San Francisco Cannabis Oversight Committee
c/o Chair Nina Parks
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November 18, 2020

San Francisco Board of Supervisors
c/o Clerk Angela Calvillo
Angela.calvillo@sfgov.org

RE: Please Vote "No" on Supe. Yee's Classist Ordinance to Prohibit Smoking by San Franciscans who Cannot Afford to Buy Single-Family Homes (File No. 201265)

Honorable Members of the Board of Supervisors:

The San Francisco Cannabis Oversight Committee opposes proposed ordinance File No. 201265 (Yee)[1], and asks that you reject this well-intentioned legislation based on its discriminatory socioeconomic impact. The legislation seeks to protect air quality for non-smokers, but would do so at the cost of the health and civil liberties of cannabis users including seriously ill medical cannabis patients—the vast majority of whom do not have Medical Marijuana Identification Cards (which are not even available during Shelter-in-Place). The ordinance would disallow smoking, but only for people in multi-unit residential buildings, meaning that San Franciscans who can afford to buy free-standing homes would be unaffected and could still smoke in peace. The $1,000/day penalty adds insult to injury, since only wealthy people can pay such fines, but wealthy people are already exempted by virtue of owning their own free-standing homes.

The Cannabis Oversight Committee was appointed by the Board of Supervisors pursuant to Ordinance No. 260-18 (2018), to advise the Board and the Mayor regarding cannabis laws. The Board specifically created the Cannabis Oversight Committee in the context of social equity, including undoing and repairing the harms of discrimination and economic disenfranchisement. Thus it is not only our duty, but also our very purpose, to offer our recommendation about the proposed ordinance: that you reject it.

I. This Inhalation Ban Would Exacerbate Racial and Economic Inequality.

This proposed ban on both smoking and vaporizing both tobacco and cannabis would only apply to apartments and condominiums buildings with more than two residential units, not single-family homes. The penalties for violations are up to $1,000 *per day* and, while these fines are appealable, unsuccessful appellants are required to pay the City's costs including attorneys' fees.

[1] https://sfgov.legistar.com/View.ashx?M=F&ID=8897595&GUID=D3BA1521-2CAB-40CA-97C2-995B544F6765.

San Francisco already has notoriously high rent prices, and now many San Franciscans have become unemployed during the COVID-19 pandemic. San Francisco has allowed cannabis smoking in private residences for over twenty-four years since the passage of Proposition 215 (1996). If this ordinance is enacted, San Franciscan renters will be liable for many thousands of dollars in fines and fees that we cannot afford. Further, this will make it harder to rent in San Francisco, let alone afford food, other medicine, and utilities. In effect, a ban on smoking in private homes will simply force people to smoke outdoors in public, subjecting the public to even more secondhand smoke and subjecting smokers to increased fines and increased risk of police interaction.

Racial disparities in San Francisco's economic inequality are well-documented. People of color are more likely to be renters and more likely to have difficulty affording rent. This ban would only affect people who live in multi-unit buildings, explicitly exempting people who can afford their own free-standing house. It is already unfair to discriminate against people who are not wealthy enough to afford to rent or buy a whole home, but especially so in San Francisco where housing is so expensive, and especially so during the pandemic when employment is scarcer.

II. The Proposed Ordinance Would Invite Litigation, Because Proposition 215 Prevents Localities from Prohibiting Patients from Inhaling Cannabis at Home.

In 1996, California voters enacted Proposition 215, the Compassionate Use Act. California Health and Safety Code Section 11362.5(b)(1) declares that the Act's purposes include "To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes…" and "To 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."

By prohibiting smoking and vaporizing cannabis in private homes, proposed ordinance File No. 201265 would violate patients' rights by illegally abridging patients' "right to obtain and use marijuana for medical purposes" and by impermissibly "sanction[ing]" them.[2] This would invite seriously ill San Franciscans to sue the City for this violation of their civil rights, and the proposed ordinance would not withstand legal challenge.

Further, Proposition 64 (2016) specifically reaffirmed these rights of medical patients, by saying that the proposition shall not "be construed or interpreted to amend, repeal, affect,

[2] Cal. H&S Code § 11362.5(b)(1), https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11362.5.&lawCode=HSC.

restrict, or preempt… Laws pertaining to the Compassionate Use Act of 1996."[3] The stated primary purpose of Proposition 64 was to legalize cannabis consumption, which includes smoking. Since Proposition 64 already explicitly bans cannabis smoking in public and in the wide range of places where tobacco smoking is banned such as restaurants, bars, and workplaces, it is clear that voters supporting Proposition 64 did not intend to ban cannabis smoking in private homes. Since cannabis inhalation is already banned in all public places, banning it in private homes would amount to a total ban, contravening the voters' will in Proposition 64.

III. The Proposed Exception for MMIC Holders is Insufficient.

We understand the proposed ordinance has been amended to provide an exemption for those few seriously ill San Franciscans who hold a Medical Marijuana Identification Card (MMIC). This exception would not be enough: most San Franciscans who use cannabis for medical purposes have never needed to obtain an MMIC, because a simple doctor's recommendation has always been sufficient to protect patients from prosecution since 1996. Further, besides being unnecessary, the MMIC was already expensive and complicated to obtain—not to mention impossible to obtain during Shelter-in-Place.[4] Since virtually none of the City's thousands of patients have an MMIC, and the City does not currently offer the MMIC, the proposed exception is all but meaningless.

Even if the exception were expanded to include all patients with a doctor's recommendation for medical cannabis, this would not be enough either. Even though anyone can get a recommendation in California, this is not free either. Many people struggle to afford health insurance and co-pays for medical appointments and medications, let alone a special piece of paper to be allowed to cannabis at home legally. Since the passage of Proposition 64 in 2016 allowing all adults to use cannabis at home without fear of criminal penalty, most patients in San Francisco have ceased consulting specialist physicians about cannabis recommendations.

Further, many adult San Franciscans use cannabis at home for reasons other than medical relief, including spiritual and recreational purposes, which would be inappropriately prohibited by this ordinance.

IV. Inhaled Cannabis is Medicine, and Edibles Are Inadequate Substitutes.

Besides banning inhaling (smoking and vaping) tobacco in residences, this ordinance would ban inhaling cannabis. Many clinical studies, including many studies funded by the State

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[3] Cal. H&S § 11362.45(i), https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11362.45.&lawCode=HSC.

[4] "[D]ue to Shelter-in-Place order, our office is currently closed to the public, and we are not processing Medical Marijuana ID cards," https://www.sfdph.org/dph/comupg/oservices/medSvs/MCID/default.asp

of California[5] and some right here in San Francisco,[6] have shown that both smoked and vaporized cannabis are efficacious medicine. It is cruel to prohibit people from using the medicine that works best for them, especially after decades of allowing it.

Patients who use cannabis for acute or severe symptoms, such as cachexia or nausea, need fast-acting relief. Inhalation takes less than a minute to deliver this symptom relief, whereas ingested edible medical cannabis products can take over an hour. Patients suffering from gastrointestinal distress, experiencing nausea or vomiting, may use medical cannabis in order to be able to eat, and may be unable to consume baked goods or liquid preparations.[7]

Further, a major advantage of inhalation is dose titration. People whose symptoms vary day-to-day may need more or less cannabis to relieve their symptoms than they did yesterday. Inhalation's quick onset makes it possible to titrate the dose (meaning, decide whether they need more or not), whereas ingestion takes much longer before knowing whether increasing the dose is necessary. The June 4, 2014 Forbes article, "Is Eating Marijuana Really Riskier Than Smoking it?", quotes Professor Franson of the University of Colorado on this topic:

> One of the issues lies in how the two forms of the drug are absorbed and metabolized, and how quickly the high comes on. "The major difference is in the absorption of the [edible] product into the blood stream," says Kari Franson, PharmD, PhD, Clinical Pharmacologist and Associate Dean for Professional Education, Department of Clinical Pharmacy, at University of Colorado Skaggs School of Pharmacy. "Once it is in the blood, it quickly goes to and has an effect

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[5] See, e.g., Wallace M, Schulteis G, Atkinson JH, Wolfson T, Lazzaretto D, Bentley H, Gouaux B, Abramson I (November 2007) Dose-dependent Effects of Smoked Cannabis on Capsaicin-induced Pain and Hyperalgesia in Healthy Volunteers. Anesthesiology. 2007 Nov;107(5):785-96. http://www.ncbi.nlm.nih.gov/pubmed/18073554.
Wilsey B, Marcotte T, Tsodikov A, Millman J, Bentley H, Gouaux B, Fishman S. (2008) A Randomized, Placebo-Controlled, Crossover Trial of Cannabis Cigarettes in Neuropathic Pain. J Pain. 2008 Jun;9(6):506-21. http://www.ncbi.nlm.nih.gov/pubmed/18403272.
Wallace MS, Marcotte TD, Umlauf A, Gouaux B, Atkinson JH. (2015). Efficacy of Inhaled Cannabis on Painful Diabetic Neuropathy. J Pain. 2015 Jul;16(7):616-27. http://www.ncbi.nlm.nih.gov/pubmed/25843054.
Wilsey B, Marcotte T, Deutsch R, Gouaux B, Sakai S, Donaghe H. (2013). Low-Dose Vaporized Cannabis Significantly Improves Neuropathic Pain. J Pain. 2013 Feb;14(2):136-48. http://www.ncbi.nlm.nih.gov/pubmed/23237736.

[6] See, e.g., Abrams DI, Jay CA, Shade SB, Vizoso H, Reda H, Press S, Kelly ME, Rowbotham MC, Petersen KL. Cannabis in painful HIV-associated sensory neuropathy: A randomized placebo-controlled trial. Neurology. 2007 Feb 13;68(7):515-21. http://www.ncbi.nlm.nih.gov/pubmed/17296917.

[7] *See* "Gastrointestinal Disorders and Medical Marijuana" by Americans for Safe Access, at https://www.safeaccessnow.org/gastrointestinal-disorders.

on the brain. With smoking, the peak blood levels happen within 3-10 minutes, and with eating, it's 1-3 hours."[8]

Thus ingesting medical cannabis, by virtue of its less rapid onset, provides inferior symptom relief for patients seeking to address acute symptoms as rapidly as possible.

Supervisors, please reject File No. 201265, because it is unfair to treat more harshly those San Franciscans who cannot afford their own free-standing home.

We look forward to being in dialogue with you about this important issue; please direct questions about it to Cannabis Oversight Committee member Jesse Stout at JesseStout@gmail.com.

Thank you.

Regards,

San Francisco Cannabis Oversight Committee

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By: Nina Parks, Chair

[8] https://www.forbes.com/sites/alicegwalton/2014/06/04/is-eating-marijuana-really-riskier-than-smoking-it/?sh=722978c77234.