

Chapter 12.26

PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2008

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Title.

This initiative shall be known and may be cited as the Patients Access to Medical Cannabis Act of 2008. (Ord. 7068-NS § 1, 12/08/08)

Findings And Declarations.

The People of the City of Berkeley find all of the following to be true:

A. We strongly support the right of seriously ill patients to use medical cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines, or any other serious illness or condition for which cannabis provides relief.

B. We strongly oppose the arrest, prosecution, and incarceration of persons legally-qualified under the Compassionate Use Act of 1996 (Proposition 215) by local, state, or federal law enforcement.

C. There is a need in our community for safe and affordable access to medical cannabis.

D. In the absence of meaningful state regulation, it is necessary for local governments to adopt policies and guidelines for the purpose of facilitating safe access and protecting patients.

E. The provision of medical cannabis should occur in a safe and orderly manner in order to protect patients and the community. In the absence of clear guidelines, there has been a lack of consistency in the permitting and regulation of medical cannabis dispensing.

F. There is a need for specific instructions for City officials and staff in order to eliminate this inconsistency.

G. There are no scientifically valid studies that determine the yield of medicine based on specific numbers of plants or the quantity of medication necessary for a patient. Berkeley's arbitrarily- low cultivation limits place undue burdens on local patients, and therefore require revision based on patient's needs.

H. The People of the City of Berkeley further find and declare that we enact this initiative pursuant to the powers reserved to the State of California, the City of Berkeley, and its people under the Tenth Amendment to the United States Constitution. (Ord. 7068-NS § 2, 12/08/08)

Section 12.26.010 Purposes.

The purpose of this chapter is to implement California Health and Safety Code Section 11362.5, known as the Compassionate Use Act of 1996 and to regulate the location of facilities lawfully used for the storage, dispensing and use of medical cannabis, other than the cultivation or possession of medical cannabis by an individual patient or caregiver at the patient or caregiver's home, lawfully incident to the residential use of that home. The Compassionate Use Act is the state law removing state law penalties for qualified patients, and primary care givers to those patients, for possession and cultivation of a personal amount of medical cannabis for qualified patients. This chapter is intended:

A. To help ensure that seriously ill Berkeley residents can obtain and use cannabis for medical purposes where that medical use has been deemed appropriate and recommended or approved by a physician who has determined that the patient's health would benefit from the use of cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines, or any other serious illness or condition for which cannabis provides relief.

B. To help ensure that qualified patients and their primary caregivers who obtain or cultivate cannabis solely for the qualified patient's medical treatment with the recommendation or approval of a physician are not subject to criminal prosecution or sanction.

C. To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of medical cannabis to patients whose medical doctors approve or recommend medical cannabis to treat a serious illness or condition.

D. To protect citizens from the adverse impacts of irresponsible medical cannabis distribution, storage and use practices. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 1 (part), 2004: Ord. 6620-NS § 1, 2001)

Section 12.26.030 Definitions.

A. "Cannabis" shall have the same meaning as the definition of "Marijuana" provided in California Health and Safety Code Section 11018 at this time, but if that definition is amended by state law in the future, as amended. Currently, under Health and Safety Code Section 11018, "marijuana means all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination."

B. "Qualified patient" shall mean a person who has a written or oral recommendation or approval from a licensed medical doctor to use cannabis for medical purposes.

C. "Primary caregiver" shall mean the individual person or persons designated by a qualified patient, provided that said individual person or persons has consistently assumed responsibility for the housing, health, or safety of the qualified patient.

D. "Medical cannabis collective" shall mean a cooperative, affiliation, association, or collective of persons comprised exclusively and entirely of qualified patients and the primary caregivers of those patients, the purpose of which is to provide education, referral, or network services to qualified patients, and to facilitate or assist in the cultivation and manufacture or acquisition of medical cannabis for qualified patients. Except as permitted by Section 12.26.130 or Title 23, medical cannabis collectives shall not be located in commercial or manufacturing districts, and shall only be allowed as incidental to residential use.

E. "Medical cannabis dispensary" shall mean any medical cannabis collective that is allowed under Section 12.26.130 to dispense medical cannabis at a non-residential location. Such a dispensary may also provide other services to its members, cultivate, acquire, bake, store, process, test, and transport medical cannabis. In dispensing medical cannabis to its qualified patients or their primary caregivers, a dispensary may be reimbursed for the cost of its services and materials.

F. "Medical cannabis organization" includes both Medical cannabis collectives and Medical cannabis dispensaries. (Ord. 7161-NS § 1, 2010; Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 1 (part), 2004: Ord. 6620-NS § 1, 2001)

Section 12.26.040 Medical cannabis collectives.

A. Pooling of Resources Recognized. The City of Berkeley recognizes that some qualified patients may not have primary caregivers and also may not be able to undertake all the physical activities necessary to cultivate cannabis for personal medical use. Accordingly, this section recognizes that qualified patients may join together with or without their primary caregivers to form medical cannabis collectives for the purpose of acquiring or cultivating and manufacturing medical cannabis solely for the personal medical use of the members who are qualified patients. The City recognizes that not all members of a medical cannabis collective will perform the same tasks or contribute to the collective in an equal manner. Accordingly, medical cannabis collectives are free to decide how to best pool their resources and divide responsibilities in cultivating medical cannabis for the personal medical use of their members who are qualified patients.

B. Restriction on Membership. Membership in a medical cannabis collective must be restricted to qualified patients and their primary caregivers. However, primary caregivers shall not be allowed to obtain cannabis for

their own personal use. In addition, a primary caregiver cannot be a member of a medical cannabis collective, unless the primary caregiver's qualified patient is also a member.

C. Restriction on Distribution to Non-Members. Medical cannabis collectives and each member thereof, shall not sell, barter, give away, or otherwise distribute cannabis to non-members of the medical cannabis collective.

D. Amount of Dried Cannabis and Plants.

1. Medical Cannabis Collectives may possess a reasonable quantity of dried cannabis and cannabis plants to meet the needs of their patient members. Medical Cannabis Collectives shall not accumulate more cannabis than is necessary to meet the personal medical needs of their Qualified Patients.

2. Except as permitted in Title 23, cultivation of medical cannabis by a medical cannabis collective that is not a Medical cannabis dispensary may only be incidental to a residential use. Cultivation occupying more than the lesser of 200 square feet or 25% of building square footage shall not be considered incidental, and is prohibited.

3. For purposes of this subdivision, "square feet" and "square footage" means the horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof).

E. Size of Visible Cannabis Gardens. The City of Berkeley recognizes that large scale outdoor cultivation of medical cannabis will create a risk of theft and violence due to the high monetary value of a large number of cannabis plants and the relative ease of theft by trespassing. Large-scale outdoor cannabis cultivation will also unfairly create tension and fear among the surrounding residents of trespassing, thefts, and violence. Accordingly, any medical cannabis collective or Collectives that cultivate medical cannabis plants outdoors (excluding secure rooftops or balconies that are not visible from other buildings or land) or in any place that is visible with the naked eye from any public or other private property, can only cultivate 10 such plants at one time on a single parcel or adjacent parcels of property.

F. Restriction on Excessive Cultivation and Possession. Nothing in this Section shall authorize any individual, organization, affiliation, collective, cooperative or other entity to (1) cultivate or possess a quantity of medical cannabis that is inappropriate for the personal medical need of the patient(s) for whom it is intended; or (2) cultivate or possess any quantity of cannabis for non-medical purposes. (Ord. 7161-NS § 2, 2010; Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

Section 12.26.050 Availability in pharmacies.

To encourage the standardization of medical cannabis, the City of Berkeley urges the federal government to reschedule cannabis so that it may be made available to qualified patients through legally licensed pharmacies and urges the state government to urge the federal government to do so as well. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

Section 12.26.060 Quality control encouraged.

The City of Berkeley strongly encourages all qualified patients, primary caregivers, and medical cannabis collectives to consult the available cannabis cultivation literature to ensure that the medical cannabis lawfully cultivated under state law is free of undesired toxins or molds. The City of Berkeley cautions that natural molding from improper storage, certain soils for indoor growing, foreign materials that unintentionally becomes lodged in cultivated cannabis, and pesticides, can all potentially render the medical cannabis totally unsafe for consumption. Collectives are encouraged to use their best effort to determine whether or not cannabis is organically grown. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

Section 12.26.070 Permissible quantities of medical cannabis.

The Compassionate Use Act allows Qualified Patients or their Primary Caregivers to possess or cultivate cannabis for the Qualified Patient's "personal medical purposes." Because each Qualified Patient will have different needs regarding appropriate Personal Medical Use, this Section seeks to ensure that each Qualified Patient or his or her Primary Caregiver can possess enough cannabis to meet the Qualified Patient's personal medical need.

A. Cultivation of Medical Cannabis. Notwithstanding any other provision of law, and pursuant to California Health and Safety Code Section 11362.77(c) as effective on January 1, 2004, all cultivation of cannabis for medical purposes by a Qualified Patient or Primary Caregiver shall be lawful and shall in no way be subject to criminal prosecution when said cultivation is conducted solely for the personal medical purposes of Qualified

Patients. Such lawful cultivation may include the cultivation and possession of both female and male plants at all stages of growth, clones, seedlings, and seeds, and related cultivation equipment and supplies. Medical Cannabis Collectives, Qualified Patients, Primary Caregivers, and cultivators may cultivate individually or collectively.

B. Possession of Medical Cannabis. Notwithstanding any other provision of law, and pursuant to California Health and Safety Code Section 11362.77(c) as effective on January 1, 2004, all possession of cannabis for medical purposes by a Qualified Patient or Primary Caregiver shall be lawful and shall in no way be subject to criminal prosecution when said possession is undertaken solely for the personal medical purposes of Qualified Patients. Medical Cannabis Collectives, Qualified Patients, Primary Caregivers, and cultivators may possess individually or collectively.

C. Property and Equipment. The rental, leasing, or providing of equipment or space utilized for cultivation, processing, or storage of medical cannabis in accordance with this Section shall be deemed lawful.

D. Size of Visible Cannabis Gardens. The City of Berkeley recognizes that large scale outdoor cultivation of cannabis may create a risk of theft. Accordingly, any Medical Cannabis Collective that cultivates cannabis plants outdoors (excluding secure rooftops, balconies, or other locations that are not visible from other buildings or land) or in a place that is visible with the naked eye from other public or private property, may cultivate no more than ten such visible plants at one time on a single parcel of property. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

Section 12.26.080 Transportation of medical cannabis.

A qualified patient or a primary caregiver of a qualified patient may transport medical cannabis within the City of Berkeley to the extent that the quantity transported and the method, timing, and distance of the transportation are reasonably related to the qualified patient's current medical need at the time of transport. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

Section 12.26.090 Medical cannabis paraphernalia.

A qualified patient and the primary caregiver of a qualified patient may possess paraphernalia that the qualified patient needs to smoke or otherwise consume medical cannabis. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

Section 12.26.100 Police procedures and training.

A. Within six months of the date that this chapter becomes effective, the training materials handbooks, and printed procedures of the Police Department shall be updated to reflect its provisions. These updated materials shall be made available to police officers in the regular course of their training and service.

B. Medical cannabis-related activities shall be the lowest possible priority of the Police Department.

C. Qualified patients, their primary caregivers, and medical cannabis collectives who come into contact with law enforcement will not be cited or arrested and dried cannabis or cannabis plants in their possession will not be seized if they are in compliance with the provisions of this chapter.

D. Qualified patients, their primary caregivers, and medical cannabis collectives who come into contact with law enforcement and cannot establish or demonstrate their status as a qualified patient, primary caregiver, or medical cannabis collective, but are otherwise in compliance with the provisions of this chapter, will not be cited or arrested and dried cannabis or cannabis plants in their possession will not be seized if (1) based on the activity and circumstances, the officer determines that there is no evidence of criminal activity; (2) the claim to be a qualified patient, primary caregiver, or medical cannabis collective is credible; and (3) proof of status as a qualified patient, primary caregiver, or medical cannabis collective can be provided to the Police Department within three business days of the date of contact with law enforcement. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

Section 12.26.110 Medical Cannabis Commission.

The purpose of this Section is to ensure that medical cannabis provision in Berkeley is conducted in a safe and orderly manner to protect the welfare of Qualified Patients and the community.

A. A medical cannabis commission is established. The commission shall consist of nine members. Appointments to the commission shall be made, and vacancies on the commission shall be filled, by council members, in accordance with the provisions of Sections 2.04.030 through 2.04.130. At least one commissioner

shall be a member of a medical cannabis dispensary, one shall be a member of a collective that is not a dispensary, and one shall be a cultivator who is not primarily associated with a single dispensary and provides medical cannabis to more than one dispensary.

B. The commission shall recommend to the City operational and safety standards for Medical Cannabis Collectives and Dispensaries, and shall consult with any individual, organization, affiliation, collective, cooperative or other entity which seeks to open a new Medical Cannabis Collective or dispensary in Berkeley or to relocate an existing Medical Cannabis Collective or dispensary. The commission shall advise the City as to whether the proposed Medical Cannabis Collective or dispensary has a strategy for compliance with the published safety and operational standards before the new Medical Cannabis Collective or dispensary commences lawful operation.

C. The commission will monitor the compliance of Medical Cannabis Collectives and dispensaries in Berkeley for the purpose of correcting any violations of the safety and operational standards. Medical Cannabis Collectives or dispensaries found to be in willful or ongoing violation of the standards shall be deemed in violation of this Chapter and referred to the City for appropriate action. (Ord. 7161-NS § 3, 2010: Ord. 7068-NS § 3 (part), 12/08/08)

Section 12.26.120 Emergency Distribution.

The City of Berkeley strongly opposes the federal prosecution of medical cannabis patients, caregivers, and providers. The City shall make all reasonable accommodation for the provision of medical cannabis to Qualified Patients or their Primary Caregivers in the event that access to medical cannabis is interrupted or severely diminished as the result of civil or criminal federal law enforcement activity. The City shall accommodate distribution of medical cannabis as early as possible following such a disruption and no later than thirty (30) days after the disruption. (Ord. 7068-NS § 3 (part), 12/08/08)

Section 12.26.130 Medical cannabis organizations.

A. Four medical cannabis dispensaries shall be allowed within the limits of the City of Berkeley, in locations and subject to the requirements specified in Title 23.

B. All medical cannabis facilities and organizations shall maintain contemporaneous financial and operational records sufficient to show compliance with this Chapter and state law governing medical cannabis, which shall be subject to inspection by the City. Such records shall protect the confidentiality of their members.

C. The City Manager may issue regulations to implement this Section. (Ord. 7161-NS § 4, 2010: Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 2 (part), 2004)

Section 12.26.140 Compliance with all applicable laws.

Nothing in this chapter shall be construed as excusing any person or entity from compliance with all other applicable federal, state and local laws. The City may make compliance with such laws a condition of deeming such person or entity in compliance with local law, except to the extent it would conflict with the purposes of this chapter. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 2 (part), 2004)

Section 12.26.150 Violations of square footage limitations not punishable as public offenses.

Notwithstanding anything to the contrary, violations of square footage limitation in Section 12.26.040.D shall not be punishable as public offenses to the extent that doing so would conflict with state law. (Ord. 7161-NS § 5, 2010)

ZONING ORDINANCE MEDICAL CANNABIS REGULATIONS

23E.16.070 Medical Cannabis Uses

A. 1. Subject to the licensing requirement of paragraph 3, four medical cannabis dispensaries as defined in Section [12.26.030](#) shall be permitted as of right with a Zoning Certificate in C-prefixed zones if they comply with the parking requirements applicable to the uses they include, and any security requirements promulgated by the Chief of Police. When applicable, Zoning Certificates for medical cannabis uses shall be issued without undue delay and following normal and expedient consideration of the permit application.

2. Medical cannabis dispensaries may not be located within 600 feet of another medical cannabis dispensary or a public or private elementary, middle or high school. It is the intent of the voters that the Council not adopt buffer zones from additional uses absent a compelling necessity.

3. No new medical cannabis dispensary may be approved under this Section until the City Council adopts a licensing process and standards for medical cannabis dispensaries. Such standards may include, but shall not be limited to, whether proposed dispensaries will provide a percentage of all usable product dispensed at no cost to very low income patients and will provide product that is produced using organic methods; and whether their form of organization, ownership and practices ensure equity and accountability, low prices and an adequate supply of high quality medical cannabis to their members.

B. A medical cannabis dispensary existing and authorized as of January 1, 2010, that does not comply with this Section, may continue at its current medical cannabis dispensing location and shall be considered a legal nonconforming use. Notwithstanding Section [23C.04.060](#) or subdivision (A)(2) of this Section, the Zoning Officer may approve an Administrative Use Permit to allow the expansion of a legal nonconforming medical cannabis dispensary use on any parcel or on two adjacent parcels where a dispensary was located on one of the parcels as of July 1, 2010.

C. Uses such as, but not limited to, testing, processing, and food preparation, that involve medical cannabis as defined in Chapter [12.26](#) but do not involve dispensing, client, patient or member services, or cultivation (other than for testing), shall be evaluated and regulated under this Title without regard to the fact that they involve medical cannabis, except that no commercial facility used for medical cannabis food preparation may be used for the preparation of any other type of food. (Ord. 7161-NS § 6, 2010: Ord. 7068-NS § 4 (part), 12/08/08)

Manufacturing District Zoning Regulations (adopted 11/10)

23E.72.040 Medical Cannabis Cultivation

A. Notwithstanding anything to the contrary in this Chapter, cultivation of medical cannabis as defined in Chapter [12.26](#) shall be permitted as a matter of right with a Zoning Certificate at 6 locations in the M District, subject to the following limitations:

1. Such locations shall be limited to licensed medical cannabis organizations.
 2. Medical cannabis may not be dispensed, and client, patient or member services are prohibited, at such locations.
 3. No single space used for cultivation and associated uses by a licensee may exceed 30,000 square feet, except that separate spaces used by different licensees may be aggregated on the same site.
- B. Such locations shall comply with security regulations promulgated by the Chief of Police, and the requirements of this Chapter, and shall not be subject to any buffer or deconcentration requirements. Such locations may include testing, processing, manufacturing and food preparation.
- C. No medical cannabis uses may be approved under this Section until the City Council adopts a licensing process and standards for such uses. Such standards shall include a requirement that indoor cultivation uses provide for an energy offset through a program specified by the City to offset the net increased energy that is used by the facility as compared to a regular industrial facility, and may include, but shall not be limited to, whether proposed facilities will provide a percentage of all usable product cultivated at no cost to very low income patients and will use organic methods in cultivation and processing to the maximum extent reasonable; and whether their form of organization, ownership and practices ensure equity and accountability, low prices and an adequate supply of high quality medical cannabis to their members. (Ord. 7161-NS § 7, 2010)