

ORDINANCE NO 7,161-N.S.

AMENDING ORDINANCE PERTAINING TO MEDICAL CANNABIS BY AMENDING SECTIONS 12.26.030, 12.26.040, 12.26.110, 12.26.130 AND 23E.16.070 OF THE BERKELEY MUNICIPAL CODE, ADDING SECTIONS 12.26.150 AND 23E.72.040 TO THE BERKELEY MUNICIPAL CODE, AND GRANTING THE CITY COUNCIL AUTHORITY TO MAKE AMENDMENTS

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

Section 1. That subdivisions (D) and (E) of Section 12.26.030 of the Berkeley Municipal Code are amended, and a new subdivision (F) is added, to read as follows:

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.

Section 2. That subdivision (D) of Section 12.26.040 of the Berkeley Municipal Code is amended to read as follows:

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).

Section 3. That Section 12.26.110 of the Berkeley Municipal Code is amended to read as follows:

### **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.

Section 4. That Section 12.26.130 of the Berkeley Municipal Code is amended to read as follows:

### **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.

Section 5. That Section 12.26.150 is added to the Berkeley Municipal Code to read as follows:

### **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.

Section 6. That Section 23E.16.070 of the Berkeley Municipal Code is amended to read as follows:

### **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.

Section 7. That Section 23E.72.040 is added to the Berkeley Municipal Code to read as follows:

### **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.

Section 8. The City Council may amend Chapter 12.26 and Title 23 or adopt other ordinances and regulations, as it deems appropriate in its sole discretion to: license medical cannabis organizations; provide for the continued safe and adequate supply of medical cannabis at a fair price for Berkeley medical cannabis patients in a manner consistent with state law; refine land use regulations pertaining to medical cannabis-related uses; protect against unfair or monopolistic practices in the medical cannabis industry; and prevent and/or remedy any threats to public health, safety or welfare, or nuisance conditions, that arise as a result of the cultivation or dispensing of medical cannabis or other activities related to medical cannabis. In addition, this measure grants the City Council the authority to amend any provision of Title 23 of the Berkeley Municipal Code as it deems appropriate in its sole discretion.

At a regular meeting of the Council of the City of Berkeley held on December 7, 2010, this Ordinance was adopted by the following vote:

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

Noes: None.

Absent: None.

ATTEST:

  
Deanna Despain, CMC, City Clerk

  
Tom Bates, Mayor

Date signed: 9 Dec 10