorize the violation of
7 State or Federal law."

8 SEC. 3308. OPERATING REQUIREMENTS FOR MEDICAL CANNABIS
9 DISPENSARY.

10 (a) Medical cannabis dispensaries shall meet all the operating criteria for the
11 dispensing of medical cannabis as is required pursuant to California Health and Safety Code
12 Section 11362.7 et seq., by this Article, *and* by the Director's administrative regulations for the
13 permitting and operation of medical cannabis dispensaries *and by the AG's Guidelines*.

14 (b) Medical cannabis dispensaries shall be operated only as collectives or
15 cooperatives in accordance this ordinance. All patients or caregivers served by a medical
16 cannabis dispensary shall be members of that medical cannabis dispensary's collective or
17 cooperative. *Medical cannabis dispensaries shall maintain membership records on-site or have them*
18 *reasonably available.*

19 (c) The medical cannabis dispensary shall *operate on a not for profit non-profit basis. It*
20 *shall* receive only compensation for the reasonable costs of operating the dispensary, actual
21 ~~expenses~~, including reasonable compensation incurred for services provided to qualified
22 patients or primary caregivers to enable that person to use or transport cannabis pursuant to
23 California Health and Safety Code Section 11362.7 et seq., or for payment for reasonable out-
24 of-pocket expenses incurred in providing those services, or both. Reasonable out-of-pocket
25 expenses may include reasonable expenses for patient services, rent or mortgage, utilities,

1 employee costs, furniture, maintenance and reserves. Sale of medical cannabis to cover
2 anything other than reasonable compensation and reasonable out-of-pocket expenses ~~for~~
3 ~~excessive profits~~ is explicitly prohibited. Once a year, commencing in March 2008, each
4 medical cannabis dispensary shall provide to the Department a written statement by the
5 dispensary's permittee made under penalty of perjury attesting to the dispensary's compliance
6 with this paragraph. Upon request by the Department, based on reasonable suspicion of
7 noncompliance, the medical cannabis dispensary shall provide the Department copies of, or access
8 to, such books, records and any other financial records information as the Department determines
9 are is necessary to show compliance with this paragraph. Reasonable suspicion is defined as
10 possession of specific and articulate facts warranting a reasonable belief that the dispensary
11 is not complying with the requirement that it be not for profit. Financial records are records of
12 revenues and expenses for the organization, including but not limited to Board of Equalization
13 returns, payroll records, business expense records and income tax returns. The Director only
14 shall disclose these financial records to those City and County departments necessary to
15 support the Director's review of the records. Upon completion of the Director's review, and
16 provided that the Director no longer has any need for the records, the Director shall return any
17 financial records, and copies thereof, to the medical cannabis dispensary.

18 (d) Medical cannabis dispensaries shall sell or distribute only cannabis manufactured
19 and processed in the State of California that has not left the State before arriving at the
20 medical cannabis dispensary.

21 (e) It is unlawful for any person or association operating a medical cannabis
22 dispensary under the provisions of this Article to permit any breach of peace therein or any
23 disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or
24 otherwise, or to permit such dispensary to remain open, or patrons to remain upon the
25 premises, between the hours of 10 p.m. and 8 a.m. the next day. However, the Department

1 shall issue permits to two medical cannabis dispensaries permitting them to remain open 24
2 hours per day. These medical cannabis dispensaries shall be located in order to provide
3 services to the population most in need of 24 hour access to medical cannabis. These
4 medical cannabis dispensaries shall be located at least one mile from each other and shall be
5 accessible by late night public transportation services. However, in no event shall a medical
6 cannabis dispensary located in a Small-Scale Neighborhood Commercial District, a Moderate
7 Scale Neighborhood Commercial District, or a Neighborhood Commercial Shopping Center
8 District as defined in Sections 711, 712 and 713 of the Planning Code, be one of the two
9 medical cannabis dispensaries permitted to remain open 24 hours per day.

10 (f) Medical cannabis dispensaries may not dispense more than one ounce of dried
11 cannabis per qualified patient to a qualified patient or primary caregiver per visit to the medical
12 cannabis dispensary. Medical cannabis dispensaries may not maintain more than ninety-nine
13 (99) cannabis plants in up to 100 square feet of total garden canopy measured by the
14 combined vegetative growth area. Medical cannabis dispensaries shall use medical cannabis
15 identification card numbers to ensure compliance with this provision. If a qualified patient or a
16 primary caregiver has a doctor's recommendation that this quantity does not meet the
17 qualified patient's medical needs, the qualified patient or the primary caregiver may possess
18 and the medical cannabis dispensary may dispense an amount of dried cannabis and
19 maintain a number cannabis plants consistent with those needs. Only the dried mature
20 processed flowers of female cannabis plant or the plant conversion shall be considered when
21 determining allowable quantities of cannabis under this Section.

22 (g) No medical cannabis shall be smoked, ingested or otherwise consumed in the
23 public right-of-way within fifty (50) feet of a medical cannabis dispensary. Any person violating
24 this provision shall be deemed guilty of an infraction and upon the conviction thereof shall be
25

1 punished by a fine of \$100. Medical cannabis dispensaries shall post a sign near their
2 entrances and exits providing notice of this policy.

3 (h) Any cultivation of medical cannabis on the premises of a medical cannabis
4 dispensary must be conducted indoors.

5 (i) All sales and dispensing of medical cannabis shall be conducted on the premises
6 of the medical cannabis dispensary. However, delivery of cannabis to qualified patients with
7 valid identification cards or a verifiable, written recommendation from a physician for medical
8 cannabis and primary caregivers with a valid identification card outside the premises of the
9 medical cannabis dispensary is permitted if the person delivering the cannabis is a qualified
10 patient with a valid identification card or a verifiable, written recommendation from a physician
11 for medical cannabis or a primary caregiver with a valid identification card who is a member of
12 the medical cannabis dispensary.

13 (j) The medical cannabis dispensary shall not hold or maintain a license from the
14 State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a
15 business that sells alcoholic beverages. Nor shall alcoholic beverages be consumed on the
16 premises or on in the public right-of-way within fifty feet of a medical cannabis dispensary.

17 (k) In order to protect confidentiality, the medical cannabis dispensary shall maintain
18 records of all qualified patients with a valid identification card and primary caregivers with a
19 valid identification card using only the identification card number issued by the State or City
20 pursuant to California Health and Safety Code Section 11362.7 et seq. and City Health Code
21 Article 28.

22 (l) The medical cannabis dispensary shall provide litter removal services twice each
23 day of operation on and in front of the premises and, if necessary, on public sidewalks within
24 hundred (100) feet of the premises.

25

1 (m) The medical cannabis dispensary shall provide and maintain adequate security on
2 the premises, including lighting and alarms reasonably designed to ensure the safety of
3 persons and to protect the premises from theft.

4 (n) Signage for the medical cannabis dispensary shall be limited to one wall sign not
5 to exceed ten square feet in area, and one identifying sign not to exceed two square feet in
6 area; such signs shall not be directly illuminated. Any wall sign, or the identifying sign if the
7 medical cannabis dispensary has no exterior wall sign, shall include the following language:
8 "Only individuals with legally recognized Medical Cannabis Identification Cards or a verifiable,
9 written recommendation from a physician for medical cannabis may obtain cannabis from
10 medical cannabis dispensaries." The required text shall be a minimum of two inches in height.
11 This requirement shall remain in effect so long as the system for distributing or assigning
12 medical cannabis identification cards preserves the anonymity of the qualified patient or
13 primary caregiver.

14 (o) All print and electronic advertisements for medical cannabis dispensaries,
15 including but not limited to flyers, general advertising signs, and newspaper and magazine
16 advertisements, shall include the following language: "Only individuals with legally recognized
17 Medical Cannabis Identification Cards or a verifiable, written recommendation from a
18 physician for medical cannabis may obtain cannabis from medical cannabis dispensaries."
19 The required text shall be a minimum of two inches in height except in the case of general
20 advertising signs where it shall be a minimum of six inches in height. Oral advertisements for
21 medical cannabis dispensaries, including but not limited to radio and television
22 advertisements shall include the same language. This requirement shall remain in effect so
23 long as the system for distributing or assigning medical cannabis identification cards
24 preserves the anonymity of the qualified patient or primary carver.

25

1 (p) The medical cannabis dispensary shall provide the Director and all neighbors
2 located within 50 feet of the establishment with the name phone number and facsimile number
3 of an on-site community relations staff person to whom one can provide notice if there are
4 operating problems associated with the establishment. The medical cannabis dispensary shall
5 make every good faith effort to encourage neighbors to call this person to try to solve
6 operating problems, if any, before any calls or complaints are made to the Police Department
7 or other City officials.

8 (q) Medical cannabis dispensaries may purchase or obtain cannabis only from members of
9 the medical cannabis dispensary's cooperative or collective and may sell or distribute cannabis only
10 to members of the medical cannabis dispensary's cooperative or collective ~~or cooperative~~.

11 (r) Medical cannabis dispensaries may sell or distribute cannabis only to those
12 members with a medical cannabis identification card or a verifiable, written recommendation
13 from a physician for medical cannabis. This requirement shall remain in effect so long as the
14 system for distributing or assigning medical cannabis identification cards preserves the
15 anonymity of the qualified patient or primary caregiver.

16 (s) It shall be unlawful for any medical cannabis dispensary to employ any person who
17 is not at least 18 years of age.

18 (t) It shall be unlawful for any medical cannabis dispensary to allow any person who is
19 not at least 18 years of age on the premises during hours of operation unless that person is a
20 qualified patient with a valid identification card or primary caregiver with a valid identification
21 card or a verifiable, written recommendation from a physician for medical cannabis.

22 (u) Medical cannabis dispensaries that display or sell drug paraphernalia must do so
23 in compliance with California Health and Safety Code §§ 11364.5 and 11364.7.

1 (v) Medical cannabis dispensaries shall maintain all scales and weighing mechanisms
2 on the premises in good working order. Scales and weighing mechanisms used by medical
3 cannabis dispensaries are subject to inspection and certification by the Director.

4 (w) Medical cannabis dispensaries that prepare, dispense or sell food must comply
5 with and are subject to the provisions of all relevant State and local laws regarding the
6 preparation, distribution and sale of food.

7 (x) The medical cannabis dispensary shall meet any specific, additional operating
8 procedures and measures as may be imposed as conditions of approval by the Director in
9 order to insure that the operation of the medical cannabis dispensary is consistent with the
10 protection of the health, safety and welfare of the community, qualified patients and primary
11 caregivers, and will not adversely affect surrounding uses.

12 (y) Medical cannabis dispensaries shall be accessible as required under the California
13 Building Code. Notwithstanding the foregoing, if a medical cannabis dispensary cannot show
14 that it will be able to meet the disabled access standard for new construction, it shall meet the
15 following minimum standards:

16 (1) An accessible entrance;

17 (2) Any ground floor service area must be accessible, including an accessible
18 reception counter and access aisle to the employee workspace behind; and,

19 (3) An accessible bathroom, with a toilet and sink, if a bathroom is provided, except
20 where an unreasonable hardship exemption is granted.

21 (4) A "limited use/limited access" (LULA) elevator that complies with ASME A17.1
22 Part XXV or an Article 15 elevator may be used on any accessible path of travel, but vertical
23 or inclined platform lifts may not.

24 (5) Any medical cannabis dispensary that distributes medical cannabis solely through
25 delivery to qualified patients or primary caregivers and does not engage in on-site distribution

1 or sales of medical cannabis shall be exempt from the requirements of this subsection
2 3308(y).

3 (z) Any medical cannabis dispensary in a building that began the Landmark Initiation
4 process (as codified by Article 10 of the San Francisco Planning Code) by August 13, 2007 is
5 exempt from the requirements set forth in section 3308(y) of this legislation until September 1,
6 2008.

7 (aa) Prior to submission of a building permit application, the applicant shall submit its
8 application to the Mayor's Office on Disability. The Mayor's Office on Disability shall review the
9 application for access compliance and forward recommendations to the Department of
10 Building Inspection.

11 SEC. 3309. PROHIBITED OPERATIONS.

12 All medical cannabis dispensaries operating in violation of California Health and Safety
13 Code Sections 11362.5 and 11326.7 et seq., or this Article are expressly prohibited. No entity
14 that distributed medical cannabis prior to the enactment of this Article shall be deemed to
15 have been a legally established use under the provisions of this Article, and such use shall not
16 be entitled to claim legal nonconforming status for the purposes of permitting,

17 SEC. 3310. DISPLAY OF PERMIT.

18 Every permit to operate a medical cannabis dispensary shall be displayed in a
19 conspicuous place within the establishment so that the permit may be readily seen by
20 individuals entering the premises.

21 SEC. 3311. SALE OR TRANSFER OF PERMITS.

22 (a) Upon sale, transfer or relocation of a medical cannabis dispensary, the permit and
23 license for the establishment shall be null and void unless another permit has been issued
24 pursuant to this Article; provided, however, that upon the death or incapacity of the permittee,
25

1 the medical cannabis dispensary may continue in business for six months to allow for an
2 orderly transfer of the permit.

3 (b) If the permittee is a corporation, a transfer of 25 percent of the stock ownership of
4 the permittee will be deemed to be a sale or transfer and the permit and license for the
5 establishment shall be null and void unless a permit has been issued pursuant to this Article;
6 provided, however that this subsection shall not apply to a permittee corporation, the stock of
7 which is listed on a stock exchange in this State or in the City of New York, State of New York,
8 or which is required by law, to file periodic reports with the Securities and Exchange
9 Commission.

10 SEC. 3312. RULES AND REGULATIONS.

11 (a) The Director shall issue rules and regulations regarding the conduct of hearings
12 concerning the denial, suspension or revocation of permits and the imposition of
13 administrative penalties on medical cannabis dispensaries.

14 (b) The Director may issue regulations governing the operation of medical cannabis
15 dispensaries. These regulations shall include, but need not be limited to:

16 (1) A requirement that the operator provide patients and customers with information
17 regarding those activities that are prohibited on the premises;

18 (2) A requirement that the operator prohibit patrons from entering or remaining on the
19 premises if they are in possession of or are consuming alcoholic beverages or are under the
20 influence of alcohol;

21 (3) A requirement that the operator require employees to wash hands and use
22 sanitary utensils when handling cannabis;

23 (4) A description of the size and type of notice of hearing to be posted in a
24 conspicuous place on the property at which the proposed medical cannabis dispensary is to
25 be operated and the number of days said notice shall remain posted; and

1 (5) A description of the size and type of sign posted near the entrances and exits of
2 medical cannabis dispensaries providing notice that no medical cannabis shall be smoked,
3 ingested or otherwise consumed in the public right of way within fifty (50) feet of a medical
4 cannabis dispensary and that any person violating this policy shall be deemed guilty of an
5 infraction and upon the conviction thereof shall be punished by a fine of \$100.

6 (c) Failure by an operator to do either of the following shall be grounds for suspension
7 or revocation of a medical cannabis dispensary permit: (1) comply with any regulation adopted
8 by the Director under this Article, or (2) give free access to areas of the establishment to
9 which patrons have access during the hours the establishment is open to the public, and at all
10 other reasonable times, at the direction of the Director, or at the direction of any City fire,
11 planning, or building official or inspector for inspection with respect to the laws that they are
12 responsible for enforcing.

13 SEC. 3313. INSPECTION AND NOTICES OF VIOLATION.

14 (a) The Director may inspect each medical cannabis dispensary regularly and based
15 on complaints, but in no event fewer than two times annually, for the purpose of determining
16 compliance with the provisions of this Article and/or the rules and regulations adopted
17 pursuant to this Article. If informal attempts by the Director to obtain compliance with the
18 provisions of this Article fail, the Director may take the following steps:

19 (1) The Director may send written notice of noncompliance with the provisions of this
20 Article to the operator of the medical cannabis dispensary. The notice shall specify the steps
21 that must be taken to bring the establishment into compliance. The notice shall specify that
22 the operator has 10 days in which to bring the establishment into compliance.

23 (2) If the Director inspector determines that the operator has corrected the problem
24 and is in compliance with the provisions of this Article, the Director may so inform the
25 operator.

1 (3) If the Director determines that the operator failed to make the necessary changes
2 in order to come into compliance with the provisions of this Article, the Director may issue a
3 notice of violation.

4 (b) The Director may not suspend or revoke a permit issued pursuant to this Article,
5 impose an administrative penalty, or take other enforcement action against a medical
6 cannabis dispensary until the Director has issued a notice of violation and provided the
7 operator an opportunity to be heard and respond as provided in Section 3316.

8 (c) If the Director concludes that announced inspections are inadequate to ascertain
9 compliance with this Article (based on public complaints or other relevant circumstances), the
10 Director may use other appropriate means to inspect the areas of the establishment to which
11 patrons have access. If such additional inspection shows noncompliance, the Director may
12 issue either a notice of noncompliance or a notice of violation, as the Director deems
13 appropriate.

14 (d) Every person to whom a permit shall have been granted pursuant to this Article
15 shall post a sign in a conspicuous place in the medical cannabis dispensary. The sign shall
16 state that it is unlawful to refuse to permit an inspection by the Department of Public Health, or
17 any City peace, fire, planning, or building official or inspector, conducted during the hours the
18 establishment is open to the public and at all other reasonable times, of the areas of the
19 establishment to which patrons have access.

20 (e) Nothing in this Section shall limit or restrict the authority of a Police Officer to enter
21 premises licensed or permitted under this Article (i) pursuant to a search warrant signed by a
22 magistrate and issued upon a showing of probable cause to believe that a crime has been
23 committed or attempted, (ii) without a warrant in the case of an emergency or other exigent
24 circumstances, or (iii) as part of any other lawful entry in connection with a criminal
25 investigation or enforcement action.

1 SEC. 3314. VIOLATIONS AND PENALTIES.

2 (a) Any dispensary, dispensary operator or dispensary manager who violates any
3 provision of this Article or any rule or regulation adopted pursuant to this Article may, after
4 being provided notice and an opportunity to be heard, be subject to an administrative penalty
5 not to exceed \$1,000 for the first violation of a provision or regulation in a 12-month period,
6 \$2,500 for the second violation of the same provision or regulation in a 12-month period; and
7 \$5, 000 for the third and subsequent violations of the same provision or regulation in a 12-
8 month period.

9 (b) The Director may not impose an administrative penalty or take other enforcement
10 action under this Article against a medical cannabis dispensary until the Director has issued a
11 notice of violation and provided the operator an opportunity to be heard and respond as
12 provided in Section 3316.

13 (c) Nothing herein shall prohibit the District Attorney from exercising the sole
14 discretion vested in that officer by law to charge an operator, employee, or any other person
15 associated with a medical cannabis dispensary with violating this or any other local or State
16 law.

17 SEC. 3315. REVOCATION AND SUSPENSION OF PERMIT.

18 (a) Any permit issued for a medical cannabis dispensary may be revoked, or
19 suspended for up to 30 days, by the Director if the Director determines that:

20 (1) the manager, operator or any employee has violated any provision of this Article or
21 any regulation issued pursuant to this Article;

22 (2) the permittee has engaged in any conduct in connection with the operation of the
23 medical cannabis dispensary that violates any State or local laws, or any employee of the
24 permittee has engaged in any conduct that violates any State or local laws at permittee's
25

1 medical cannabis dispensary, and the permittee had or should have had actual or constructive
2 knowledge by due diligence that the illegal conduct was occurring;

3 (3) the permittee has engaged in any material misrepresentation when applying for a
4 permit;

5 (4) the medical cannabis dispensary is being managed, conducted, or maintained
6 without regard for the public health or the health of patrons;

7 (5) the manager, operator or any employee has refused to allow any duly authorized
8 City official to inspect the premises or the operations of the medical cannabis dispensary;

9 (6) based on a determination by another City department, including the Department of
10 Building Inspections, the Fire Department, the Police Department, and the Planning
11 Department, that the medical cannabis dispensary is not in compliance with the laws under
12 the jurisdiction of the Department.

13 (b) The Director may not suspend or revoke a permit issued pursuant to this Article or
14 take other enforcement action against a medical cannabis dispensary until the Director has
15 issued a notice of violation and provided the operator an opportunity to be heard and respond
16 as provided in Section 3316.

17 (c) Notwithstanding paragraph (b), the Director may suspend summarily any medical
18 cannabis dispensary permit issued under this Article pending a noticed hearing on revocation
19 or suspension when in the opinion of the Director the public health or safety requires such
20 summary suspension. Any affected permittee shall be given notice of such summary
21 suspension in writing delivered to said permittee in person or by registered letter.

22 (d) If a permit is revoked no application for a medical cannabis dispensary may be
23 submitted by the same person for three years.

24 SEC. 3316. NOTICE AND HEARING FOR ADMINISTRATIVE PENALTY AND/OR
25 REVOCATION OR SUSPENSION.

1 (a) If the Director determines that a medical cannabis dispensary is operating in
2 violation of this Article and/or the rules and regulations adopted pursuant to this Article, he or
3 she shall issue a notice of violation to the operator of the medical cannabis dispensary.

4 (b) The notice of violation shall include a copy of this Section and the rules and
5 regulations adopted pursuant to this Article regarding the conduct of hearings concerning the
6 denial, suspension or revocation of permits and the imposition of administrative penalties on
7 medical cannabis dispensaries. The notice of violation shall include a statement of any
8 informal attempts by the Director to obtain compliance with the provisions of this Article
9 pursuant to Section 3313(a). The notice of violation shall inform the operator that:

10 (1) The Director has made an initial determination that the medical cannabis
11 dispensary is operating in violation of this Article and/or the rules and regulations adopted
12 pursuant to this Article; and

13 (2) The alleged acts or failures to act that constitute the basis for the Directors initial
14 determination; and

15 (3) That the Director intends to take enforcement action against the operator, and the
16 nature of that action including the administrative penalty to be imposed, if any, and/or the
17 suspension or revocation of the operator's permit; and

18 (4) That the operator has the right to request a hearing before the Director within
19 fifteen (15) days of receipt of the notice of violation in order to allow the operator an
20 opportunity to show that the medical cannabis dispensary is operating in compliance with this
21 Article and/or the rules and regulations adopted pursuant to this Article.

22 (c) If no request for a hearing is filed with the Director within the appropriate period,
23 the initial determination shall be deemed final and shall be effective fifteen (15) days after the
24 notice of initial determination was served on the alleged violator. The Director shall issue an
25 Order imposing the enforcement action and serve it upon the party served with the notice of

1 initial determination. Payment of any administrative penalty is due within 30 days of service of
2 the Director's Order. Any administrative penalty assessed and received in an action brought
3 under this Article shall be paid to the Treasurer of the City and County of San Francisco. The
4 alleged violator against whom an administrative penalty is imposed also shall be liable for the
5 costs and attorney's fees incurred by the City in bringing any civil action to enforce the
6 provisions of this Section, including obtaining a court order requiring payment of the
7 administrative penalty.

8 (d) If the alleged violator files a timely request for a hearing, within fifteen (15) days of
9 receipt of the request, the Director shall notify the requestor of the date, time, and place of the
10 hearing. The Director shall make available all documentary evidence against the medical
11 cannabis dispensary no later than fifteen (15) days prior to the hearing. Such hearing shall be
12 held no later than forty-five (45) days after the Director receives the request, unless time is
13 extended by mutual agreement of the affected parties.

14 (e) At the hearing, the medical cannabis dispensary shall be provided an opportunity
15 to refute all evidence against it. The Director shall conduct the hearing. The hearing shall be
16 conducted pursuant to rules and regulations adopted by the Director.

17 (f) Within twenty (20) days of the conclusion of the hearing, the Director shall serve
18 written notice of the Director's decision on the alleged violation. If the Director's decision is
19 that the alleged violator must pay an administrative penalty, the notice of decision shall state
20 that the recipient has ten (10) days in which to pay the penalty. Any administrative penalty
21 assessed and received in an action brought under this Article shall be paid to the Treasurer of
22 the City. The alleged violator against whom an administrative penalty is imposed also shall be
23 liable for the costs and attorney's fees incurred by the City in bringing any civil action to
24 enforce the provisions of this Section, including obtaining a court order requiring payment of
25 the administrative penalty.

1 SEC. 3317. APPEALS TO BOARD OF APPEALS.

2 (a) Right of Appeal. The final decision of the Director to grant, deny, suspend, or
3 revoke a permit, or to impose administrative sanctions, as provided in this Article, may be
4 appealed to the Board of Appeals in the manner prescribed in Article 1 of the San Francisco
5 Business and Tax Relations Code. An appeal shall stay the action of the Director.

6 (b) Hearing. The procedure and requirements governing an appeal to the Board of
7 Appeals shall be as specified in Article 1 of the San Francisco Business and Tax Regulations
8 Code.

9 SEC. 3318. BUSINESS LICENSE AND BUSINESS REGISTRATION CERTIFICATE.

10 (a) Every medical cannabis dispensary shall be required to obtain a business license
11 from the City in compliance with Article 2 of the Business and Tax Regulations Code.

12 (b) Every medical cannabis dispensary shall be required to obtain a business
13 registration certificate from the City in compliance with Article 12 of the Business and Tax
14 Regulations Code.

15 SEC. 3319. DISCLAIMERS AND LIABILITY.

16 By regulating medical cannabis dispensaries, the City and County of San Francisco is
17 assuming an undertaking only to promote the general welfare. It is not assuming, nor is it
18 imposing on its officers and employees, an obligation for breach of which it is liable in money
19 damages to any person who claims that such breach proximately caused injury. To the fullest
20 extent permitted by law, the City shall assume no liability whatsoever, and expressly does not
21 waive sovereign immunity, with respect to the permitting and licensing provisions of this
22 Article, or for the activities of any medical cannabis dispensary. To the fullest extent permitted
23 by law, any actions taken by a public officer or employee under the provisions of this Article
24 shall not become a personal liability of any public officer or employee of the City. This Article
25 (the "Medical Cannabis Act") does not authorize the violation of state or federal law.

1 SEC. 3320. SEVERABILITY.

2 If any provision of this Article or the application of any such provision to any person or
3 circumstance, shall be held invalid, the remainder of this Article, to the extent it can be given
4 effect, or the application of those provisions to persons or circumstances other than those to
5 which it is held invalid, shall not be affected thereby, and to this end the provisions of this
6 Article are severable.

7 SEC. 3321. ANNUAL REPORT BY DIRECTOR.

8 (a) Once a year, commencing in January 2007, the Director shall make a report to the
9 Board of Supervisors that:

10 (1) sets forth the number and location of medical cannabis dispensaries currently
11 permitted and operating in the City;

12 (2) sets forth an estimate of the number of medical cannabis patients currently active
13 in the City;

14 (3) provides an analysis of the adequacy of the currently permitted and operating
15 medical cannabis dispensaries in the City in meeting the medical needs of patients;

16 (4) provides a summary of the past year's violations of this Article and penalties
17 assessed.

18 (b) Upon receipt of this Report, the Board of Supervisors shall hold a hearing to
19 consider whether any changes to City law, including but not limited to amendments to the
20 Health Code or Planning Code, are warranted.

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

23 By: _____
24 LINDA M. ROSS
25 Deputy City Attorney