

RESOLUTION NO. 66,711-N.S.

ADOPTING RANKING AND ALLOCATION CRITERIA AND PROCEDURE FOR  
MEDICAL CANNABIS DISPENSARIES

WHEREAS, on July 1, 2014, the City Council adopted the first reading of a new Chapter 12.27 of the Berkeley Municipal Code, which establishes operating standards for medical cannabis dispensaries in Berkeley and will take effect thirty days following the second reading of the Ordinance; and

WHEREAS, when Chapter 12.27 becomes effective it will permit the operation of a limited number of additional dispensaries in Berkeley; and

WHEREAS, the City Council anticipates that there will be more applicants to operate the limited number of additional dispensaries than available slots, and accordingly some system for allocating those limited slots is necessary.

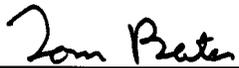
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Ranking and Allocation Process attached hereto as Exhibit A is hereby adopted.

The foregoing Resolution was adopted by the Berkeley City Council on July 1, 2014 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington,  
Wozniak and Bates.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Tom Bates, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, CMC, City Clerk

## **RANKING/ALLOCATION PROCESS FOR MEDICAL CANNABIS DISPENSARIES**

### **INTRODUCTION**

This process is adopted pursuant to and to implement Berkeley Municipal Code Chapter 12.27. The competitive process and criteria below will be used for determining which Dispensaries may fill any unoccupied slots under the City's 4-dispensary cap, adopted in 2010, and codified in Section 12.26.130. As of the adoption of this Process, there were three operating Dispensaries, and one open slot, however additional slots may become available in the future either as a result of attrition or amendment of Section 12.26.130, or for other reasons.

### **PUBLIC INFORMATION**

Applications and associated materials in the possession of the City are public records. While certain information will likely be exempt from disclosure, other information will not be, and some information will necessarily be made public as part of the ranking process. In complying with the Public Records Act, the City will make reasonable efforts to keep sensitive information from being disclosed, but cannot guaranty that information an applicant may want to be kept confidential will not be disclosed. The City will make reasonable efforts to notify applicants whenever requests for disclosure of their information are received. The City shall not in any way be liable for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act, and applicants assume the risk of such disclosure by submitting their applications.

### **SUMMARY OF PROCESS**

The ranking/allocation process shall consist of a single comprehensive application, and four rounds of evaluation, which are summarized below.

#### **Round 1: Application and Determination of Eligibility**

Staff will conduct a background and criminal history check and evaluate whether an application demonstrates eligibility under Section 12.27.030.

Each Principal must attain a passing grade on a Medical Cannabis competency test.

Successful applicants whose applications meet these requirements will be forwarded on to Round 2.

Materials submitted by applicants who do not pass the qualification round will be returned to them, and all copies of those materials will be destroyed.

## **Round 2: Initial Ranking – Minimum Qualifications**

Applicants will be ranked based on criteria below.

- Proposed Location(s) of business
- Business Plan
- Neighborhood Compatibility Plan
- Safety and Security Plan

The top 10 applicants would move on to Round 3.

## **Round 3: Second Ranking – Bonus Points**

Points will be awarded based on the categories listed below. The top five applications would move to the Selection process.

- Availability of Professional Services
- Community Benefits
- Enhanced Product Safety
- Environmental Benefits
- Labor & Employment
- Local Enterprise
- Location (final)
- Qualifications of Principals
- Consolidation

## **Round 4: Selection**

The City Council will then make the final decision from among the top five candidates.

## **DESCRIPTION OF PROCESS**

### **A. Round 1 – Application and Determination of Eligibility**

#### **1. Application Requirements**

Before accepting applications, the City will give at least 60 days public notice that applications to operate a Dispensary or Dispensaries will be accepted pursuant Chapter 12.27. The notice shall specify a deadline for submission of applications, as well as the number of Dispensaries for which applications will be accepted.

All Applicants will be required to submit an application on a form provided by the City. Applications shall be signed by a Principal under penalty of perjury that she or he has personal knowledge of the information stated in the application and that it is true.

The application shall include such information as the City may require that demonstrates compliance with applicable provisions of Chapter 12.27, as well as the following:

1. The name of a single point of contact for the applicant, who shall be a Principal.
2. All information required by Section 12.27.040.
3. A description of the Dispensary and its proposed location(s), including the address of any proposed facility with proof of ownership, lease, and or letter of owner's willingness to lease. A signed lease is not to be given any additional consideration until Round 3.
4. Plans for alteration of any existing buildings.
5. Business Plan. The business plan must contain as much detail as possible on the day-to-day operation of the Dispensary and how it will conform to applicable state and local laws and the Attorney General's Guidelines. The business plan shall describe: mechanisms for ensuring that the Dispensary will operate on a Not-for-Profit basis; a description of how Medical Cannabis will be tracked and monitored to prevent diversion, such as by verifying the status of recommending physicians and retaining all written recommendations from recommending physicians; a schedule for beginning operation, including a narrative outlining any proposed construction and improvements and a timeline for completion. The business plan shall include a budget for construction, operation, maintenance, compensation of employees, equipment costs, utility costs, and other operation and maintenance costs, and shall demonstrate sufficient capital in place to pay startup costs and at least three months of operating costs, as well as a description of the sources and uses of funds. Proof of capitalization shall be in the form of documentation of cash or other liquid assets on hand, Letters of Credit or other equivalent assets. The business plan shall also include a pro forma for at least three years of operation.
6. Neighborhood Compatibility Plan. The application must describe how the Dispensary, including its exterior areas and surrounding public areas, will be managed so as to avoid becoming a nuisance or having impacts on its neighbors and the surrounding community.
7. Location(s). The application must describe the proposed location or locations of the Dispensary, all confronting and abutting uses, transit access and accessibility and nearby sensitive uses.
8. Safety and Security Plan. The application shall include a detailed description of Fire prevention, suppression, HVAC and alarm systems that includes an assessment of the facility's fire safety by a qualified Fire prevention suppression consultant. An appropriate plan will have considered all possible fire, hazardous material, and inhalation issues/threats and will have both written and physical mechanisms in place to deal with each specific situation.

The security plan shall include a description and detailed schematic of the overall facility security. Applicants shall detail their operational security including but not limited to general security policies for the facility, employee specific policies, training, sample written policies, transactional security, visitor security, 3<sup>rd</sup> party contractor security, and delivery security. In particular Applicants should address ingress and egress access, perimeter security, product security (at all hours), internal security measures for access (area specific), types of security systems (alarms and cameras), and security personnel to be employed. The security plan shall also include an assessment of site security by a qualified security consultant. Security plans shall not be made public.

During the evaluation period, security plan details that could aid persons who wish to commit security violations shall be considered to be confidential and shall not be released unless ordered by a court.

9. Environmental Benefits. The application must describe any proposed “green” business practices relating to energy and climate, water conservation, and materials and waste management. Specific “green” practices that are encouraged are:
  - a. maximizing energy efficiency;
  - b. where applicable, applying for and using available PG&E programs for free technical assistance for design and construction of building shell, tenant improvements, building systems and processes;
  - c. using renewable energy;
  - d. reducing transportation emissions (e.g., use of biofuels, electric vehicles);
  - e. using green building measures;
  - f. any other efforts to reduce or offset any greenhouse gas emissions
  - g. reuse and remediation of Brownfield sites;
  - h. water conservation, including recycling and on-site treatment, if permitted
  - i. developing a zero waste plan for operations;
  - j. minimizing packaging and using recycled content, recyclable and reusable materials, throughout the supply chain;
  - k. implementing a reuse plan for materials used;
  - l. providing a prediction of and implementing an operational phase waste stream broken down by refuse, recycled materials and composted materials by volume;
  - m. using organic fertilizers and pest control measures; and
  - n. minimizing use of hazardous or toxic substances and preventing them from entering the soil, air or water.
  
10. Community Benefits. The application shall describe benefits that the Dispensary would provide to the local community. Examples of such benefits are:
  - a. providing re-entry jobs and job training to the unemployed;
  - b. contributing to/supporting domestic violence prevention programs;
  - c. contributing to/supporting Parks and Recreation Centers, libraries, or funding for arts, culture, and environmental programs;
  - d. contributing to/supporting Children/Youth programs and intervention services;

- e. contributing to/supporting substance abuse education and rehabilitation programs;
  - f. funding foreclosure prevention and foreclosure abatement programs, including eviction defense following foreclosure;
  - g. provision of high quality Medical Cannabis to low income Members;
  - h. any other neighborhood improvements.
11. Enhanced Product Safety. The application shall state how the Dispensary will ensure enhanced consumer safety by testing for biological and chemical contaminants, specified by the City Manager pursuant to state or federal standards for food, drugs or tobacco.
12. Labor and Employment. The application shall describe to what extent the Dispensary will adhere to heightened pay and benefits standards and practices, including recognition of the collective bargaining rights of employees. Specific practices that are subject to consideration include the following:
- a. providing compensation to and opportunities for continuing education and training of employees/staff (applications should provide proof of the Dispensary's policy and regulations);
  - b. being a "card check-neutral" facility;
  - c. having obtained pre-existing recognition from a certified labor union;
  - d. being party to a collective bargaining agreement with a certified labor union; and
  - e. providing a "living wage" to facility staff and employees. Wage scale should be provided in writing for all levels of employment at the facility. "Living Wage" shall mean 200% of the minimum wage mandated by California or Federal law, whichever is greater.
13. Local Enterprise. The application shall state the extent to which the Dispensary will be a locally managed enterprise whose Principals reside within Berkeley and/or the following adjacent cities: Albany, Kensington, Oakland and Emeryville.
14. Availability of Professional Services. The application shall state the extent to which the Dispensary will provide professional services related to the use of Medical Cannabis to Members, whether on- or off-site. Such services may include, but are not necessarily limited to, medical or technical consulting, referrals to providers of such services, mental health services, alternative health care to the extent permitted by state law, diet and nutritional advice, and similar types of services, but shall not include recommending the use of Medical Cannabis.
15. Qualifications of Principals. The application shall include information concerning any special business or professional qualifications or licenses of principals that would add to the number or quality of services that the Dispensary would provide, especially in areas related to Medical Cannabis, such as scientific or health care fields.

## **2. Determination of Eligibility**

Staff will undertake background and criminal history checks, verify whether the applications provide complete and accurate information and demonstrate compliance with the eligibility requirements of Section 12.27.030.

If an application meets these requirements, each Principal will be required to attain a passing grade on a Medical Cannabis competency test to demonstrate a working knowledge of state and local compliance standards.

Applications that include all required information will be considered.

Late and incomplete applications will not be considered.

Applicants who pass the Medical Cannabis competency test and whose applications meet these requirements will be eligible to continue to Round 2.

Determinations in Round 1 will be final and not be subject to appeal.

### **3. Competitive Ranking Process**

Applications that pass Round 1 will be reviewed by a three-person panel of City staff designated by the City Manager. The reviewing panel will evaluate applications in each succeeding round based on how well they satisfy the criteria for that round. In evaluating applications, the reviewing panel shall consider the quality and responsiveness of the application with respect to each of the topics covered. The evaluation and ranking of the applications and allocation of Dispensary slots shall lie within the sole judgment and discretion of the reviewers.

#### **B. Round 2 – Initial Ranking: Minimum Qualifications**

In Round 2, the reviewing panel will evaluate each application against the criteria in, and assign points based on, the following table.

<b>Topic</b>	<b>Maximum Possible Points</b>
Proposed Location(s)	400
Business Plan	300
Neighborhood Compatibility Plan	400
Safety and Security Plan	400
Total possible	1500

The top 10 applicants will move on to Round 3.

The reviewing panel will rank the remaining applicants by assigning points in each of the categories in the table below. "Consolidation" points shall be awarded for consolidation with one or more of the other top ten applications. The top five applications, based on the total number of points from Rounds 2 and 3 will then move to

the Selection process. In the case of a consolidated application, the average number of total points shall be used.

**C. Round 3 – Second Ranking: Bonus Points**

<b>Topic</b>	<b>Maximum Possible Points</b>
Availability of Professional Services	300
Enhanced Product Safety	200
Environmental Benefits	200
Community Benefits	300
Labor & Employment	300
Local Enterprise	500
Location (final)	500
Qualifications of Principals	500
Consolidation (with applicants that pass Round 2)	150 for each consolidation, maximum of 300
Total possible	2800 (plus up to 300 for consolidation)

**D. Round 4 – Selection**

Within 45 days after Round 3 is completed, each applicant shall conduct a public meeting in the area or areas proposed for its Dispensary. If no location in the immediate area is available, the applicant shall use a community facility that is as near as possible. Notice of such public meetings shall be on a form approved by the City and shall be provided as set forth in BMC Chapter 23B.32 for Use Permit public hearings. Within 5 days after notice of the public meeting is mailed, an applicant shall provide to the City a copy of the notice of the public meeting, a list of addresses to which it was sent, and an affidavit of mailing. An applicant that does not hold a public meeting within this period of time shall be disqualified.

After the public meetings are completed the applications shall be presented to the Medical Cannabis Commission, which may make a recommendation to the City Council.

The City Council will then establish the final ranking of applications and make its selection from among the top five.

Notice of the public meetings of the Commission and Council shall be provided as set forth in BMC Chapter 23B.32 for Use Permit public hearings.