

ORDINANCE NO. 7,360–N.S.

ADDING A NEW CHAPTER 12.27 TO THE BERKELEY MUNICIPAL CODE
REGULATING MEDICAL CANNABIS DISPENSARIES AND COLLECTIVES

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

Section 1. That a new Chapter 12.27 is added to the Berkeley Municipal Code to read as follows:

Medical Cannabis Dispensaries and Collectives

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Article I General

12.27.010 Applicability

A. This Chapter applies to Medical Cannabis Dispensaries (“Dispensaries”) and Collectives as defined in Section 12.26.030.

B. The three existing Dispensaries permitted as of January 1, 2012, under Berkeley Municipal Code section 12.26.130 shall have a grace period of 12 months from the effective date of this ordinance to comply with it. Any such Dispensary that substantially complies with this ordinance by that time may continue to operate and shall not be required to participate in the ranking and allocation process under 12.27.100. Any such dispensary that does not substantially comply with this ordinance by that date shall cease operation, but may apply to operate under Berkeley Municipal Code section 12.27.100 on the same basis as any other applicant.

12.27.020 Definitions

For purposes of this Chapter, the definitions in Section 12.26.030, as well as the following definitions, shall apply.

A. "Active Ingredients" means, in the case of dried cannabis flowers, extractions or infusions, delta-9-tetrahydrocannabinolic acid, delta-9-tetrahydrocannabinol, cannabidiolic acid, cannabidiol, and any cannabinoid or propyl cannabinoid derivative when present in amounts greater than .5% by dry weight, and any mono- or sesquiterpenoid present in an amount exceeding .3% of a product's dry weight.

B. "Batch" means:

1. a discrete quantity of dried Medical Cannabis that is all from the same crop grown in the same location and harvested in the same manner and at the same time;
2. a discrete quantity of other Medical Cannabis Product that has been prepared or processed in the same manner.

C. "Cannabis By-Products" means delta-8-THC and cannabinol when present in amounts greater than .2% of a product's dry weight

D. "Cultivate" and "Cultivation" mean activities related to the growing, harvesting, drying, curing, processing, manicuring and production of Medical Cannabis, and may include testing, manufacturing and preparation of Edibles, as long as the predominant use is cultivation of Medical Cannabis.

E. Medical Cannabis.

1. "Medical Cannabis" means Cannabis, as defined in Section 12.26.030.A, that is intended or used for medicinal purposes in compliance with state law.

2. "Medical Cannabis Product" is any non-edible product that contains Medical Cannabis.

3. "Edible Medical Cannabis Product" (or "Edible") is edible product that contains Medical Cannabis. Edible Medical Cannabis Products shall not be considered food for purposes of implementation of the California Retail Food Code (Health & Safety Code §§ 113700 *et. seq.*) or the California Sherman Food and Drug and Cosmetic Act (Health & Safety Code §§ 109875 *et. seq.*).

F. "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.

G. "Not-for-Profit" means that an organization receives compensation only for the reasonable costs of its operation, including reasonable compensation for products and services provided to Members to enable them to use Medical Cannabis pursuant to Health and Safety Code Sections 11362.7 *et seq.*; reasonable compensation for employees; reasonable out-of-pocket expenses incurred in providing those products or services, or both. Reasonable out-of-pocket expenses may include, but are not necessarily limited to, reasonable expenses for Member services and education, rent or mortgage, utilities, construction, furniture, maintenance, analytic testing, security, professional service costs, regulatory compliance costs, debt service, and reserves.

H. "Principal" means any person that has direct or non-delegated indirect authority over the management or policies of a Dispensary or the Medical Cannabis Organization (MCO) that operates it.

I. "Protected Health Information" means documentation of a Member's medical history or condition other than a physician's recommendation, an identification card issued pursuant to Health and Safety Code Section 11362.7 *et seq.*, or the written designation of a primary caregiver by a qualified patient or identification card holder. Protected Health Information shall not include 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 Cannabis or Medical Cannabis Products provided to a Member.

Article II Dispensaries

12.27.030 Eligibility requirements

A. No person may be allowed to have any position with a Dispensary other than that of Member 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 subdivisions (d) or (e) of Section 11357 or 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.

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

C. No Principal of any Dispensary may be a Principal for any other Dispensary in Berkeley.

12.27.040 Information requirements

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

A. A description of the Dispensary 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 Dispensary's organizational status, such as articles of incorporation, by-laws, partnership agreements, and other documentation as may be appropriate or required by the City.

12.27.050 Operating Standards

Dispensaries 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 Chapter 12.26 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. Membership.

1. Dispensaries may consist only of Members.

2. Dispensaries may only obtain Medical Cannabis from, and supply Medical Cannabis to, their Members.

3. No person other than a Member may Cultivate Medical Cannabis on behalf of a Dispensary.

4. The scale of Cultivation by or on behalf of a Dispensary shall be proportional to its Member load.

5. Dispensaries may not admit any person as a Member without first verifying his or her status as a qualified patient or primary caregiver as defined by state law, and shall immediately cancel the membership of any person who diverts Medical Cannabis for non-medical use or in any manner not permitted by this Chapter, Chapter 12.26 or California law.

6. Physicians' recommendations shall be verified prior to granting membership and at least every twelve (12) months thereafter, and a physical or digital record shall be kept of such verification. No Medical Cannabis may be dispensed except to a Member and pursuant to a recommendation that is no more than twelve (12) months old, unless the recommendation expressly states that it has a longer term or does not expire.

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

8. All prospective members must be advised in writing, prior to accession to membership, as follows: "WARNING: Medical cannabis products including edibles are not tested by local, state or federal governmental agencies for health, safety, or efficacy. There may be health risks associated with the consumption of these products."

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

1. Accounts for all Medical Cannabis, Medical Cannabis Products and Edibles;
2. Tracks each Batch of Medical Cannabis, Medical Cannabis Products and Edibles received by the Dispensary from its source, 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 receipt of the Batch; and
4. Is capable of producing a summary showing the information necessary to verify non-diversion.

C. Dispensing.

1. Dispensaries may not dispense to any person who is not a Member, and may not dispense without first verifying membership.

2. Dispensaries may not provide more Medical Cannabis to an individual than is necessary for that person's personal medical use, and may not dispense more than one ounce of dried Cannabis per day per qualified patient as defined in state law; provided that:

a. if a qualified patient has a physician's recommendation that this quantity does not meet his or her medical needs, the qualified patient or his or her primary caregiver may possess, and the Dispensary may dispense to him or her, an amount of Medical Cannabis consistent with those needs;

b. a Dispensary may provide more than one ounce of dried Medical Cannabis if the excess amount is low concentration Medical Cannabis that would not

normally be sold for consumption, and is only used for preparation of Medical Cannabis Products by a Member; or

c. a qualified patient needs a greater quantity due to a planned absence from the area.

3. Dispensaries may not distribute free samples for promotional purposes outside of the Dispensary premises.

4. If a Member has an identification card issued pursuant to Health & Safety Code Section 11362.71 or 11362.735, a Dispensary shall use the number from that card to ensure compliance with this subdivision.

D. Members and employees.

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

2. Dispensaries may not admit any person under 18 years of age to membership without written authorization of a parent or legal guardian. Any Member under 18 years of age shall be accompanied by a parent or legal guardian at all times that such person is at the Dispensary.

E. Security.

1. Dispensaries shall provide adequate security and lighting on-site 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. Dispensaries must maintain security guards and camera coverage of their entire grounds 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, dispensing 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 12.27.110.

3. Dispensaries 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 during non-business hours, a Dispensary 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 Dispensaries 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, Medical Cannabis Products and Edibles, except for limited amounts used for display purposes, samples or immediate sale, shall be securely stored at all times, and the entrance to all storage areas shall be locked and under the control of staff.

7. Dispensaries 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. Dispensaries shall be operated to ensure neighborhood compatibility, and shall take all steps necessary to ensure that Members do not create neighborhood disturbances. Such measures shall include, but not be limited to, providing a security guard to patrol the area surrounding the Dispensary during all hours of operation.

2. Dispensaries shall provide the Police Department and all residents 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 establishment may be reported. This information shall be updated as necessary to keep it current. Dispensaries shall encourage neighbors to call this person to try to solve any operating problems.

3. All Dispensaries shall have an on-site manager responsible for overall operation at all times they are open, and shall provide the Police Department with contact information for all such persons, including telephone number and e-mail address. Dispensaries 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. Dispensaries 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 the premises and adjacent properties. Such conditions include, but are not limited to: smoking; creating a noise disturbance; loitering; littering; and graffiti.

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

6. Dispensaries shall operate only between the hours of 9:00 a.m. and 9:00 p.m.

G. Consumption of Medical Cannabis, Tobacco and Alcohol.

1. Smoking of Medical Cannabis is prohibited at Dispensaries and within 50 feet of Dispensaries on the public right of way. For purposes of this subdivision, the term "smoking" does not include the use of an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of Medical Cannabis, including but not limited to any device manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

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

3. Sale, service and consumption of alcoholic beverages at Dispensaries is prohibited, and Dispensaries shall prohibit any person in possession of an alcoholic beverage from entering or remaining on the premises.

4. This subdivision does not prohibit the testing of Medical Cannabis Products by staff of a Dispensary or the use of tinctures or topical Medical Cannabis Products that do not have intoxicating effects.

H. Accessibility. Dispensaries shall comply with all physical accessibility requirements that would be applicable to a newly-constructed building, except that pre-existing Dispensaries permitted under Ordinance No. 6826 – N.S. shall not be required to comply with such requirements as long as they remain in the same location as when this Chapter became effective, except as may be required by other laws.

I. Termination of Membership.

A Dispensary shall terminate the membership of any Member of whom it is aware who purposely or repeatedly violates the limitations in this Section or who operates a motor vehicle after ingesting any Medical Cannabis Product at that Dispensary. Prompt termination of membership under this subdivision shall be considered in any enforcement proceeding against a Dispensary.

12.27.060 Signage

A. A sign shall be posted at the entrance to any Dispensary that includes the following language:

This Dispensary only provides medical cannabis to its members, who must have legally recognized California Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis.

The required text shall be of sufficient size to be easily read from a distance of five feet.

B. A sign shall be posted in a conspicuous location inside the structure at the location advising:

This Dispensary is registered in accordance with the laws of the City of Berkeley. The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of State law. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.

C. A sign or signs shall be posted in a location or locations conspicuous from all sales areas inside the structure that state:

WARNING: Medical cannabis products including edibles are not tested by local, state or federal governmental agencies for health, safety, or

efficacy. There may be health risks associated with the consumption of these products.

The required text shall be of sufficient size to be easily read from a distance of five feet.

12.27.070 Product Safety, Quality Assurance and Labeling

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

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
THC	HPLC, or GC with derivatization
CBDA	HPLC, or GC with derivatization
CBD	HPLC, or GC with derivatization
CBN	HPLC, or GC with derivatization
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, Medical Cannabis Products and Edibles as set forth in the following table.

Product type	Label information
Cannabis (flowers, leaf and concentrates)	% 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
Beverages	mg/container and mg/serving, if applicable; nutritional and allergen information as required by the CDPH for cottage foods.

C. Medical Cannabis, Medical Cannabis Products and Edibles shall be tested for contaminants as set forth in the following table. Medical Cannabis, Medical Cannabis Products and Edibles 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
Pesticides	GC-MS ¹ , Elisa ²	100 ppb (total of all pesticides) ³
Microbiological contaminants	<ul style="list-style-type: none"> • AOAC⁴ 986.33 • AOAC 997.02 (Milk and Dairy Standards) • AOAC 991.14 • PCR⁷ or Petrifilm • PCR or Petrifilm • PCR or Petrifilm 	<ul style="list-style-type: none"> • APC⁵ <100,000 CFUs⁶ (Plating only), • Yeast/Mold= APC<10 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) ⁸
¹ Gas chromatography-mass spectrometry ² Enzyme-linked immunosorbent assay ³ Parts per billion ⁴ Association of Analytical Communities ⁵ Aerobic plate count ⁶ Colony-forming unit ⁷ Polymerase chain reaction ⁸ Parts per million		

D. Baked goods, such as cookies and brownies, shall be exempt from testing for contaminants. These products are still subject to testing for potency, as required for the label information in Section 12.27.070.B, and must use medical cannabis that has been tested for contaminants.

E. Dispensaries 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, Medical Cannabis Product or Edibles;
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, Medical Cannabis Product or Edible 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.

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

1. Medical Cannabis and Medical Cannabis Products that is made available to members shall be contained in packaging that bears labels containing the following information, in addition to any other information that a Dispensary may choose to provide or that may be required by law:

- a. the name and contact information for the Dispensary;
- 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.

G. Preparation, Packaging and Labeling of Edibles.

1. Edibles. Edibles shall be limited to those items approved in the California Homemade Food Act, Chapter 6.1 (commencing with Section 51035) of Part 1 of Division 1 of Title 5 of the Government Code.

2. Compliance with State Food Safety Requirements. A Dispensary that prepares, dispenses, or in any manner distributes Edible Medical Cannabis Products must comply with the relevant provisions of all State and local laws specified by the City Manager regarding the preparation, distribution, labeling and sale of food, even if those laws are not directly applicable to Edibles. Any facility used by a Dispensary to produce Edibles shall be constructed, operated and inspected in accordance with the applicable building code and applicable food safety requirements.

3. Preparation of Edibles.

a. Individuals involved in the production or distribution of Edibles containing Medical Cannabis shall thoroughly wash their hands before commencing production and before handling the finished product. Gloves must be worn when packaging edible products containing Medical Cannabis.

b. In order to reduce the likelihood of foodborne disease transmission, individuals who are suffering from symptoms associated with acute gastrointestinal illness or are known to be infected with a communicable disease that is transmissible through foodstuffs are prohibited from preparing edible products containing Medical Cannabis until they are free of that illness or disease, or are incapable of transmitting the illness or disease through foodstuffs. Individuals who have sores or cuts on their hands must use gloves when preparing and handling edible products containing Medical Cannabis.

c. Edibles that are produced or distributed at a Dispensary may only be prepared by a Member of that Dispensary and, if prepared in Berkeley, shall only be prepared in a facility permitted and inspected for the production of food by a government agency, such as a commercial kitchen or a facility operating in accordance with the California Homemade Food Act.

d. Certified Food Handler. A Member who produces Edible Medical Cannabis Products must be a State certified food handler. The valid certificate number of such Members must be on record at each Dispensary where the edible product is distributed, and a copy of the certificate kept either on-site, or made available during inspections if kept off-site.

e. Hand-washing Facilities. Hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Handwashing facilities shall be located in the facility in Edible preparation areas and where good sanitary practices require employees to wash and/or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices.

4. Packaging of Edibles.

a. All Edibles shall be individually wrapped at the original point of preparation. Labeling shall be distinctly and clearly legible on the front of the package and must include: (i) a warning if nuts or other known allergens are used; (ii) a warning that the item is a medication containing Medical Cannabis and the total weight (in ounces or grams) and amount of Active Ingredients in the package; (iii) the date of manufacture; (iv) a statement that the contents are not a food product; and (v) information indicating any caloric impact on the patient. The package label must have a warning clearly legible emphasizing that the product is to be kept away from children.

i. Labels of Edibles that are not tested for contaminants (baked goods) shall include a statement that the cannabis used in the product was tested for contaminants.

b. Packaging of Edibles shall be opaque, and may not make it appear as if the Edible is a food product. Packaging that makes the product attractive to children or imitates candy is not allowed.

c. Packaging of edibles shall be tamper-evident.

5. Producers of Edibles that are not tested for contaminants shall maintain a written or computerized log documenting:

a. The source of the cannabis used in each batch of product;

b. The contaminant testing date; and

c. The testing facility for the cannabis

H. 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.

12.27.080 Medical cannabis for low income Members

A. At least 2% (by weight) of the annual amount of Medical Cannabis provided by a Dispensary to all Members, shall be provided at no cost to very low-income Members who are Berkeley residents. This amount shall be calculated every six months, based on the amount dispensed during the immediately preceding six months. Medical Cannabis provided under this Section shall be the same quality on average as Medical Cannabis that is dispensed to other members.

B. For purposes of this Section, income shall be verified using federal income tax returns or other reliable method approved by the City Manager.

C. For purposes this Section, "very low income" shall mean the household income established by the most recent annual City Council resolution that establishes the maximum income levels for qualification for exemption from specified local taxes and fees.

12.27.090 Records

A. General. All Dispensaries 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 Dispensary's application and during the ranking and allocation process. Such records shall be maintained in a secure location under the control of the Dispensary 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. Dispensaries 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, Dispensaries need not operate on a Not-For-Profit basis.

2. Dispensaries 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. Membership. Dispensaries shall keep an accurate roster of Members, 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 using 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 the Dispensary's Members.

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

1. The total number of members during the year;
2. The total amount of revenue collected during the year;
3. The consideration paid for each Batch;
4. Monetary and non-monetary contributions from Members;
5. Total monetary and non-monetary distributions to Members other than Medical Cannabis Products or Edibles dispensed 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. Dispensaries shall immediately report any conviction of a person subject to Section 12.27.030.A that would cause him or her to be ineligible to have a position other than that of Member.

12.27.100 Ranking and allocation procedure and criteria

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

12.27.110 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 and Members 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 or Member 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 12.27.090 shall be deemed to be "financial information" covered by Chapter 7.26.

B. The information required by Section 12.27.040 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 Collectives

12.27.120 Limitations on Collective operations

As a use that is incidental to the residential use of property in residential zoning districts, Collectives shall comply with the following operating limitations:

A. A Collective may not generate more than 5 Member trips per day per location, excluding trips by residents of the Collective location.

B. Cash on hand shall be minimized, and no more than \$1000 may be retained overnight per location.

C. Collectives may not operate at more than four (4) locations in Berkeley, and may not store or maintain at any site at any time more than a combined total of 10 pounds of dried Medical Cannabis and concentrates, of which no more than 1 pound may be concentrates.

D. Collectives may not have Member visits to obtain Medical Cannabis except for social purposes before 8:00 a.m. or after 9:00 p.m.

E. No alcohol may be served for consideration.

F. No consideration may be charged for entry into the Collective or any part of the residence in which the Collective is located, no live entertainment may be provided, and no entertainment of any sort may be provided for consideration.

G. Smoking of Medical Cannabis by non-residents is prohibited in all exterior areas of Collectives and within 50 feet of Collectives on the public right of way.

H. Collectives may not have any exterior display identifying them as such.

I. Establishment and maintenance of a Collective may not involve any changes in utility service or exterior modifications beyond those that would be customary for a residence.

J. Collectives may not have any impacts on adjoining properties, such as, but not limited to, excessive noise, glare, smells, smoke, etc., beyond those that are normal for residential use.

12.27.130 Operating standards for all Collectives

Collectives shall comply with the following provisions of this Chapter.

- A. Section 12.27.050, subdivisions A, B and C.
- B. Section 12.27.070 subdivisions A-F. Subsection 12.27.070.C shall only apply to collectives with 25 or more members.
- C. Section 12.27.090, subdivisions B and D. Subsection 12.27.090.B.2 shall only apply to collectives with 25 or more members.
- D. Section 12.27.110, to the extent applicable.
- E. Before it may obtain a business license pursuant as required by Chapter 9.04, a Collective must obtain an inspection from the City that any cultivation or processing of Medical Cannabis that it intends to undertake at a given site will not pose a fire hazard.

12.27.140 Reserved.

Article IV Enforcement

12.27.150 Authority of City Manager

A. The City Manager or his or her designee shall have authority to determine the nature of any purported Collective or Dispensary and whether that Collective or Dispensary 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.

12.27.160 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.

12.27.170 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.

12.27.180 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 Ordinance 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.

At a regular meeting of the Council of the City of Berkeley held on July 1, 2014 this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

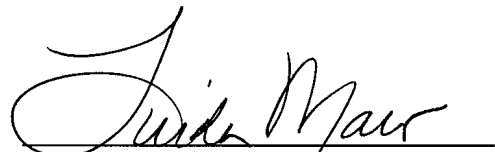
Absent: None.

At a regular meeting of the Council of the City of Berkeley held on July 8, 2014, this Ordinance was adopted by the following vote:

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

Noes: None.

Absent: Moore and Bates.


Linda Maio, Mayor Pro Tempore

ATTEST: 
Mark Numainville, CMC, City Clerk

Date signed: July 10, 2014