

ORDINANCE NUMBER N.S.

AMENDING BERKELEY MUNICIPAL CODE (BMC) CHAPTER 12.26 TO REGULATE THE NUMBER AND LOCATION OF MEDICAL CANNABIS DISPENSARIES

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

Section 1. That Sections 12.26.010 and 12.26.030 of Berkeley Municipal Code Chapter 12.26 shall be amended to read as follows:

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.

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 of medical cannabis for qualified patients.

E. "Medical cannabis dispensary" shall mean any person or entity that dispenses, cultivates, stores or uses medical cannabis except where such cultivation, storage or use is by a patient or that patient's caregiver, incidental to residential use by such patient, and for the sole use of the patient who resides there.

Section 2. That BMC Sections 12.26.110 and 12.26.120 are hereby added to read as follows:

12.26.110 Medical cannabis dispensary.

No more than three medical cannabis dispensaries shall be located within the limits of the City of Berkeley. No such dispensary shall be located within a 1000 foot range of another such dispensary, nor within 1000 feet of a public elementary, middle or high school. Any dispensary existing at the time this ordinance becomes effective, may continue at its current location, notwithstanding its violation of the de-concentration requirements of this section. The City Manager may issue regulations to implement this section.

12.26.120 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.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 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.