



Legislative Background

BOS File No. 170865

BOS File No: 170865
Name: Zoning - Interim Moratorium on Medical Cannabis Dispensaries

Legislation Overview:

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.

<u>Sponsor(s):</u>	Cohen
<u>Date Introduced:</u>	7/25/2017
<u>Date Referred:</u>	8/1/2017
<u>Scheduled for Land Use and Transportation Committee:</u>	9/11/2017 (tentatively)
<u>Scheduled for Board of Supervisors:</u>	9/12/2017 (tentatively)

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 authorization. (See page 5 for more information on Discretionary Review and Conditional Use Authorization.) Currently, there is no ban on the approval of MCD applications by the Planning Department or Planning Commission.

Amendments to Current Law

Temporarily prohibits the Planning Commission and Planning Department from approving or authorizing any medical cannabis dispensary use.

This moratorium would remain in effect for 45 days unless

- (1) It is 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.

Note: MCD projects that have been approved by the Planning Department or the Planning Commission as of the effective date of the ordinance are not subject to the moratorium.

The interim moratorium on MCDs would go into effect immediately upon approval by the Mayor.¹

California Government Code Section 65858²

Section 65858 defines procedures for establishment of an interim zoning moratorium, which takes the form of an urgency ordinance.

Urgency ordinances:

- Require only one reading at the Board of Supervisors.
- Require a 4/5ths vote (9 votes) for approval.
- Are effective under the same terms as a Board of Supervisors resolution.

Extensions

An interim zoning moratorium may be extended for a total of up to 2 years.

- If the Board has provided less than 10 days published notice, an extension of up to 10 months and 15 days may be proposed.
(Initial 45 days) + (Extension of 10 months and 15 days) = 1-year moratorium
- If the Board has provided 10 days published notice, an extension of up to 22 months and 15 days may be proposed.
(Initial 45 days) + (Extension of 22 months and 15 days) = 2-year moratorium

An extension of an interim ordinance requires a 4/5ths vote (9 votes) of the Board of Supervisors.

Considerations

- As Supervisors and others have said, the City needs to develop a regulatory structure with a citywide lens, rather than regulating on a per-district basis. The interim zoning moratorium creates uniform citywide restrictions, thereby removing the motive for district-specific restrictions.
- District-specific restrictions, such as District 11's three-MCD cap, may exacerbate the unequal distribution of MCDs across the City and motivate other districts to propose similar legislation. (See page 3 for the number of MCDs per district.)
- A patchwork of district-specific restrictions would complicate the law-making process that is currently underway regarding regulation of commercial medicinal and adult use cannabis beginning in 2018. The interim zoning moratorium would alleviate districts' concerns while the City develops its future system for governing the cannabis industry.
- By the time an applicant's MCD permit to operate is approved, the new commercial licensing structure may already be in place. (See "Legislative Timelines" on page 4.)
- The legislation cites Proposition 64 (adult use: commercial sale/for-profit) as the reason for an increase in MCD permit applications. It explains that the increase is driven in part by

¹ If the Mayor signs the moratorium, it goes into effect immediately. If the Mayor vetoes the moratorium, it needs a 4/5ths vote from the Board of Supervisors in order to pass. If the Mayor does not sign the moratorium, it goes into effect on the 11th day after approval at the Board of Supervisors.

² California Government Code Section 65858:

http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65858

prospective MCD operators that aim to convert to adult use cannabis retail establishments beginning January 1. Possession of the MCD permit may be seen as an advantage when licenses become available. Note that the current MCD program is a nonprofit, collective/cooperative model. The MCD program was created in the spirit of the Compassionate Use Act to serve patients with a need for cannabis. It was not intended to be a stepping-stone permit or a loophole.

- If many MCDs convert to adult use retail, the medical market may be underserved.
- “Grandfathering” may result in many nonconforming actors. (Nonconforming actors may operate under different rules.)
- The City may decide to continue the MCD program. If it does, businesses seeking to transition into commercial sales may not have as clear a pathway as expected. If dispensaries cannot convert easily from MCD to adult use, they may need to complete the separate application for an adult use permit; in such a situation, there could be significant costs, but little or no advantage.
- If the City opts for a quota system, a large number of grandfathered MCDs could also affect the availability of new permits. This would restrict the number of new retailers that could open.
- Initial demand for cannabis and cannabis products is expected to be strong. Allowing new MCDs to be approved may help to meet demand in 2018 if such MCDs are permitted to sell in the adult use market.

Medical Cannabis Dispensaries by District

District	MCDs in Operation	MCD Applications in Review	Total
1	1	0	1
2	1	0	1
3	10	1	11
4	0	5	5
5	2	0	2
6	13	12	25
7	1	1	2
8	2	1	3
9	5	3	8
10	1	3	4
11	3	1	4
TOTAL	39	27	66

Legislative Timeline

Items to the left indicate the timeline of BOS File No. 170865; items to the right indicate the timeline of cannabis draft ordinances.

BOS File No. 170865

7/25	Moratorium legislation introduced.
8/14	SBC hearing of moratorium legislation.

9/11	Projected date Land Use & Transportation could hear moratorium proposal.
9/12	Earliest BOS reading of moratorium.
9/22	Projected moratorium start date. Duration: 45 days, with possible extension of up to 2 years.

Cannabis Draft Ordinances

9/1	Deadline to submit draft ordinances for commercial sale of adult use and medical cannabis.
9/5	Earliest BOS could introduce the new ordinances.

9/11, 9/25	Possible dates SBC could hear the new ordinances.
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1/1/18	State expected to begin issuing licenses for adult use and medical retailers. City licensing timeline to be determined.
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Note: “Projected” and “earliest” dates are estimates that were calculated using legislation introduction dates and standard legislative timelines. However, a number of factors could delay the process.

Planning Commission Review Types

Mandatory discretionary review

From time to time the Planning Commission will review a permit application. The Commission may determine that modifications to the proposed project are necessary in order to protect the public interest. If so, they can require the permit applicant to make the necessary changes. The Department will disapprove the application unless the required changes are made. This process of Commission consideration is commonly known as ‘Discretionary Review’ or simply ‘DR’. By filing a DR application, a member of the public is asking the Commission to exercise its discretionary power.

DR is a special power of the Commission, outside the normal building permit application approval process. It is supposed to be used only when there are exceptional and extraordinary circumstances associated with a proposed project. The Commission has been advised by the City Attorney that the Commission’s discretion is sensitive and must be exercised with utmost constraint.

Conditional use permit – “A Conditional Use is a use that is not principally permitted in a particular Zoning District. Conditional Uses require a Planning Commission hearing in order to determine if the proposed use is necessary or desirable to the neighborhood, whether it may potentially have a negative impact on the surrounding neighborhood, and whether the use complies with the San Francisco General Plan. During this public hearing the Planning Commission will ‘condition’ the use by applying operational conditions that may mitigate neighborhood concerns as well as apply conditions that may be required by the Department and the Planning Code. Conditional Use Authorizations are entitlements that run with the property, not the operator.”