

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 City from approving or authorizing any medical cannabis dispensary use, except for those MCDs that have a mandatory discretionary review hearing scheduled before the Planning Commission as of September 11, 2017. MCDs that are required to obtain a conditional use authorization, and for which a final determination on the conditional use authorization, including the resolution of any appeal, has not been made as of the effective date of the ordinance, are subject to the moratorium. Other MCDs 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. 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.

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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