

1 [Zoning - Interim Moratorium on Medical Cannabis Dispensaries]

2

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.**

8

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

10

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

14

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

16

17 Section 1. Findings.

18

18 **(a) General Findings.**

19

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

22

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

24 //

25 //

1 **(b) Findings Directly Related to Imposition of an Interim Moratorium.**

2 (1) California Government Code Section 65858 provides that local jurisdictions,
3 to protect the public safety, health, and welfare, may adopt as an urgency measure an interim
4 ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal.

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

13 (3) There is an immediate threat to the public health, safety, and welfare caused
14 by the continued issuance of MCD permits without uniform and equitable regulations for the
15 granting of those permits.

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

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

1 (~~CA~~) Due to the City’s current zoning limitations, MCDs tend to be
2 clustered in a limited number of areas, such as Supervisorial Districts 3 and 6, concentrating
3 and heightening the adverse land use impacts in those areas, and creating the potential for
4 dramatic and adverse changes in neighborhood character and composition.

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

19 (~~EC~~) It is in the best interest of City residents for the City to establish a
20 healthy balance of MCDs and non-medical cannabis retail outlets.

21 (D) The Director of the Office of Cannabis, in consultation with the San
22 Francisco Human Rights Commission, is currently preparing a report analyzing disparities in
23 the cannabis industry based on race, income, economic status, gender, disability, sexual
24 orientation, gender identity, and HIV/AIDS status. This report, which will include
25 recommendations about how the City can foster equitable access to participation in the

1 cannabis industry, must be completed by no later than November 1, 2017. The issuance of
2 additional MCD permits before this report is completed could undermine the City's plan to
3 create an equitable and comprehensive approach to the regulation of cannabis-related
4 business establishments.

5 _____ (E) The City is considering different possible approaches to permitting
6 MCDs as well as non-medical cannabis retailers, and may wish to consider various factors in
7 the application process, such as whether a permit applicant lives in a ZIP code or other
8 defined area that has been disproportionately impacted by discriminatory drug policies. The
9 issuance of additional MCD permits while the City is developing its permitting system could
10 undermine the City's plan to create an equitable and comprehensive approach to the
11 regulation of cannabis-related business establishments.

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

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

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

24 //

25 //

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

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

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

13 **(d) Environmental Findings.**

14 The Planning Department has determined that the actions contemplated in this
15 ordinance comply with the California Environmental Quality Act (California Public Resources
16 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
17 Supervisors in File No. 170865 and is incorporated herein by reference. The Board affirms
18 this determination.

19
20 Section 2. The following interim zoning moratorium shall be adopted as an Urgency
21 Ordinance:

22 (a) Neither the Planning Department nor the Planning Commission shall issue an
23 approval or authorization for any Medical Cannabis Dispensary use, as defined in Planning
24 Code Section 102, except where the proposed Medical Cannabis Dispensary use has been
25

1 scheduled for a mandatory discretionary review hearing before the Planning Commission as
2 of September 11, 2017.

3 (b) A proposed Medical Cannabis Dispensary use that is required to obtain a
4 conditional use authorization, and for which a final determination on the conditional use
5 authorization, including the resolution of any appeal, has not yet been made as of the effective
6 date of this ordinance, is subject to this ordinance.

7 (c) Except as specified in subsection (b) above, Any project that, as of the effective
8 date of this ordinance, has received approval or authorization from the Planning Department
9 or the Planning Commission for use as a Medical Cannabis Dispensary, is not subject to this
10 ordinance.

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

15 (ee) Due to the urgency of establishing this interim zoning moratorium and
16 notwithstanding the requirements of Planning Code Section 306.7(g), the Board of
17 Supervisors finds that the standard public notice for Board of Supervisors hearings is
18 adequate to inform the public of any hearing(s) on this ordinance.

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

1 Section 4. Effective Date. This ordinance shall become effective immediately upon
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance by a 4/5ths vote.

5
6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: _____
9 VICTORIA WONG
Deputy City Attorney

10 n:\legana\as2017\1800017\01219476.docx