

ORDINANCE - N.S. - 8-6-15 Version

Changes from March through August shown in track changes

ADDING A NEW CHAPTER 12.28 TO THE BERKELEY MUNICIPAL CODE RELATING TO CULTIVATION OF MEDICAL CANNABIS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That a new Chapter 12.28 is added to the Berkeley Municipal Code is amended to read as follows:

**Chapter 12.28
MEDICAL CANNABIS CULTIVATION**

Sections:

Article I General

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Article II Medical Cannabis Cultivation Businesses and Facilities

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Article I General

Comment [erg1]: Title changed per May MCC request.

12.28.010 Applicability

This Chapter applies to Medical Cannabis Cultivation.

12.28.020 Definitions

For purposes of this Chapter, the definitions in Sections [12.26.030](#) and 12.27.020, as well as the following definitions, shall apply.

A. "Medical Cannabis Cultivation Business" or "**Cultivation Business**" means a Medical Cannabis Organization as defined in Section 12.26.030.G, the primary activity of which is Cultivation.

Comment [erg2]: "Business" changed to "Cultivation Business" throughout document per June MCC vote.

B. "Medical Cannabis Cultivation Facility" or "Facility" means a building or other location where Medical Cannabis is cultivated.

C. "Member" means a qualified patient or primary caregiver as defined in California law who is also a member of a Collective or Dispensary pursuant to its rules and consistent with California law.

Article II Medical Cannabis Cultivation Businesses and Facilities

12.28.030 Eligibility requirements

A. No person may be allowed to be a Principal or employee of a **Cultivation Business** if he or she has been convicted of:

1. homicide;
2. within the preceding 10 years, any serious or violent felony listed in Penal Code Section [1192.7\(c\)](#) or Section [667.5\(c\)](#);
3. within the preceding 10 years, any violation of Penal Code Sections [243](#) through [247](#), except for subdivision (a) of Section 243;
4. within the preceding 10 years, any offense under Section 11361, or Articles 1, 3, 5, 6, or 7 of Chapter 6 of Division 10 of the Health and Safety Code; or
5. within the preceding 5 years any felony violation of Health and Safety Code Section [11358](#), Section [11359](#) or Section [11360](#).

Comment [erg3]: Staff will recommend keeping the reference to subdivisions (d) or (e) of Section 11357.

B. A **Cultivation Business** may only be operated by a Cooperative or Collective, and shall operate in a Not-for-Profit manner.

C. No Principal of any **Cultivation Business** may be a Principal for any other **Cultivation Business** in Berkeley.

D. A Dispensary may not own or control more than one Cultivation Business.

Comment [erg4]: Added by City Attorney in April per March MCC discussion.

E. Notwithstanding subdivisions C and D, a Dispensary may own or control a Cultivation Facility up to, but not exceeding, 30,000 square feet of Cultivation Facility, and a Cultivation Business may own or control up to one Dispensary.

Comment [erg5]: Added by City Attorney in August per March MCC discussion.

12.28.040 Information requirements

Every Cultivation Business shall provide the following information to the City, and shall update it annually and whenever there is any material change.

- A. A description of each Facility operated by the Cultivation Business and its location, which shall include such information as the City may require that demonstrates compliance with applicable provisions of this Chapter.
- B. The name, address and 24-hour contact information for each Principal, including a photocopy of at least one primary form of photo identification, such as a California Drivers License or US Passport. This information shall also include any aliases, maiden or married names or other former legal names.
- C. Proof of each Principal's status as a qualified patient or primary caregiver.
- D. For each Principal, a signed consent for the City to conduct a background check, including criminal history.
- E. Proof of the nature of the Cultivation Business's organizational status, such as articles of incorporation, by-laws, partnership agreements, and other documentation as may be appropriate or required by the City.

12.28.050 Operating Standards

Cultivation Businesses and Facilities shall comply with Health and Safety Code Sections [11362.7](#) et seq. and any other state laws that may be adopted concerning Medical Cannabis, the Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, and Chapters [12.26](#) and 12.27 and Title 23 of the Berkeley Municipal Code, and any other applicable City laws or regulations, and shall pay all applicable state or local taxes. Dispensaries shall also comply with the operating standards set forth in this Section.

- A. General operating standards.

1. Cultivation Businesses may consist only of Members, and only Members may work at a Facility.

2. ~~A Principal or designated Member of the Board of a Cultivation Business must be a member of the eDispensary or eCollective that the Cultivation Business they supplies to. Businesses may only obtain Medical Cannabis from, and supply Medical Cannabis to, Medical Cannabis Organizations of which at least one of their Principals is a Member.~~

Comment [erg6]: Changed per June MCC vote.

3. ~~The scale of Cultivation by a Business shall be proportional to the Member load of the Medical Cannabis Organizations to which it supplies Medical Cannabis or Medical Cannabis Products.~~

Comment [erg7]: Removed per March MCC vote

4. Businesses may not admit any person as a Principal or employee without first verifying his or her status as a qualified patient or primary caregiver as defined by state law, and shall immediately terminate the involvement or employment of any person who diverts Medical Cannabis or Medical Cannabis Products for non-medical use or in any manner not permitted by this Chapter 12.26, Chapter 12.27 or California law.

5. ~~Cash on hand shall be minimized, and no more than \$1000.~~

Comment [erg8]: Per MCC vote 5-7-15

6. No physician recommendations for Medical Cannabis may be provided on site.

B. Non-diversion. Cultivation Businesses shall take all practicable steps necessary to prevent and deter diversion of Medical Cannabis or Medical Cannabis Products to non-Members. Cultivation Businesses must limit access to Medical Cannabis and Medical Cannabis Products to authorized personnel only, and must maintain an inventory management system that:

1. Accounts for all Medical Cannabis and Medical Cannabis Products;

2. Tracks each Batch of Medical Cannabis and Medical Cannabis Products produced by the Cultivation Business from each Facility, including each Batch's approximate content of Active Ingredients and Cannabis By-Products as a percentage of weight;

3. Retains all information listed in paragraphs 1 and 2 above for a period of at least 120 days from production of the Batch; and

4. Is capable of producing a summary showing the information necessary to verify non-diversion.

C. Product Distribution.

Cultivation Businesses may only provide Medical Cannabis or Medical Cannabis Products to other Medical Cannabis Organizations that are permitted by local authorities or permissible under local law.

D. Members and employees.

All employees and volunteers must be Members who are at least 18 years of age.

E. Security.

1. **Cultivation** Businesses shall provide adequate security and lighting at each Facility -to ensure the safety of persons and protect the premises from theft at all times. Lighting shall be of sufficient intensity to illuminate all areas of the lot.

2. **Cultivation** Businesses must maintain security guards and camera coverage of the entire grounds of each Facility to an extent sufficient to ensure the safety of persons and deter crime. Cameras must be maintained in good condition, and use a format approved by the City Manager, which is of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime. The cameras shall be in use 24 hours per day, seven (7) days per week. The areas to be covered by the security cameras include, but are not limited to, distribution areas, storage areas, cultivation areas, all doors, parking lots, and any other area determined by the City Manager. Surveillance footage must be retained for a period of 90 days and made available to the Berkeley Police Department for purposes of investigation of alleged crimes, promptly upon request without the necessity of a warrant or subpoena. Retention and maintenance of security camera recordings shall comply with Section [12.28.110](#).

Comment [erg9]: Checking with BPD to get opinion on need for security guards.

3. Facilities must be equipped with an alarm system that is operated and monitored by a security company licensed by and in good standing with the California Department of Consumer Affairs. Alarms shall be maintained and in good working condition at all times.

4. In order to prevent unauthorized entry to a Facility during non-business hours, a Business shall either secure all exterior windows and roof hatches from the inside with bars, retractable, folding or sliding metal gates, or metal rollup or accordion doors, or provide at least one security guard during those hours.

5. Any security guards employed by **Cultivation** Businesses shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times. Security personnel may not be armed.

6. All Medical Cannabis- and, Medical Cannabis Products shall be securely stored at all times, and the entrance to all storage areas shall be locked and under the control of staff.

7. **Cultivation** Businesses shall make transactions with payment methods other than cash whenever feasible. All cash received, except that needed for retail customer transactions shall be kept in a secure receptacle such as a drop safe or other type of safe.

F. Neighborhood compatibility.

1. Facilities shall be operated in a manner that ensures neighborhood compatibility, and shall take all steps necessary to ensure that they do not create

neighborhood disturbances. Such measures shall include, but not be limited to, providing a security guard to patrol the area surrounding the Facility during all hours of operation.

2. Facilities shall provide the Police Department and all residents, businesses and property owners within 100 feet with the current name, phone number, secondary phone number and e-mail address of an on-site community relations staff person to whom notice of any operating problems associated with the Facility may be reported.

This information shall be updated as necessary to keep it current. Cultivation Businesses shall encourage neighbors to call this person to try to solve any operating problems.

3. All Cultivation Businesses shall have an on-site manager at each Facility who is responsible for overall operation at all times that employees are conducting operations, and shall provide the Police Department with contact information for all such persons, including telephone number and e-mail address. Cultivation Businesses shall also provide the Police Department with the current name and phone numbers of at least one 24-hour-on-call manager. This information shall be updated as necessary to keep it current.

4. Cultivation Businesses shall take all reasonable steps to discourage and correct objectionable conditions that constitute a public or private nuisance in parking areas, sidewalks, alleys and areas surrounding a Facility and adjacent properties. Such conditions include, but are not limited to: smoking; creating a noise disturbance; loitering; littering; and graffiti.

5. Cultivation Businesses shall ensure all graffiti is removed from property and parking lots under their control within 72 hours of its appearance.

G. Dispensing and Consumption of Medical Cannabis, Tobacco and Alcohol.

1. Dispensing of Medical Cannabis or Medical Cannabis Products to end users at a Facility is prohibited.

2. Sale or consumption of tobacco is prohibited at Facilities.

3. ~~Sale, and/or service and consumption of alcoholic beverages at Facilities is prohibited, and Businesses shall prohibit any person in possession of an alcoholic beverage from entering or remaining at a Facility.~~

4. ~~This subdivision does not prohibit the testing of Medical Cannabis Products, or the use of non-combustible Medical Cannabis, Medical Cannabis Products or Edibles by persons for whom such use is not a crime under California law, for treatment of medical conditions pursuant to a recommendation by a physician by staff of a Dispensary or the use of tinctures or topical Medical Cannabis Products that do not have intoxicating effects.~~

Comment [erg10]: Changed per March MCC vote

Comment [erg11]: Changed per March MCC discussion. Reference to non-combustible Medical Cannabis added by staff in August to cover vaping.

H. Accessibility. Facilities shall comply with all physical accessibility requirements that would be applicable to a newly-constructed building.

12.28.060 Signage

No signage is required. Signage is discouraged.

12.28.070 Product Safety, Quality Assurance and Labeling

Medical Cannabis and Medical Cannabis Products shall be tested, and specified compounds shall be quantitated, as set forth in this Section.

Comment [erg12]: Changes in Sections A, B and C are suggested by staff and the City Attorney as of a conversation with testing facilities in July 2015. These changes have not been reviewed or discussed by the MCC – discussion is scheduled for the September meeting.

A. The following compounds shall be quantitated as set forth in the following table, using equipment and methodologies with limits of detection for all compounds no greater than 0.1% by weight, or 1 mg/g.

Constituent	Equipment/Methodology
THCA	HPLC ¹ , or GC ² with derivatization, <u>or other methodology approved by a state or the federal government as meeting a limit of quantitation of 0.1% by weight</u>
THC	
CBDA	
CBD	
CBN	
¹ High-performance liquid chromatography ² Gas chromatography	

B. The quantitative information required by subdivision A shall be printed on labels for all Medical Cannabis and Medical Cannabis Products as set forth in the following table.

Product type	Label information
Cannabis (flowers, leaf and concentrates, <u>including water processed concentrates</u>)	% by weight and mg/g
Edibles (other than beverages)	mg/package or mg/serving if applicable; nutritional and allergen information as required by the CDPH for cottage foods
Capsules/pills	mg/capsule
Oils, butters, tinctures (for internal consumption)	weight/volume mg/g
Topicals (external application)	mg/g or mg/mL, as applicable

Product type	Label information
Beverages	mg/container and mg/serving, if applicable; nutritional and allergen information as required by the CDPH for cottage foods.

C. Medical Cannabis and Medical Cannabis Products shall be tested for contaminants as set forth in the following table. Medical Cannabis and Medical Cannabis Products that contain more than the permissible levels may not be provided to any Member or any other person, and shall either be destroyed or returned to their source(s).

Contaminant	Testing methodology	Permissible amount
<u>EPA-controlled pesticides commonly used in cannabis cultivation</u>	<u>Any methodology that the City determines is sufficiently sensitive to determine that the permissible amount has not been exceeded, using EPA-or FDA-accepted methodologies for pesticides, including, not limited to, GC-MS¹, Elisa²</u>	100 ppb (total of all <u>quantitated pesticides</u>) ³
Microbiological contaminants	<u>Any methodology approved by any U.S. or recognized international standards organization</u> <ul style="list-style-type: none"> • <u>AOAC⁴ 986.33</u> • <u>AOAC 997.02 (Milk and Dairy Standards)</u> • <u>AOAC 991.14</u> • <u>PCR⁷ or Petrifilm</u> • <u>PCR or Petrifilm</u> • <u>PCR or Petrifilm</u> 	• APC ⁶⁴ < 100,000 CFUs ⁶⁵ (Plating only),
		• Yeast/Mold = APC < 10,000 CFUs (Plating only)
		• Coliform ≤ 1,000 CFUs (Plating only)
		• Pseudomonas ≤ 1,000 CFUs
		• Salmonella = 0 CFU
		• E. coli = 0 CFU (PCR)
Residual flammable solvents (concentrates only)	Head space analysis	400 ppm (total of all solvents) ⁸⁶

¹ Gas chromatography-mass spectrometry

Contaminant	Testing methodology	Permissible amount
² Enzyme-linked immunosorbent assay		
³ Parts per billion		
⁴ Association of Analytical Communities		
⁵⁴ Aerobic plate count		
⁶⁵ Colony-forming unit		
⁷ Polymerase chain reaction		
⁸⁶ Parts per million		

D. Cultivation Businesses shall maintain a written or computerized log documenting:

1. the date, type, and amount of Product tested;
2. the source(s) of any contaminated Medical Cannabis or Medical Cannabis Products;
3. the report containing the results of the testing, including the name and level of the substance detected; and
4. the disposition of the Medical Cannabis or Medical Cannabis Product from which the contaminated sample was obtained, including the amount and the date and manner of disposition.

Such logs shall be maintained for at least one year and made available to the City upon request.

E. Packaging and Labeling for Medical Cannabis and Medical Cannabis Products.

1. Medical Cannabis and Medical Cannabis Products shall be contained in packaging that bears labels containing the following information, in addition to any other information that a Cultivation Business may choose to provide or that may be required by law:
 - a. the name and contact information for the Facility;
 - b. the weight;
 - c. the quantity of compounds as set forth in subdivision B;
 - d. the date of manufacture or production; and
 - e. a complete list of ingredients.
2. Scales and weighing mechanisms must be able to weigh to within 1/100th of a gram, shall be maintained in good working order and shall be subject to annual inspection by either the Alameda County Department of Agriculture/Weights and Measures or a licensed scale company.

F. Definitions.
For purposes of this Section, the following terms are defined as set forth below.

1. Compound(s) means any or all of the following chemicals, as the context requires:
 - a. "THC" or "Δ9-THC" means Δ^9 -tetrahydrocannabinol, (–)-(6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a-tetrahydro-6H-benzo[c]chromen-1-ol.
 - b. "THCA" or "Δ9-THCA" means the acid form of THC.
 - c. "CBD" or "Cannabidiol" means 2-[(1R,6R)-6-isopropenyl-3-methylcyclohex-2-en-1-yl]-5-pentylbenzene-1,3-diol.
 - d. "CBDA" or "Cannabidiolic acid" means the acid form of CBD.
 - e. "CBN" or "Cannabinol" means 6,6,9-trimethyl-3-pentyl-benzo[c]chromen-1-ol.
2. "Concentrate" means any oil or butter into which any Compound has been infused or otherwise dissolved.
3. "Contaminant" means any pesticide, residual solvent or microbiological organism or product thereof.
4. "Solvent" means any substance in which another substance is dissolved, forming a solution.
5. "Tincture" means an extract of Cannabis or solution of such, typically made with alcohol.

12.28.080. Energy use

Comment [erg13]: Energy use section added by staff/City Attorney April 2015

A. A Facility may not be approved unless it includes all cost-effective water and energy efficiency measures, including but not limited to natural daylight, high efficiency task lighting, natural ventilation, on-site renewable generation, automatic controls, water collection, filtration and reuse, and rainwater harvesting. The application for a Facility shall include a description of all energy and water systems, measures employed to maximize efficient resource use, and the following metrics, with supporting documentation:

1. Planned lighting power density (watts per square foot)
2. Planned lighting Energy Utilization Index (kBtu/sf/year)
3. Planned total site Energy Utilization Index (kBtu/sf/year)
4. Planned potable water consumption (gallons/sf/year)

B. A Cultivation Business shall mitigate the carbon dioxide emissions caused by the generation of electrical energy delivered to its Facility through either:

1. purchase of renewable energy certificates certified by the Center for Resource Solutions;
2. a local carbon offset fund established by the City of Berkeley.

C. If a Facility uses natural gas to generate electricity for consumption at the site, the Cultivation Business shall offset the carbon content of all electrical energy delivered to the Facility through either:

1. a program that is included in one of the Offset Project Registries approved by the California Air Resources Board and consists of a project or projects that are solely located in the United States and are either producing energy or reducing energy consumption;
2. a local carbon offset fund established by the City of Berkeley.

D. For purposes of calculating carbon emissions, the carbon dioxide content of natural gas shall be 5.302 metric tons per 1,000 therms and the carbon dioxide content for electricity shall be the value, at the time of filing, from the most recent Power Content Label published by the California Energy Commission.

E. The Cultivation Business shall be responsible for demonstrating compliance on a calendar-year basis. Documentation shall include copies of energy and water bills, as well as an authorization to energy and water providers to disclose energy and water consumption at the Facility directly to the City. All parties that are responsible for energy and water bills shall also be responsible for providing such documentation and authorization.

12.28.090 Records

A. General. All Cultivation Businesses and Facilities shall maintain contemporaneous financial and operational records sufficient to show compliance with this Chapter, Chapter [12.26](#), and applicable California law, as well as satisfaction of commitments made in the Cultivation Business's application and during the ranking and allocation process. Such records shall be maintained in a secure location under the control of the Cultivation Business within the City of Berkeley, and shall be subject to inspection by the City upon reasonable notice during regular operational hours or by appointment.

B. Finances.

1. Cultivation Businesses shall operate on a Not-for-Profit basis. Sale of Medical Cannabis to cover anything other than reasonable compensation and reasonable out-of-pocket expenses is explicitly prohibited. To the extent they provide goods or services not related to Medical Cannabis, Cultivation Businesses need not operate on a Not-For-Profit basis.

2. Cultivation Businesses shall make their financial records available to the City on an annual basis. Such audited records shall be limited to information necessary for the

City to determine the not-for-profit status of the organization and shall include information on staff/principal compensation.

C. Qualified Patient or Primary Caregiver status. Cultivation Businesses shall keep an accurate roster of all Principals and employees, which shall include either the State of California Medical Marijuana Identification Card number issued by a county pursuant to Health & Safety Code Sections 11362.7 et seq. or a copy of a physician's referral and, if any such person is a Primary Caregiver, a written authorization from the Qualified Patient to be represented by such Primary Caregiver. Such records shall be maintained in a manner that protects the confidentiality of all persons identified therein.

D. Operations. Cultivation Businesses shall maintain the following information and make it available to the City within 30 days of the end of each calendar year.

1. The Collectives and /or Dispensaries of which the Principals and employees are Members.

2. The total amount of revenue collected during the year;

3. The consideration received for each Batch;

4. Monetary and non-monetary contributions;

5. Total monetary and non-monetary distributions to Members of any of the Dispensaries and/or Collectives of which the Principals or employees are Members, other than Medical Cannabis, Medical Cannabis Products or Edibles provided for monetary consideration;

6. Salaries and overhead; and

7. A complete list of the types of Medical Cannabis, Medical Cannabis Products and Edibles available, and the prices thereof.

E. Convictions. Cultivation Businesses shall immediately report any conviction of a person subject to Section 12.28.030.A that would cause him or her to be ineligible to be a Principal or employee.

12.28.100 Ranking and allocation procedure and criteria

The Council may by resolution establish procedures and criteria for accepting applications to operate Facilities and determining which, if any, to approve.

12.28.110 Confidentiality of information

A. The City's review of information submitted or maintained pursuant to this Chapter shall preserve the confidentiality of all information about Principals to the maximum extent consistent with state and local law. The City shall incur no liability for the inadvertent or negligent disclosure of such information. Disclosure of any Principal

information to the City for purposes of this Chapter shall not be deemed a waiver of confidentiality. Financial information provided to the City pursuant to Section [12.28.090](#) shall be deemed to be "financial information" covered by Chapter [7.26](#).

B. The information required by Section [12.28.040](#) and recordings from security cameras, shall be confidential and shall not be subject to public inspection or disclosure except to City employees for purposes of law enforcement.

C. In order to protect confidentiality, Dispensaries shall not collect or maintain Protected Health Information. Dispensaries shall maintain membership records and information about members in a manner that ensures that the information will not be disclosed except as required by this Chapter or other laws. If a Dispensary maintains information conveyed by a Member to a Dispensary regarding such Member's medical condition, information conveyed by a Member to a Dispensary regarding efforts to ameliorate or otherwise address symptoms associated with such Member's medical condition, or information regarding Medical Cannabis, Medical Cannabis Products and/or Edibles provided to a Member, such information shall be kept in a manner that is in compliance with the Confidentiality of Medical Information Act. Membership lists shall be available to City employees charged with the administration of this Chapter for inspection on site without a warrant during business hours or by appointment.

Article III Enforcement

12.28.120 Authority of City Manager

A. The City Manager or his or her designee shall have authority to determine the nature of any purported [Cultivation](#) Business or Facility and whether that [Cultivation](#) Business or Facility complies with any of the requirements of this Chapter and to conduct inspections as provided in Chapter [1.16](#).

B. The City Manager or his or her designee shall have authority to enter onto private property and perform such inspections as may be necessary or convenient to implement and enforce this Chapter, and to adopt regulations to implement this Chapter.

12.28.130 Abatement of violations

A. Violations of this Chapter shall constitute a public nuisance under Chapter [1.26](#). The City may enforce this Chapter through proceedings under Chapter [1.24](#), Chapter [1.28](#), Chapter [23B.64](#) and any other law or ordinances it deems appropriate.

B. Notwithstanding anything to the contrary, violations of this Chapter shall not be punishable as public offenses to the extent that doing so would conflict with state law.

12.28.140 Fees

The City Council may establish by resolution the fees that shall be charged for administration and implementation of this Chapter. The adoption of such fees shall not prevent the City from recovering enforcement costs not specified in such resolution.

12.28.150 Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. Posting.

Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.