City & County of San Francisco

Cannabis Medical Access Report

Office of Cannabis & Department of Public Health

November 1, 2017

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I. Executive Summary

On September 5, 2017, the Board of Supervisors unanimously passed Ordinance No. 170859, creating the Office of Cannabis and defining the Office's responsibilities. Within the ordinance, the Board of Supervisors requested that the Office of Cannabis, the Department of Public Health and the Controller's Office deliver to them and the Mayor no later than November 1, 2017, a report analyzing the unique needs of individuals who use cannabis for medicinal purposes and providing recommendations regarding policy options that would (A) preserve affordable and/or free access to medical cannabis patients, (B) ensure medical cannabis patients continue to receive high-quality, appropriate care and (C) providing uninterrupted access to medical cannabis patients.

This report studies the current state of medical access in San Francisco, provides background on the Medical Marijuana Identification Card Program and known characteristics of the card holder community, and provides feedback given to the City through focus groups hosted by the Department of Public Health. Finally, the report makes various recommendations for the City's consideration.

II. Introduction

California Medical Cannabis Policy

In 1996, California became the first state in the U.S. to legalize medical cannabis. Legalization resulted from passage of Proposition 215, the Compassionate Use Act, which was incorporated into California's Health and Safety Code (Sec. 11362.5). Its purpose was to a) ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and b) ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

Senate Bill 420 followed almost a decade later to prescribe personal cultivation and possession limits and establish the right of qualified patients and caregivers to form collectives and cooperatives for the lawful cultivation and distribution of cannabis among members. These laws allowed for medical cannabis access and created city and county-based systems across the State.

Between 2003 and 2015, the commercial cannabis industry grew with few rules and regulations. It wasn't until 2015 and the passage of the Medical Marijuana Regulation and Safety Act that California established a legal framework to regulate and monitor marijuana dispensaries ("AB-243, Medical Marijuana" 2015). Originally set to take effect on January 1, 2016, the Medical Marijuana Regulation and Safety Act was amended via the Medical Cannabis Regulation and Safety Act in June 2016. This updated piece of legislature aimed to incorporate stronger environmental protection policies within a comprehensive licensing system ("SB-643, Medical Marijuana" 2016).

On November 8, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA), legalizing the distribution, sale, and possession of marijuana. AUMA was modeled on the Medical Marijuana Regulation and Safety Act (MMRSA) of 2015. In 2017, California sought to create one regulatory system for both medical and recreational use. Therefore, this last June, Governor Jerry Brown signed the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) into law, reconciling the differences between AUMA and MMRSA, a taking a crucial step towards developing a regulatory framework to facilitate a for-profit cannabis sector for both medicinal and adult-use.

San Francisco

In 1991, San Francisco voters passed Proposition P, Hemp Medication, which asked whether or not San Francisco would recommend that the State of California and the California Medical Association restore "hemp medical preparations" to California's official list of medicines (Office of the Registrar of Voters 1991). There were three paid arguments in the ballot in favor of Proposition P, which provided quotes from physicians and cited scientific institutions in arguing for cannabis' medical benefits (Office of the Registrar of Voters 1991). Voters approved the proposition with nearly 80% of the vote (San Francisco Public Library 2017).

In 1999, San Francisco's Health Commission adopted Resolution No. 29-99, "Supporting the Development and Implementation of a Voluntary Medical Cannabis Identification Card Program" (San Francisco Department of Public Health 2000). This resolution supported the development of an identification card program for medical cannabis for individuals who qualified under the Compassionate Use Act as patients or primary caregivers. In 2000, the Board of Supervisors formally created San Francisco's current identification program for medical marijuana (San Francisco Department of Public Health 2000).

On December 3, 2001 the Board of Supervisors passed Resolution No. 01-2006, declaring San Francisco to be a "Sanctuary for Medical Cannabis (San Francisco Board of Supervisors 2005). They also urged California law enforcement and regulatory agencies to avoid harassing, arresting and prosecuting physicians, dispensaries, patients or caregivers who complied with the Compassionate Use Act.

In 2002, the Board of Supervisors placed Proposition S, titled "Medical Marijuana," on the ballot. The proposition was a declaration of policy, directing the Mayor, Board of Supervisors, District Attorney, City Attorney, and Department of Public Health to explore the possibility of creating a program to grow and distribute medical marijuana (Department of Elections 2002). Proposition S passed with approximately 62% of the vote (San Francisco Public Library 2017).

In March 2005, the Board of Supervisors passed Ordinance No. 64-05, "Zoning – Interim Moratorium on Medical Cannabis Dispensaries" (San Francisco Board of Supervisors 2005). The ordinance expressed concern over the significant increase in the number of individuals enrolled in the city's voluntary medical cannabis identification program, "In 2002, there were approximately 2,200 individuals registered...and

there are now over 5,000 or 7,000 individuals enrolled" (San Francisco Board of Supervisors 2005). The ordinance acknowledged that there were no mechanisms to regulate or monitor medical cannabis dispensaries and therefore imposed a moratorium on new clubs and dispensaries.

On November 22, 2005, the Board of Supervisors unanimously passed Article 33 of the San Francisco Health Code, which provides codes, rules, regulations, and operating procedures for medical cannabis dispensaries (San Francisco Department of Public Health 2005).

As of November 1, 2017, there were 46 licensed dispensaries in the City and County of San Francisco. Though the Department of Public Health has historically been responsible for the dispensary permitting process. Following the passage of Proposition 64, San Francisco's "Budget and Appropriation Ordinance" for the Fiscal Year 2017-2018 established the Office of Cannabis and tasked the Office with coordinating various city departments and state agencies efforts to comprehensively regulate medical and adult-use commercial cannabis activity in 2018.

III. Medical Marijuana Identification Card Program

The California Department of Public Health (CDPH) Medical Marijuana Identification Card Program (MMICP)[1] creates a State-authorized medical marijuana identification card (MMIC) along with a registry database for card holders (i.e. qualified patients and primary caregivers). The card provides legal justification for the possession and use of medical cannabis in California, but the card program is voluntary, meaning not everyone who uses cannabis for medical purposes is required to obtain one. Individuals and/or primary caregivers wishing to apply for a State card must do so through their county of residency, and the San Francisco Department of Public Health (SFDPH) Vital Records department manages this process at the county level.

A. Application Process

It is important to note that the State program is also confidential, meaning neither CDPH nor SFDPH retains any personal, demographic, or medical information of program applicants and/or card-holders. The identifying and medical information that applicants provide as part of the State application process is returned to the applicant at the time the card is issued. The only information maintained at the county level are the unique identifier that the State assigns to every card holder and the card's expiration date.

B. County-Level Medical Marijuana Identification Card Program Data

In terms of number of cards issued by county, a recently published California Department of Public Health report notes that, from July 2005 through September 2017 (see figure 1), the San Francisco Department of Public Health issued 22,740 cards—one of the highest amounts across participating counties. This is not to say that there are currently 22,740 patients using medical cannabis in San Francisco, as the card

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[1] *See* CDPH Medical Marijuana Identification Card Program report, available at https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/MMPCounty%20Card%20Count%20September%202017-18revADA.pdf.

must be re-issued on an annual basis. It is also important to note the fluctuation in number of card holders over time, with 3,975 cards issued in fiscal year 2007, 1,638 in fiscal year 2012, 652 cards in fiscal year 2016, and 580 cards in fiscal year 2017.

Figure 1. Number of MMIC Cards Issued in San Francisco by Fiscal Year

*Fiscal Year 2017-18 reflects the number of cards issued through September 2017.

C. Medical Marijuana Identification Card Holder Data

As mentioned earlier, the county does not retain general demographic information of applicants or card-holders. One data point that is available to SFDPH is the number of card holders that have requested a card fee reduction as a Medi-Cal program beneficiary. Per State law, Medi-Cal beneficiaries receive a 50% reduction in the fee for the State identification card.[2] The current amount is X.

This information is useful because it provides insight into affordability questions for medical cannabis patients in San Francisco, since the Medi-Cal program serves low-income individuals and families. In general, individuals and families with annual incomes at or below 138 percent of the Federal Poverty level qualify for the program. Figure 2 below[3] provides more information about income levels at 138 percent of the Federal Poverty Level.

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[2] The full fee for each card in San Francisco County is currently $100, with Medi-Cal beneficiary fee reduction bringing the cost down to $50 dollars. *See also* California Health and Safety Code Section 11362.755.

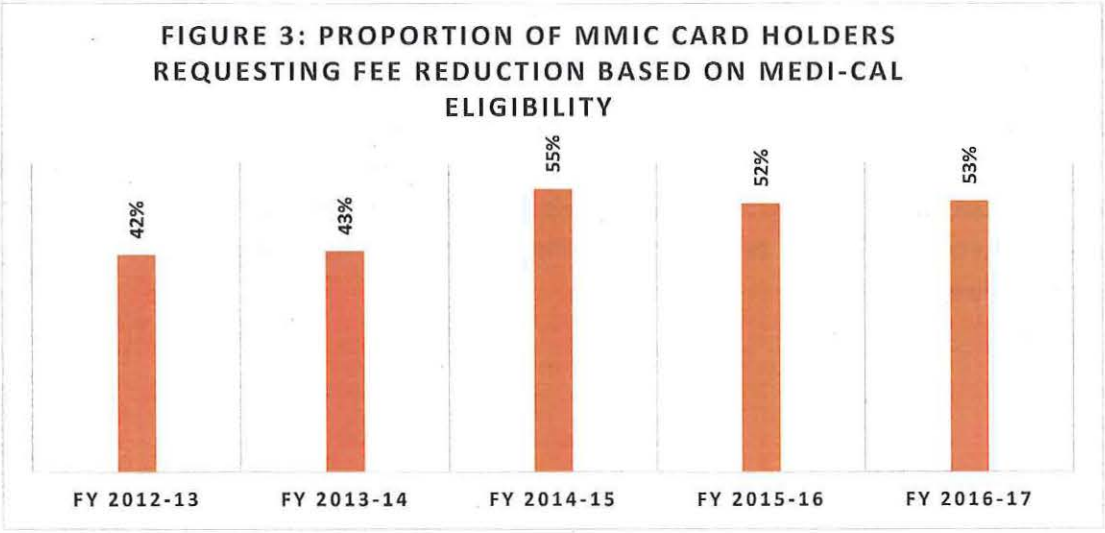
[3] California Department of Health Care Services website, available at http://www.dhcs.ca.gov/services/medi-cal/Pages/DoYouQualifyForMedi-Cal.aspx.

Figure 2. California Medi-Cal Income Eligibility

Family Size	138% Poverty Level
1	16,395
2	22,108
2 Adults	22,108
3	27,821
4	33,534
5	39,248
6	44,961
7	50,688
8	56,429
9	62,169
10	67,910
11	73,651
12	79,392
Each Additional Person	Add 5,741

Figure 3 below[4] shows the proportion of State card holders in San Francisco that requested a card fee reduction based on Medi-cal eligibility from fiscal year 2013 through fiscal year 2017. The figure shows that over the past few fiscal years, over half of all card holders in San Francisco made such requests.

Figure 3. Proportion of MMIC Card Holders Requesting Fee Reduction Based on Medi-Cal Eligibility



[4] SFDPH files.

IV. Focus Group Narratives

A. Methodology

In order to provide the City's policymakers and the Office of Cannabis with a comprehensive view of the medical cannabis cost and affordability landscapes, the Department of Public Health conducted three separate focus groups where discussions outlined concerns and participants put forth solutions to alleviate those concerns. Where individuals were unable to participate in person, the Department collected responses via phone and email. Over three focus group sessions, the Department interviewed sixteen individuals.

The focus groups included representatives from the below stakeholder categories, and Department of Public Health staff strived for a balance of race, gender and sexual orientation within each focus group.

- Medical cannabis patients
- Medical cannabis patient advocates
- Medical cannabis business owners – storefront and delivery only
- Public policy experts

As part of the discussions, focus group participants also noted their experiences with homelessness, living with HIV, behavioral health issues, living with a disability, and past military service. It is also important to note that many focus group participants felt they represented more than one category above.

Each focus group discussed the following questions:

1. In your experience, how is the medical cannabis patient community reacting to State and local changes to the medical cannabis regulatory framework?
2. What is the general feeling among patients about the cost of medical cannabis in the new medical cannabis regulatory market? How does the addition of the adult use market factor into the discussion?
3. What is the general feeling among patients about the State medical cannabis identification card? Do people generally know how to apply, where to get it and that there is a fee associated with obtaining it?
4. Do you have ideas and suggestions about how the City could address concerns you've mentioned? For example, what would the elements of a compassionate care program be in San Francisco?

The following information, in no particular order, is a compilation of the main discussion points from all focus groups, and where there was general consensus or agreement across focus groups, it is noted.

B. Medical Cannabis Community Reactions and Concerns: Focus Group Responses

1. In your experience, how is the medical cannabis patient community reacting to State and local changes to the medical cannabis regulatory framework?
2. What is the general feeling among patients about the cost of medical cannabis in the new regulatory market? How does the addition of the adult use market factor into the discussion?

Responses to the above questions are noted below.

Preserving San Francisco's Compassionate Care Model. Focus group participants affirmed that patients use cannabis as an alternative to prescription drugs, a harm reduction tool, and as an important treatment option for a wide variety of conditions, and that the State and City needed to appropriately recognize this as a significant benefit to individuals with medical needs. Participants also noted that the current medical cannabis structure and future adult use system would not have been possible without the steadfast dedication of the current medical cannabis community, and, for that reason, the City should elevate those needs.

With regard to the current and future landscapes, one participant noted that patients are currently benefitting from an increase in available products as new dispensaries enter the medical market and lowered prices due to increased market competition, further noting that in the newly regulated market, patients can also expect to benefit further from guidelines designed to make cannabis and cannabis products safer. This participant stated that patients they have encountered feel excited, but also apprehensive and uncertain about how the medical and adult use markets will affect one another and how new regulations will affect the medical cannabis market, specifically. This individual believed that these feelings would remain until State and local medical and adult use legislation and regulations are finalized, and that the longer that process takes, the more uncertainty the cannabis industry will experience.

One overarching concern across focus groups was that current State law[5] does not allow for compassionate care to continue in San Francisco in the way that patients have accessed it in the past, access it currently, and envision it for the future. Focus group members felt that if this issue is not addressed, the City runs the risk of eliminating compassionate care altogether. One meeting participant noted that, though the pending State medical and adult use cannabis regulatory systems should be streamlined wherever possible for efficiency purposes, this was an area where the adult use and medical cannabis markets should differ significantly. Underlying concerns stemming from these statements were as follows:

- *Cost for Patients.* Participants in each focus group highlighted the issue of cost for patients in the newly regulated medical cannabis market, especially for low-income and indigent patients, immobile patients, and those experiencing homelessness. To some participants, the cost of

[5] These concerns would also apply to any provisions within the current proposed local ordinance that codify the relevant State law provisions.

medical cannabis is already at unaffordable levels for many, and patients and patient advocates in each focus group were concerned about the ability for them to access the market in the face of new State and local regulations, where the regulatory cost would likely be passed on to consumers. There was also concern about the added burden of State and (possible) local taxation structures. According to some, patients generally prefer regulated, lab-tested medical cannabis, but one serious consequence of exorbitant taxes would be a proliferation of the illicit market, where medical cannabis would likely be cheaper. State law does exempt medical cannabis patients with the aforementioned State-issued card from State sales tax,[6] but there was consensus across focus groups that this exemption does not go far enough to reduce cost barriers for patients.

- *Prohibition against Samples, Free and Discounted Cannabis.* State Law currently prohibits the giving away of cannabis and cannabis products as part of a business promotion or commercial activity.[7] This has been interpreted to disallow the giving of cannabis samples and cannabis/cannabis products at discounted or no cost to individual consumers and/or other businesses, which are current practices in San Francisco's medical cannabis market. Participants across the focus groups were strongly opposed to these State law provisions since, according to them, such practices are critical for maintaining a functional compassionate care program. For example, patients rely on samples to test products in hopes of finding one that alleviates symptoms, and it would be cost-prohibitive for patients to instead have to purchase each item at full price at the outset.

  Further, State law also requires that all cannabis and cannabis products be tagged with a unique identifier, known as a "track and trace" system.[8] There was a concern that this could conflict with any local policy allowing for donations or samples, since those cannabis items would not be moving through the commercial system the way State law currently envisions. For example, some medical cannabis businesses currently receive anonymous cannabis and cannabis product donations that they then distribute to patients, and such a track and trace system would deter those donors from continuing a practice that, in their view, facilitates continued and affordable access for low-income patients.

- *Phased Elimination of the Collective/Cooperative Model.* In establishing a State-regulated medical cannabis market, State law also eventually phases out the current collective/cooperative medical cannabis model.[9] According to focus group participants, this would eliminate a critical community-sharing element of San Francisco's current compassionate care practices.

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[6] The Adult Use of Marijuana Act – Proposition 64, Section 34011.

[7] Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) Section 26153.

[8] The Adult Use of Marijuana Act – Proposition 64, Section 26170.

[9] Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) Section 11362.775

- *Product Type and Dosage Inflexibility.* Current State law limits edible cannabis product THC content to 10 milligrams per serving size in both the medical and adult use markets,[10] and previously proposed State regulations[11] limited the total THC amount per package to 100 milligrams. The proposed State regulations also placed a 1,000-milligram THC limit on non-edible cannabis products in both markets.[12] Focus group participants identified two main problems with this approach. First, there is often a need for patients to consume higher dosages than individuals in the adult use market because medical condition treatment plans and cannabis metabolism rates differ per individual, and, since State law does not currently allow for patients to obtain cannabis at little to no cost, this limitation would require patients to purchase multiple products to reach their required dosage levels, which is cost-prohibitive. Second, some participants noted that the pending State cannabis regulations would likely limit the types of edible cannabis products that can be produced, which they felt would provide primarily for preservative-heavy and sugar-laden products, lead to high caloric intake among patients if they must consume multiple servings, and create potential health issues as a result.

- *Cannabis License Fees.* Some focus group participants cited State and (possible) local cannabis permit fees[13] as a potential cost barrier for true compassionate care businesses that wish to continue providing cannabis and services to low-income patients in San Francisco.

- *Medical Cannabis for Patients Under 18.* State law currently prohibits the production of cannabis products that are considered appealing to children.[14] Focus group participants noted that some children who use medical cannabis would benefit from products that are designed to make consumption palatable for them.

Lack of Dedicated Consumption Spaces for Patients. All focus groups noted that, for medical cannabis patients, consuming their medicine is often a social experience that is important for the healing process, and that there were not enough existing spaces in San Francisco for this purpose.

Driving Under the Influence Determinations. There was concern in one focus group about the process the State and City will undertake in determining whether an individual is driving under the influence. A process that considers only whether THC is present in the system, and not whether driving is actually

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[10] Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) Section 26130 (c).

[11] *See* California Department of Public Health Proposed Regulations Comment Summary and Response, available at https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/Cannabis%20Comments%20(Final%20on%20CDPH%20Letterhead).pdf.

[12] *See* California Department of Public Health Proposed Regulations Comment Summary and Response, available at https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/Cannabis%20Comments%20(Final%20on%20CDPH%20Letterhead).pdf.

[13] Local cannabis permit fees have not yet been determined, but focus group participants thought they would likely be a cost barrier once established, especially when considered alongside a State license fee.

[14] Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) Section 26130 (c).

impaired as a result, will negatively affect patients, especially those who require relatively high THC doses as part of their treatment plans.

Safe Consumption Information for Patients. Meeting participants noted that safe consumption information currently varied across dispensaries, which could lead to misinformation and unsafe patient consumption practices.

C. State Medical Cannabis Identification Card – Focus Group Responses

3. What is the general feeling among patients about the State medical cannabis ID card? Do people generally know how to apply, where to get it and that there is a fee associated with obtaining it?

Responses to the above questions are noted below.

There was general consensus across focus groups that many patients in San Francisco are currently unaware of the State card program and/or how to obtain a card. Participants noted that some current businesses were not appropriately applying the State sales tax exemption for medical cannabis patients who possess the card, and that this would likely continue without widespread education about the program for business owners, their employees and medical cannabis patients. One participant suggested that the Health Department lead this educational effort and increase accessibility by also educating providers that do not commonly interact with medical cannabis patients and may be unfamiliar with program guidelines, and developing informational materials for display at dispensaries and doctors' offices.

With the onset of adult use commercial activity and consumption, there was a concern that medical cannabis patients may bypass the medical market and instead obtain cannabis in the adult use market due to public stigma surrounding medical cannabis use, as well as misconceptions about the type of information that is stored within the medical cannabis identification program database and how that may affect current/future employment opportunities and the ability to purchase a firearm.[15]

In contrast, one participant noted that it was difficult to predict the effect of the adult use market on the MMIC program, but suggested that increased taxation levels for medical cannabis and a possible lack of San Francisco-based adult use retailers in early January, 2018, may significantly increase State card utilization. Others felt that adult use legalization and consumption would have a positive effect on the medical market and card utilization, since more people would be comfortable with cannabis use in general.

[15] The Bureau of Alcohol, Tobacco, Firearms and Explosives issued a memorandum to all firearms licensees in 2011 clarifying that federal law prohibits unlawful users of controlled substances, as defined by the federal Controlled Substances Act, from receiving or possessing firearms or ammunition. *See* Bureau memorandum, available at http://71.11.3.134/share/PDF/ATFOpenLetter092111.pdf.

D. Ideas and Suggestions – Focus Group Responses

4. Do you have ideas and suggestions about how the City could address the concerns you've mentioned? For example, what would the elements of a compassionate care program be in San Francisco?

Responses to the above questions are noted below.

City Advocacy at the State Level to Preserve Current Compassionate Care Programs. Each focus group highlighted the need for the City to advocate at the State level to allow:

- businesses to provide cannabis samples and cannabis free of charge and/or at a discounted cost to medical cannabis patients
- anonymous donations to compassionate care locations
- businesses to produce high dosage products for medical cannabis patients

Focus group participants felt that such advocacy would allow compassionate care to continue in the City in its current form.

Establish a Citywide Compassionate Care Program. Within the context of the aforementioned State level advocacy, focus group participants thought the City could create a program with the following possible characteristics:

Program Eligibility Criteria. Using income as the overarching criterion, San Francisco residents with medical cannabis need who are enrolled in Medi-Cal (or would qualify if they applied), low-income seniors (i.e. individuals over 50), immobile patients, and veterans would qualify for the City program. To capture as many individuals as possible, the City could also consider enrollment in other existing programs serving low-income San Franciscans as proof of compassionate care program eligibility. To limit the risk of federal intervention and adverse consequences for patients who receive federal assistance, the City could use the current MMIC application process as a record retention model. Focus group participants also highlighted the importance of discretion and preserving the confidentiality of those accessing the program.

Program Elements. Focus groups put forth the following possibilities:

- Program participants would be able to purchase medical cannabis and any medical cannabis product at cost of production.
- Program participants would be able to access current compassionate care services at individual medical cannabis dispensaries, e.g. samples, cannabis and cannabis products at little to no cost.
- San Francisco could create event permits for compassionate care events across the City, where patients and businesses could provide samples, share cannabis and cannabis products, and provide free or discounted cannabis to program participants.

- San Francisco could allow current medical cannabis collective/cooperative businesses to continue their operations as they currently exist.
- Any reduced cost policies the City establishes for patients would also apply to adult use cannabis and cannabis products.
- Some participants specifically referenced a 2007 San Francisco Board of Supervisors resolution[16] that encouraged cannabis dispensaries to establish compassionate care programs, noting that it already includes many principles that the City could codify Citywide (e.g. prioritizing seniors and veterans).

Citywide Compassionate Care Card. Separate from the State-issued medical cannabis identification card, a county-based card could be issued to individuals who qualify for the program. Some focus group participants referenced a previous San Francisco county medical cannabis identification card program that was deactivated with the establishment of the State-issued card, suggesting that the City's card program could be reactivated for this purpose. Focus group members also felt the card should be issued at little to no cost to program participants.

Program Funding Mechanisms. Focus group participants suggested that a fund be established to support the City's Compassionate Care program in whatever form(s) it eventually takes. Due to the inability for many cannabis businesses to access banking services, it was advised that the City create the fund and that a stakeholder group that includes cannabis businesses oversee the fund's revenue allocation process. Some focus group participants suggested that the fund also be used to subsidize the licensing fees for compassionate care businesses and/or the operating costs of a compassionate care community center suggested elsewhere in this report. Focus groups suggested three main funding mechanisms:

- *Round-Up Mechanism.* At the point of sale in either the medical or adult use markets, consumers could choose to donate to the fund by "rounding up" the cost of their purchase. For example, if a consumer purchased a cannabis product at 47 dollars, the total price could be rounded up to 50 dollars, with the remaining three dollars donated to the program.
- *Business contributions.* Under this model, cannabis businesses would be required to set aside a portion of their profits to fund the program, or the City could instead make such contributions voluntary. Some participants preferred a voluntary option to a mandated contribution.
- *Business Program Start Up Funds.* Here, cannabis businesses would voluntarily contribute immediate funding for the program, with the City then assuming responsibility for continued funding after the initial contribution.

[16] See San Francisco Board of Supervisors 2007 Resolution urging Medical Cannabis Dispensaries to Implement Compassionate Care Programs to Serve Low and No Income Patients, available at http://sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions07/r0623-07.pdf.

City Advocacy at the State Level to Support Additional Compassionate Care Aspects. In the course of discussion, focus group participants highlighted other areas where advocacy would be needed to further support compassionate care goals.

- *Exempt Medical Cannabis Cultivators from Taxation.* According to some, establishing a tax exemption for medical cannabis cultivators would incentivize them to donate to compassionate care programs and increase cannabis availability for patients.
- *Donate Seized Cannabis and Cannabis Products to Compassionate Care Programs.* When cannabis is seized as a result of law enforcement intervention, some focus group participants felt it should not be destroyed. Rather, it could be donated to the City's compassionate care program and subsequently redistributed to patients.
- *Create Cannabis Product Exemption for Children with Medical Cannabis Needs.* The City should allow cannabis products that may be appealing to children to be provided for those with medical need.
- *Expand the types of cannabis products to include healthier options.*
- *Discourage the narrowing of qualifying conditions.* The City should view individual interactions between patients and physicians as the primary mechanism for determining whether medical cannabis use is warranted.
- *Create employment protections for medical cannabis card holders and compassionate care program participants.*

Establish a Municipal Growing Framework. Some focus group participants felt the City should consider municipal cultivation as a way to provide cannabis at lower cost to patients. City voters passed Proposition S in 2002,[17] which urged the City to explore this option, and the aforementioned focus group participants would support further discussion and action on this issue.

Create Additional Consumption Locations for Patients. Each focus group highlighted a need for additional medical cannabis consumption (i.e. smoking, vaping and product ingestion/use) locations in the City, especially if federal law continues to prohibit consumption in public housing. Some participants advocated for separate medical use consumption spaces to preserve a treatment-based environment for patients, adding that such spaces should not require a minimum purchase level in order to access the consumption area. Others underscored the need for community centers where patients can both consume their medicine and engage in harm reduction programs and activities, suggesting that the City reserve spaces in the City where such community centers can thrive and subsidize operational costs for those centers.

[17] *See* Proposition S language and ballot results at https://sfpl.org/pdf/main/gic/elections/November5_2002.pdf and https://sfpl.org/index.php?pg=2000027201&propid=1683.

Prioritize Delivery Services. For many immobile patients, medical cannabis delivery services are critical and should be prioritized within the City's cannabis regulatory framework.

Reinstate Historical Compassionate Care Locations. According to some focus group participants, a number of compassionate care locations were closed in the past due to federal intervention or an inability to thrive within the City's Medical Cannabis Act (Article 33) framework. Those participants felt the City should assist these businesses in re-establishing themselves in San Francisco in order to strengthen the compassionate care network.

Reduce Fee for State Medical Cannabis Identification Card. To increase affordability, the City should lower the current cost of the State-issued medical cannabis identification card.

Establish Patient Advisory Committee. The City should establish an advisory committee, consisting primarily of a diverse set of medical cannabis patients, and possibly businesses, to oversee the process of establishing and maintaining a compassionate care program.

Education for Patients and Recommending Physicians. Safe consumption information should be distributed to patients, and this information should be standardized across dispensaries and compassionate care locations in the City. Physicians must also be properly educated about how to provide cannabis recommendations that allow dispensaries to provide the correct cannabis treatment options.

A Successful Compassionate Care Framework in San Francisco – Focus Group Responses

Focus groups also discussed the need to ensure that San Francisco's compassionate care framework is successful, and made the following suggestions for how success could be defined:

- *Patients with Real Medical Need are Able to Access Cannabis at Affordable Cost.* Here, focus group participants advised the City to establish a robust educational campaign for the compassionate care program that uses a variety of communication outlets, including television, radio, and newsprint, to promote the program and ensure that there is widespread and far-reaching patient participation. Participants also suggested that the City develop a survey that would provide useful feedback for the City as to medical cannabis accessibility. Finally, it was suggested that the City consider mechanisms to prevent abuse of the program and hence ensure that patients with actual need are able to easily participate.

- *Cannabis Businesses of Varying Size are Able to Participate in the Program.* In this regard, one participant encouraged the City to consider the impact of any compassionate care program requirements on businesses of varying size and avoid creating a system that rewards non-compliance or places an undue burden on smaller businesses that will find it more difficult to absorb the cost of new State and local medical cannabis business regulations. That individual went on to note that establishing a compassionate care program would likely be an iterative process, since there is uncertainty at the moment about how the adult use market will fare in

San Francisco, so transparency about the program and how businesses can comply will be critical, especially during the initial implementation period.

Some focus group participants felt that the aforementioned patient advisory committee could be tasked with providing ongoing guidance to the City in this area.

V. Findings & Recommendations

Based on Focus Group comments and concerns raised in the sessions by participants, the report finds the following, and makes associated recommendations:

Finding 1 – Continued Access to Medical Cannabis: The City has a long history of providing medical cannabis to patients, and this access to should continue in 2018 and beyond.

Recommendation:

A. The City should require all retailers to maintain medical use as a condition of their permit.
B. The City should further prioritize permit processing for medical only applicants.

Finding 2 – Cost Concerns: There are concerns that patients, particularly low income and indigent patients, will not be able to afford medical cannabis.

Recommendation:

A. Compassion programs should be targeted to low income and indigent populations, veterans, and patient populations who can identify need.
B. The City should remain thoughtful about the tax burden on the medical cannabis supply chain and patient consumers when crafting a local tax structure.
C. The City should allow samples in certain circumstances, to allow patient consumers to test products before having to purchase products at full or reduced cost.
D. The City should advocate for dosage flexibility for medical products at the State level if higher dosage levels are not addressed in emergency regulations this November.

Finding 3 – Clarity and Advocacy for State Allowance of Compassion Programs: Stakeholders would like the City to advocate for Compassion Programs that reflect San Francisco's values.

Recommendation:

A. The City should advocate to the State to allow counties to maintain compassion programs, and provide clear regulations related to compassion programs within the M-Type supply chain.

Finding 4 – Preservation of Compassionate Care Model: The compassionate care model has provided patients with access to medicinal cannabis, is an important harm reduction tool, and these programs. should be maintained.

Recommendation:

A. Similar to the mandate passed unanimously by the Board of Supervisors in File No. 071505 (2007),[18] the City should create a compassion program or allow for retailers to establish their own compassion program. Descriptions of these programs and how the program will meet track and trace requirements should be detailed in their application for an Article 16 permit.
B. The City should consider the creation of nonprofit licenses for compassionate care programs in 2018. This could include contemplating a lower license fee.
C. The City should allow for flexibility in implementing a Compassion Program. An example of this is the City could create a Compassion Fund administered by the City. In lieu of creating an onsite program, retailers could provide a percentage of monthly gross revenue to this fund to offset licensing fees for future nonprofit permit permits and costs of products.

Finding 5 – Determine Eligibility: There is a need to create eligibility criteria that is discrete and confidential to ensure patient privacy.

Recommendation:

A. The City should leverage should leverage its existing programs, such as the Medical Marijuana Identification Card (MMIC) program, as a pathway to a) determine eligibility and 2) provide a method by which patients can prove their eligibility to retailers or potential nonprofits. This resource should be provided at little to no cost to the patient.

Finding 6 – Consumption Space: Consumption of medical cannabis can be a social experience, therefore, patients would like spaces to be provided that allow for social consumption.

Recommendation:

A. The City should encourage the retention of existing Medicinal Cannabis Consumption Space.
B. The City should disallow retailers from mandating a certain amount of product be purchased in order to access the onsite smoking/vaping/consumption lounge.

Finding 7 – Safe Consumption Information: Patient consumers would benefit from having access to consistent education related to safe consumption.

Recommendation:

A. The Department of Public Health should create fact based information to be provided to all consumers including patients at the point of sale.

Finding 8 – Advocacy for Patient Community: The City would benefit from continued advice from patients, patient advocates, and businesses.

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[18] San Francisco Board of Supervisors, File No. 071505, 2007. http://sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions07/r0623-07.pdf.

Recommendation:

A. The City should amend the Cannabis State Legalization Task Force membership to ensure a broad set of stakeholders representing patient advocacy are reflected in the makeup of the body, and can further inform and advise future task force recommendations, notably about the evolution of policy related to compassion programs. One of these members should have experience in running a non-profit compassion program.

Finding 9 – Data & Accountability: The City needs to gather data and report out on it regularly to ensure we are iterating our policies and meeting our goals.

Recommendation:

A. The Office of Cannabis and the Health Department should continue to monitor the effects of cannabis legalization on medical cannabis use in San Francisco.
B. Data collection should be consistent with patient privacy guidelines, and should be incorporated into the Office of Cannabis' overall data management strategy.
C. The Office of Cannabis in collaboration with the Department of Public Health should provide a report and recommendations to further inform the City's path forward with medical cannabis by December 31, 2018.

Table of Contents

I. Executive Summary

On September 5, 2017, the Board of Supervisors unanimously passed Ordinance No. 170859, creating the Office of Cannabis and defining the Office's responsibilities. Within the ordinance, the Board of Supervisors requested that the Office of Cannabis, the Department of Public Health and the Controller's Office deliver to them and the Mayor no later than November 1, 2017, a report analyzing the unique needs of individuals who use cannabis for medicinal purposes and providing recommendations regarding policy options that would (A) preserve affordable and/or free access to medical cannabis patients, (B) ensure medical cannabis patients continue to receive high-quality, appropriate care and (C) providing uninterrupted access to medical cannabis patients.

This report studies the current state of medical access in San Francisco, provides background on the Medical Marijuana Identification Card Program and known characteristics of the card holder community, and provides feedback given to the City through focus groups hosted by the Department of Public Health. Finally, the report makes various recommendations for the City's consideration.

II. Introduction

California Medical Cannabis Policy

In 1996, California became the first state in the U.S. to legalize medical cannabis. Legalization resulted from passage of Proposition 215, the Compassionate Use Act, which was incorporated into California's Health and Safety Code (Sec. 11362.5). Its purpose was to a) ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and b) ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

Senate Bill 420 followed almost a decade later to prescribe personal cultivation and possession limits and establish the right of qualified patients and caregivers to form collectives and cooperatives for the lawful cultivation and distribution of cannabis among members. These laws allowed for medical cannabis access and created city and county-based systems across the State.

Between 2003 and 2015, the commercial cannabis industry grew with few rules and regulations. It wasn't until 2015 and the passage of the Medical Marijuana Regulation and Safety Act that California established a legal framework to regulate and monitor marijuana dispensaries ("AB-243, Medical Marijuana" 2015). Originally set to take effect on January 1, 2016, the Medical Marijuana Regulation and Safety Act was amended via the Medical Cannabis Regulation and Safety Act in June 2016. This updated piece of legislature aimed to incorporate stronger environmental protection policies within a comprehensive licensing system ("SB-643, Medical Marijuana" 2016).

On November 8, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA), legalizing the distribution, sale, and possession of marijuana. AUMA was modeled on the Medical Marijuana Regulation and Safety Act (MMRSA) of 2015. In 2017, California sought to create one regulatory system for both medical and recreational use. Therefore, this last June, Governor Jerry Brown signed the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) into law, reconciling the differences between AUMA and MMRSA, a taking a crucial step towards developing a regulatory framework to facilitate a for-profit cannabis sector for both medicinal and adult-use.

San Francisco

In 1991, San Francisco voters passed Proposition P, Hemp Medication, which asked whether or not San Francisco would recommend that the State of California and the California Medical Association restore "hemp medical preparations" to California's official list of medicines (Office of the Registrar of Voters 1991). There were three paid arguments in the ballot in favor of Proposition P, which provided quotes from physicians and cited scientific institutions in arguing for cannabis' medical benefits (Office of the Registrar of Voters 1991). Voters approved the proposition with nearly 80% of the vote (San Francisco Public Library 2017).

In 1999, San Francisco's Health Commission adopted Resolution No. 29-99, "Supporting the Development and Implementation of a Voluntary Medical Cannabis Identification Card Program" (San Francisco Department of Public Health 2000). This resolution supported the development of an identification card program for medical cannabis for individuals who qualified under the Compassionate Use Act as patients or primary caregivers. In 2000, the Board of Supervisors formally created San Francisco's current identification program for medical marijuana (San Francisco Department of Public Health 2000).

On December 3, 2001 the Board of Supervisors passed Resolution No. 01-2006, declaring San Francisco to be a "Sanctuary for Medical Cannabis (San Francisco Board of Supervisors 2005). They also urged California law enforcement and regulatory agencies to avoid harassing, arresting and prosecuting physicians, dispensaries, patients or caregivers who complied with the Compassionate Use Act.

In 2002, the Board of Supervisors placed Proposition S, titled "Medical Marijuana," on the ballot. The proposition was a declaration of policy, directing the Mayor, Board of Supervisors, District Attorney, City Attorney, and Department of Public Health to explore the possibility of creating a program to grow and distribute medical marijuana (Department of Elections 2002). Proposition S passed with approximately 62% of the vote (San Francisco Public Library 2017).

In March 2005, the Board of Supervisors passed Ordinance No. 64-05, "Zoning – Interim Moratorium on Medical Cannabis Dispensaries" (San Francisco Board of Supervisors 2005). The ordinance expressed concern over the significant increase in the number of individuals enrolled in the city's voluntary medical cannabis identification program, "In 2002, there were approximately 2,200 individuals registered...and

there are now over 5,000 or 7,000 individuals enrolled" (San Francisco Board of Supervisors 2005). The ordinance acknowledged that there were no mechanisms to regulate or monitor medical cannabis dispensaries and therefore imposed a moratorium on new clubs and dispensaries.

On November 22, 2005, the Board of Supervisors unanimously passed Article 33 of the San Francisco Health Code, which provides codes, rules, regulations, and operating procedures for medical cannabis dispensaries (San Francisco Department of Public Health 2005).

As of November 1, 2017, there were 46 licensed dispensaries in the City and County of San Francisco. Though the Department of Public Health has historically been responsible for the dispensary permitting process. Following the passage of Proposition 64, San Francisco's "Budget and Appropriation Ordinance" for the Fiscal Year 2017-2018 established the Office of Cannabis and tasked the Office with coordinating various city departments and state agencies efforts to comprehensively regulate medical and adult-use commercial cannabis activity in 2018.

III. Medical Marijuana Identification Card Program

The California Department of Public Health (CDPH) Medical Marijuana Identification Card Program (MMICP)[1] creates a State-authorized medical marijuana identification card (MMIC) along with a registry database for card holders (i.e. qualified patients and primary caregivers). The card provides legal justification for the possession and use of medical cannabis in California, but the card program is voluntary, meaning not everyone who uses cannabis for medical purposes is required to obtain one. Individuals and/or primary caregivers wishing to apply for a State card must do so through their county of residency, and the San Francisco Department of Public Health (SFDPH) Vital Records department manages this process at the county level.

A. Application Process

It is important to note that the State program is also confidential, meaning neither CDPH nor SFDPH retains any personal, demographic, or medical information of program applicants and/or card-holders. The identifying and medical information that applicants provide as part of the State application process is returned to the applicant at the time the card is issued. The only information maintained at the county level are the unique identifier that the State assigns to every card holder and the card's expiration date.

B. County-Level Medical Marijuana Identification Card Program Data

In terms of number of cards issued by county, a recently published California Department of Public Health report notes that, from July 2005 through September 2017 (see figure 1), the San Francisco Department of Public Health issued 22,740 cards—one of the highest amounts across participating counties. This is not to say that there are currently 22,740 patients using medical cannabis in San Francisco, as the card

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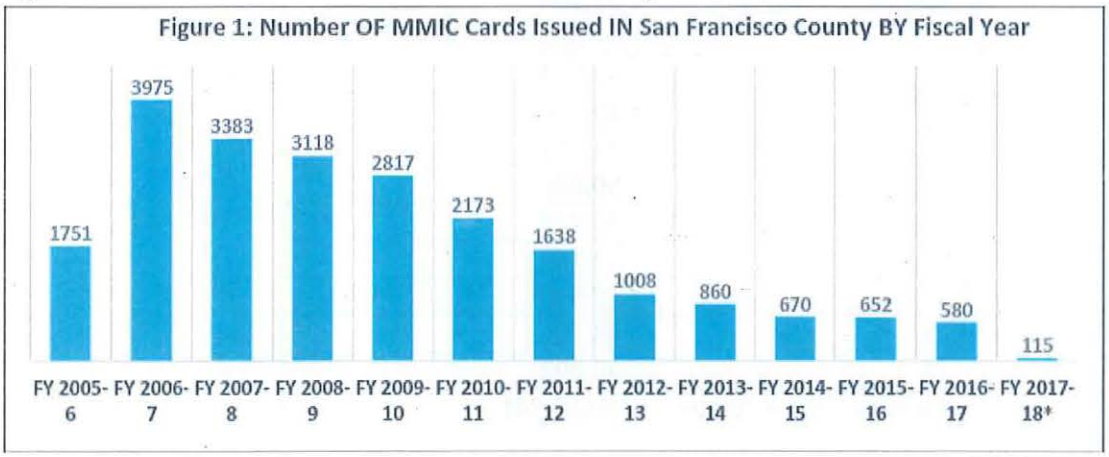
[1] *See* CDPH Medical Marijuana Identification Card Program report, available at https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/MMPCounty%20Card%20Count%20September%202017-18revADA.pdf.

must be re-issued on an annual basis. It is also important to note the fluctuation in number of card holders over time, with 3,975 cards issued in fiscal year 2007, 1,638 in fiscal year 2012, 652 cards in fiscal year 2016, and 580 cards in fiscal year 2017.

Figure 1. Number of MMIC Cards Issued in San Francisco by Fiscal Year



*Fiscal Year 2017-18 reflects the number of cards issued through September 2017.

C. Medical Marijuana Identification Card Holder Data

As mentioned earlier, the county does not retain general demographic information of applicants or card-holders. One data point that is available to SFDPH is the number of card holders that have requested a card fee reduction as a Medi-Cal program beneficiary. Per State law, Medi-Cal beneficiaries receive a 50% reduction in the fee for the State identification card.[2] The current amount is X.

This information is useful because it provides insight into affordability questions for medical cannabis patients in San Francisco, since the Medi-Cal program serves low-income individuals and families. In general, individuals and families with annual incomes at or below 138 percent of the Federal Poverty level qualify for the program. Figure 2 below[3] provides more information about income levels at 138 percent of the Federal Poverty Level.

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[2] The full fee for each card in San Francisco County is currently $100, with Medi-Cal beneficiary fee reduction bringing the cost down to $50 dollars. *See also* California Health and Safety Code Section 11362.755.

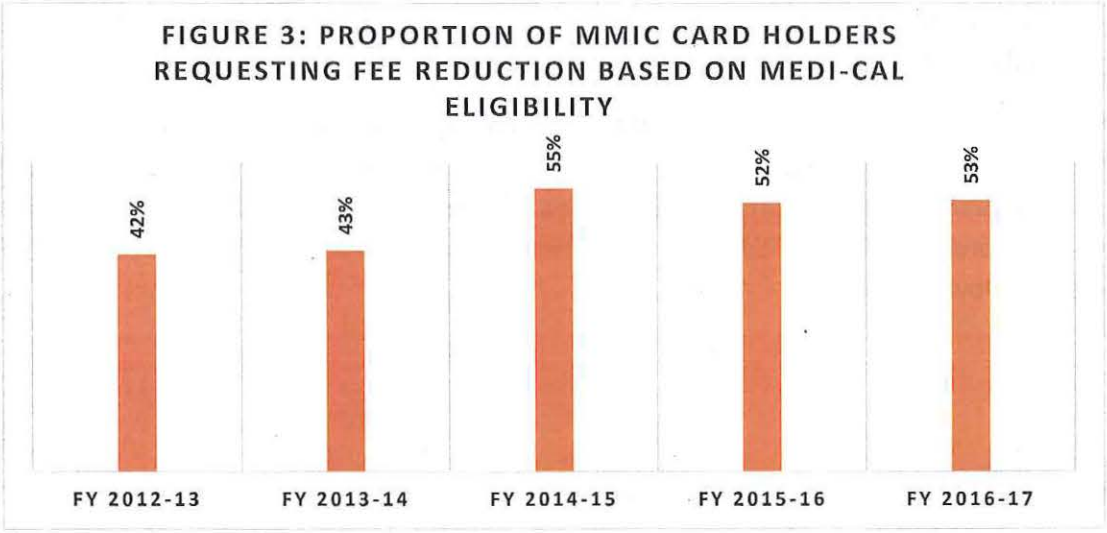
[3] California Department of Health Care Services website, available at http://www.dhcs.ca.gov/services/medi-cal/Pages/DoYouQualifyForMedi-Cal.aspx.

Figure 2. California Medi-Cal Income Eligibility

Family Size	138% Poverty Level
1	16,395
2	22,108
2 Adults	22,108
3	27,821
4	33,534
5	39,248
6	44,961
7	50,688
8	56,429
9	62,169
10	67,910
11	73,651
12	79,392
Each Additional Person	Add 5,741

Figure 3 below[4] shows the proportion of State card holders in San Francisco that requested a card fee reduction based on Medi-cal eligibility from fiscal year 2013 through fiscal year 2017. The figure shows that over the past few fiscal years, over half of all card holders in San Francisco made such requests.

Figure 3. Proportion of MMIC Card Holders Requesting Fee Reduction Based on Medi-Cal Eligibility



[4] SFDPH files.

IV. Focus Group Narratives

A. Methodology

In order to provide the City's policymakers and the Office of Cannabis with a comprehensive view of the medical cannabis cost and affordability landscapes, the Department of Public Health conducted three separate focus groups where discussions outlined concerns and participants put forth solutions to alleviate those concerns. Where individuals were unable to participate in person, the Department collected responses via phone and email. Over three focus group sessions, the Department interviewed sixteen individuals.

The focus groups included representatives from the below stakeholder categories, and Department of Public Health staff strived for a balance of race, gender and sexual orientation within each focus group.

- Medical cannabis patients
- Medical cannabis patient advocates
- Medical cannabis business owners – storefront and delivery only
- Public policy experts

As part of the discussions, focus group participants also noted their experiences with homelessness, living with HIV, behavioral health issues, living with a disability, and past military service. It is also important to note that many focus group participants felt they represented more than one category above.

Each focus group discussed the following questions:

1. In your experience, how is the medical cannabis patient community reacting to State and local changes to the medical cannabis regulatory framework?
2. What is the general feeling among patients about the cost of medical cannabis in the new medical cannabis regulatory market? How does the addition of the adult use market factor into the discussion?
3. What is the general feeling among patients about the State medical cannabis identification card? Do people generally know how to apply, where to get it and that there is a fee associated with obtaining it?
4. Do you have ideas and suggestions about how the City could address concerns you've mentioned? For example, what would the elements of a compassionate care program be in San Francisco?

The following information, in no particular order, is a compilation of the main discussion points from all focus groups, and where there was general consensus or agreement across focus groups, it is noted.

B. Medical Cannabis Community Reactions and Concerns: Focus Group Responses

1. In your experience, how is the medical cannabis patient community reacting to State and local changes to the medical cannabis regulatory framework?
2. What is the general feeling among patients about the cost of medical cannabis in the new regulatory market? How does the addition of the adult use market factor into the discussion?

Responses to the above questions are noted below.

Preserving San Francisco's Compassionate Care Model. Focus group participants affirmed that patients use cannabis as an alternative to prescription drugs, a harm reduction tool, and as an important treatment option for a wide variety of conditions, and that the State and City needed to appropriately recognize this as a significant benefit to individuals with medical needs. Participants also noted that the current medical cannabis structure and future adult use system would not have been possible without the steadfast dedication of the current medical cannabis community, and, for that reason, the City should elevate those needs.

With regard to the current and future landscapes, one participant noted that patients are currently benefitting from an increase in available products as new dispensaries enter the medical market and lowered prices due to increased market competition, further noting that in the newly regulated market, patients can also expect to benefit further from guidelines designed to make cannabis and cannabis products safer. This participant stated that patients they have encountered feel excited, but also apprehensive and uncertain about how the medical and adult use markets will affect one another and how new regulations will affect the medical cannabis market, specifically. This individual believed that these feelings would remain until State and local medical and adult use legislation and regulations are finalized, and that the longer that process takes, the more uncertainty the cannabis industry will experience.

One overarching concern across focus groups was that current State law[5] does not allow for compassionate care to continue in San Francisco in the way that patients have accessed it in the past, access it currently, and envision it for the future. Focus group members felt that if this issue is not addressed, the City runs the risk of eliminating compassionate care altogether. One meeting participant noted that, though the pending State medical and adult use cannabis regulatory systems should be streamlined wherever possible for efficiency purposes, this was an area where the adult use and medical cannabis markets should differ significantly. Underlying concerns stemming from these statements were as follows:

- *Cost for Patients.* Participants in each focus group highlighted the issue of cost for patients in the newly regulated medical cannabis market, especially for low-income and indigent patients, immobile patients, and those experiencing homelessness. To some participants, the cost of

[5] These concerns would also apply to any provisions within the current proposed local ordinance that codify the relevant State law provisions.

medical cannabis is already at unaffordable levels for many, and patients and patient advocates in each focus group were concerned about the ability for them to access the market in the face of new State and local regulations, where the regulatory cost would likely be passed on to consumers. There was also concern about the added burden of State and (possible) local taxation structures. According to some, patients generally prefer regulated, lab-tested medical cannabis, but one serious consequence of exorbitant taxes would be a proliferation of the illicit market, where medical cannabis would likely be cheaper. State law does exempt medical cannabis patients with the aforementioned State-issued card from State sales tax,[6] but there was consensus across focus groups that this exemption does not go far enough to reduce cost barriers for patients.

- *Prohibition against Samples, Free and Discounted Cannabis.* State Law currently prohibits the giving away of cannabis and cannabis products as part of a business promotion or commercial activity.[7] This has been interpreted to disallow the giving of cannabis samples and cannabis/cannabis products at discounted or no cost to individual consumers and/or other businesses, which are current practices in San Francisco's medical cannabis market. Participants across the focus groups were strongly opposed to these State law provisions since, according to them, such practices are critical for maintaining a functional compassionate care program. For example, patients rely on samples to test products in hopes of finding one that alleviates symptoms, and it would be cost-prohibitive for patients to instead have to purchase each item at full price at the outset.

  Further, State law also requires that all cannabis and cannabis products be tagged with a unique identifier, known as a "track and trace" system.[8] There was a concern that this could conflict with any local policy allowing for donations or samples, since those cannabis items would not be moving through the commercial system the way State law currently envisions. For example, some medical cannabis businesses currently receive anonymous cannabis and cannabis product donations that they then distribute to patients, and such a track and trace system would deter those donors from continuing a practice that, in their view, facilitates continued and affordable access for low-income patients.

- *Phased Elimination of the Collective/Cooperative Model.* In establishing a State-regulated medical cannabis market, State law also eventually phases out the current collective/cooperative medical cannabis model.[9] According to focus group participants, this would eliminate a critical community-sharing element of San Francisco's current compassionate care practices.

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[6] The Adult Use of Marijuana Act – Proposition 64, Section 34011.

[7] Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) Section 26153.

[8] The Adult Use of Marijuana Act – Proposition 64, Section 26170.

[9] Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) Section 11362.775

- *Product Type and Dosage Inflexibility.* Current State law limits edible cannabis product THC content to 10 milligrams per serving size in both the medical and adult use markets,[10] and previously proposed State regulations[11] limited the total THC amount per package to 100 milligrams. The proposed State regulations also placed a 1,000-milligram THC limit on non-edible cannabis products in both markets.[12] Focus group participants identified two main problems with this approach. First, there is often a need for patients to consume higher dosages than individuals in the adult use market because medical condition treatment plans and cannabis metabolism rates differ per individual, and, since State law does not currently allow for patients to obtain cannabis at little to no cost, this limitation would require patients to purchase multiple products to reach their required dosage levels, which is cost-prohibitive. Second, some participants noted that the pending State cannabis regulations would likely limit the types of edible cannabis products that can be produced, which they felt would provide primarily for preservative-heavy and sugar-laden products, lead to high caloric intake among patients if they must consume multiple servings, and create potential health issues as a result.

- *Cannabis License Fees.* Some focus group participants cited State and (possible) local cannabis permit fees[13] as a potential cost barrier for true compassionate care businesses that wish to continue providing cannabis and services to low-income patients in San Francisco.

- *Medical Cannabis for Patients Under 18.* State law currently prohibits the production of cannabis products that are considered appealing to children.[14] Focus group participants noted that some children who use medical cannabis would benefit from products that are designed to make consumption palatable for them.

Lack of Dedicated Consumption Spaces for Patients. All focus groups noted that, for medical cannabis patients, consuming their medicine is often a social experience that is important for the healing process, and that there were not enough existing spaces in San Francisco for this purpose.

Driving Under the Influence Determinations. There was concern in one focus group about the process the State and City will undertake in determining whether an individual is driving under the influence. A process that considers only whether THC is present in the system, and not whether driving is actually

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[10] Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) Section 26130 (c).

[11] *See* California Department of Public Health Proposed Regulations Comment Summary and Response, available at https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/Cannabis%20Comments%20(Final%20on%20CDPH%20Letterhead).pdf.

[12] *See* California Department of Public Health Proposed Regulations Comment Summary and Response, available at https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/Cannabis%20Comments%20(Final%20on%20CDPH%20Letterhead).pdf.

[13] Local cannabis permit fees have not yet been determined, but focus group participants thought they would likely be a cost barrier once established, especially when considered alongside a State license fee.

[14] Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) Section 26130 (c).

impaired as a result, will negatively affect patients, especially those who require relatively high THC doses as part of their treatment plans.

Safe Consumption Information for Patients. Meeting participants noted that safe consumption information currently varied across dispensaries, which could lead to misinformation and unsafe patient consumption practices.

C. State Medical Cannabis Identification Card – Focus Group Responses

3. What is the general feeling among patients about the State medical cannabis ID card? Do people generally know how to apply, where to get it and that there is a fee associated with obtaining it?

Responses to the above questions are noted below.

There was general consensus across focus groups that many patients in San Francisco are currently unaware of the State card program and/or how to obtain a card. Participants noted that some current businesses were not appropriately applying the State sales tax exemption for medical cannabis patients who possess the card, and that this would likely continue without widespread education about the program for business owners, their employees and medical cannabis patients. One participant suggested that the Health Department lead this educational effort and increase accessibility by also educating providers that do not commonly interact with medical cannabis patients and may be unfamiliar with program guidelines, and developing informational materials for display at dispensaries and doctors' offices.

With the onset of adult use commercial activity and consumption, there was a concern that medical cannabis patients may bypass the medical market and instead obtain cannabis in the adult use market due to public stigma surrounding medical cannabis use, as well as misconceptions about the type of information that is stored within the medical cannabis identification program database and how that may affect current/future employment opportunities and the ability to purchase a firearm.[15]

In contrast, one participant noted that it was difficult to predict the effect of the adult use market on the MMIC program, but suggested that increased taxation levels for medical cannabis and a possible lack of San Francisco-based adult use retailers in early January, 2018, may significantly increase State card utilization. Others felt that adult use legalization and consumption would have a positive effect on the medical market and card utilization, since more people would be comfortable with cannabis use in general.

[15] The Bureau of Alcohol, Tobacco, Firearms and Explosives issued a memorandum to all firearms licensees in 2011 clarifying that federal law prohibits unlawful users of controlled substances, as defined by the federal Controlled Substances Act, from receiving or possessing firearms or ammunition. *See* Bureau memorandum, available at http://71.11.3.134/share/PDF/ATFOpenLetter092111.pdf.

D. Ideas and Suggestions – Focus Group Responses

4. Do you have ideas and suggestions about how the City could address the concerns you've mentioned? For example, what would the elements of a compassionate care program be in San Francisco?

Responses to the above questions are noted below.

City Advocacy at the State Level to Preserve Current Compassionate Care Programs. Each focus group highlighted the need for the City to advocate at the State level to allow:

- businesses to provide cannabis samples and cannabis free of charge and/or at a discounted cost to medical cannabis patients
- anonymous donations to compassionate care locations
- businesses to produce high dosage products for medical cannabis patients

Focus group participants felt that such advocacy would allow compassionate care to continue in the City in its current form.

Establish a Citywide Compassionate Care Program. Within the context of the aforementioned State level advocacy, focus group participants thought the City could create a program with the following possible characteristics:

Program Eligibility Criteria. Using income as the overarching criterion, San Francisco residents with medical cannabis need who are enrolled in Medi-Cal (or would qualify if they applied), low-income seniors (i.e. individuals over 50), immobile patients, and veterans would qualify for the City program. To capture as many individuals as possible, the City could also consider enrollment in other existing programs serving low-income San Franciscans as proof of compassionate care program eligibility. To limit the risk of federal intervention and adverse consequences for patients who receive federal assistance, the City could use the current MMIC application process as a record retention model. Focus group participants also highlighted the importance of discretion and preserving the confidentiality of those accessing the program.

Program Elements. Focus groups put forth the following possibilities:

- Program participants would be able to purchase medical cannabis and any medical cannabis product at cost of production.
- Program participants would be able to access current compassionate care services at individual medical cannabis dispensaries, e.g. samples, cannabis and cannabis products at little to no cost.
- San Francisco could create event permits for compassionate care events across the City, where patients and businesses could provide samples, share cannabis and cannabis products, and provide free or discounted cannabis to program participants.

- San Francisco could allow current medical cannabis collective/cooperative businesses to continue their operations as they currently exist.
- Any reduced cost policies the City establishes for patients would also apply to adult use cannabis and cannabis products.
- Some participants specifically referenced a 2007 San Francisco Board of Supervisors resolution[16] that encouraged cannabis dispensaries to establish compassionate care programs, noting that it already includes many principles that the City could codify Citywide (e.g. prioritizing seniors and veterans).

Citywide Compassionate Care Card. Separate from the State-issued medical cannabis identification card, a county-based card could be issued to individuals who qualify for the program. Some focus group participants referenced a previous San Francisco county medical cannabis identification card program that was deactivated with the establishment of the State-issued card, suggesting that the City's card program could be reactivated for this purpose. Focus group members also felt the card should be issued at little to no cost to program participants.

Program Funding Mechanisms. Focus group participants suggested that a fund be established to support the City's Compassionate Care program in whatever form(s) it eventually takes. Due to the inability for many cannabis businesses to access banking services, it was advised that the City create the fund and that a stakeholder group that includes cannabis businesses oversee the fund's revenue allocation process. Some focus group participants suggested that the fund also be used to subsidize the licensing fees for compassionate care businesses and/or the operating costs of a compassionate care community center suggested elsewhere in this report. Focus groups suggested three main funding mechanisms:

- *Round-Up Mechanism.* At the point of sale in either the medical or adult use markets, consumers could choose to donate to the fund by "rounding up" the cost of their purchase. For example, if a consumer purchased a cannabis product at 47 dollars, the total price could be rounded up to 50 dollars, with the remaining three dollars donated to the program.
- *Business contributions.* Under this model, cannabis businesses would be required to set aside a portion of their profits to fund the program, or the City could instead make such contributions voluntary. Some participants preferred a voluntary option to a mandated contribution.
- *Business Program Start Up Funds.* Here, cannabis businesses would voluntarily contribute immediate funding for the program, with the City then assuming responsibility for continued funding after the initial contribution.

[16] See San Francisco Board of Supervisors 2007 Resolution urging Medical Cannabis Dispensaries to Implement Compassionate Care Programs to Serve Low and No Income Patients, available at http://sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions07/r0623-07.pdf.

City Advocacy at the State Level to Support Additional Compassionate Care Aspects. In the course of discussion, focus group participants highlighted other areas where advocacy would be needed to further support compassionate care goals.

- *Exempt Medical Cannabis Cultivators from Taxation.* According to some, establishing a tax exemption for medical cannabis cultivators would incentivize them to donate to compassionate care programs and increase cannabis availability for patients.
- *Donate Seized Cannabis and Cannabis Products to Compassionate Care Programs.* When cannabis is seized as a result of law enforcement intervention, some focus group participants felt it should not be destroyed. Rather, it could be donated to the City's compassionate care program and subsequently redistributed to patients.
- *Create Cannabis Product Exemption for Children with Medical Cannabis Needs.* The City should allow cannabis products that may be appealing to children to be provided for those with medical need.
- *Expand the types of cannabis products to include healthier options.*
- *Discourage the narrowing of qualifying conditions.* The City should view individual interactions between patients and physicians as the primary mechanism for determining whether medical cannabis use is warranted.
- *Create employment protections for medical cannabis card holders and compassionate care program participants.*

Establish a Municipal Growing Framework. Some focus group participants felt the City should consider municipal cultivation as a way to provide cannabis at lower cost to patients. City voters passed Proposition S in 2002,[17] which urged the City to explore this option, and the aforementioned focus group participants would support further discussion and action on this issue.

Create Additional Consumption Locations for Patients. Each focus group highlighted a need for additional medical cannabis consumption (i.e. smoking, vaping and product ingestion/use) locations in the City, especially if federal law continues to prohibit consumption in public housing. Some participants advocated for separate medical use consumption spaces to preserve a treatment-based environment for patients, adding that such spaces should not require a minimum purchase level in order to access the consumption area. Others underscored the need for community centers where patients can both consume their medicine and engage in harm reduction programs and activities, suggesting that the City reserve spaces in the City where such community centers can thrive and subsidize operational costs for those centers.

[17] *See* Proposition S language and ballot results at https://sfpl.org/pdf/main/gic/elections/November5_2002.pdf and https://sfpl.org/index.php?pg=2000027201&propid=1683.

Prioritize Delivery Services. For many immobile patients, medical cannabis delivery services are critical and should be prioritized within the City's cannabis regulatory framework.

Reinstate Historical Compassionate Care Locations. According to some focus group participants, a number of compassionate care locations were closed in the past due to federal intervention or an inability to thrive within the City's Medical Cannabis Act (Article 33) framework. Those participants felt the City should assist these businesses in re-establishing themselves in San Francisco in order to strengthen the compassionate care network.

Reduce Fee for State Medical Cannabis Identification Card. To increase affordability, the City should lower the current cost of the State-issued medical cannabis identification card.

Establish Patient Advisory Committee. The City should establish an advisory committee, consisting primarily of a diverse set of medical cannabis patients, and possibly businesses, to oversee the process of establishing and maintaining a compassionate care program.

Education for Patients and Recommending Physicians. Safe consumption information should be distributed to patients, and this information should be standardized across dispensaries and compassionate care locations in the City. Physicians must also be properly educated about how to provide cannabis recommendations that allow dispensaries to provide the correct cannabis treatment options.

A Successful Compassionate Care Framework in San Francisco – Focus Group Responses

Focus groups also discussed the need to ensure that San Francisco's compassionate care framework is successful, and made the following suggestions for how success could be defined:

- *Patients with Real Medical Need are Able to Access Cannabis at Affordable Cost.* Here, focus group participants advised the City to establish a robust educational campaign for the compassionate care program that uses a variety of communication outlets, including television, radio, and newsprint, to promote the program and ensure that there is widespread and far-reaching patient participation. Participants also suggested that the City develop a survey that would provide useful feedback for the City as to medical cannabis accessibility. Finally, it was suggested that the City consider mechanisms to prevent abuse of the program and hence ensure that patients with actual need are able to easily participate.

- *Cannabis Businesses of Varying Size are Able to Participate in the Program.* In this regard, one participant encouraged the City to consider the impact of any compassionate care program requirements on businesses of varying size and avoid creating a system that rewards non-compliance or places an undue burden on smaller businesses that will find it more difficult to absorb the cost of new State and local medical cannabis business regulations. That individual went on to note that establishing a compassionate care program would likely be an iterative process, since there is uncertainty at the moment about how the adult use market will fare in

San Francisco, so transparency about the program and how businesses can comply will be critical, especially during the initial implementation period.

Some focus group participants felt that the aforementioned patient advisory committee could be tasked with providing ongoing guidance to the City in this area.

V. Findings & Recommendations

Based on Focus Group comments and concerns raised in the sessions by participants, the report finds the following, and makes associated recommendations:

Finding 1 – Continued Access to Medical Cannabis: The City has a long history of providing medical cannabis to patients, and this access to should continue in 2018 and beyond.

Recommendation:

A. The City should require all retailers to maintain medical use as a condition of their permit.
B. The City should further prioritize permit processing for medical only applicants.

Finding 2 – Cost Concerns: There are concerns that patients, particularly low income and indigent patients, will not be able to afford medical cannabis.

Recommendation:

A. Compassion programs should be targeted to low income and indigent populations, veterans, and patient populations who can identify need.
B. The City should remain thoughtful about the tax burden on the medical cannabis supply chain and patient consumers when crafting a local tax structure.
C. The City should allow samples in certain circumstances, to allow patient consumers to test products before having to purchase products at full or reduced cost.
D. The City should advocate for dosage flexibility for medical products at the State level if higher dosage levels are not addressed in emergency regulations this November.

Finding 3 – Clarity and Advocacy for State Allowance of Compassion Programs: Stakeholders would like the City to advocate for Compassion Programs that reflect San Francisco's values.

Recommendation:

A. The City should advocate to the State to allow counties to maintain compassion programs, and provide clear regulations related to compassion programs within the M-Type supply chain.

Finding 4 – Preservation of Compassionate Care Model: The compassionate care model has provided patients with access to medicinal cannabis, is an important harm reduction tool, and these programs. should be maintained.

Recommendation:

A. Similar to the mandate passed unanimously by the Board of Supervisors in File No. 071505 (2007),[18] the City should create a compassion program or allow for retailers to establish their own compassion program. Descriptions of these programs and how the program will meet track and trace requirements should be detailed in their application for an Article 16 permit.
B. The City should consider the creation of nonprofit licenses for compassionate care programs in 2018. This could include contemplating a lower license fee.
C. The City should allow for flexibility in implementing a Compassion Program. An example of this is the City could create a Compassion Fund administered by the City. In lieu of creating an onsite program, retailers could provide a percentage of monthly gross revenue to this fund to offset licensing fees for future nonprofit permit permits and costs of products.

Finding 5 – Determine Eligibility: There is a need to create eligibility criteria that is discrete and confidential to ensure patient privacy.

Recommendation:

A. The City should leverage should leverage its existing programs, such as the Medical Marijuana Identification Card (MMIC) program, as a pathway to a) determine eligibility and 2) provide a method by which patients can prove their eligibility to retailers or potential nonprofits. This resource should be provided at little to no cost to the patient.

Finding 6 – Consumption Space: Consumption of medical cannabis can be a social experience, therefore, patients would like spaces to be provided that allow for social consumption.

Recommendation:

A. The City should encourage the retention of existing Medicinal Cannabis Consumption Space.
B. The City should disallow retailers from mandating a certain amount of product be purchased in order to access the onsite smoking/vaping/consumption lounge.

Finding 7 – Safe Consumption Information: Patient consumers would benefit from having access to consistent education related to safe consumption.

Recommendation:

A. The Department of Public Health should create fact based information to be provided to all consumers including patients at the point of sale.

Finding 8 – Advocacy for Patient Community: The City would benefit from continued advice from patients, patient advocates, and businesses.

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[18] San Francisco Board of Supervisors, File No. 071505, 2007. http://sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions07/r0623-07.pdf.

Recommendation:

A. The City should amend the Cannabis State Legalization Task Force membership to ensure a broad set of stakeholders representing patient advocacy are reflected in the makeup of the body, and can further inform and advise future task force recommendations, notably about the evolution of policy related to compassion programs. One of these members should have experience in running a non-profit compassion program.

Finding 9 – Data & Accountability: The City needs to gather data and report out on it regularly to ensure we are iterating our policies and meeting our goals.

Recommendation:

A. The Office of Cannabis and the Health Department should continue to monitor the effects of cannabis legalization on medical cannabis use in San Francisco.
B. Data collection should be consistent with patient privacy guidelines, and should be incorporated into the Office of Cannabis' overall data management strategy.
C. The Office of Cannabis in collaboration with the Department of Public Health should provide a report and recommendations to further inform the City's path forward with medical cannabis by December 31, 2018.