

Chapter 12.26

PROTOCOLS FOR MEDICAL CANNABIS

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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. 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. (Ord. 6620-NS § 1, 2001)

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 compromised 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. (Ord. 6620-NS § 1, 2001)

12.26.040 Medical cannabis collectives.

A. Pooling of Resources Recognized. The City of Berkeley recognizes that some qualified patients may not have primary caregivers and also may not be able to undertake all the physical activities necessary to cultivate cannabis for personal medical use. Accordingly, this section recognizes that qualified patients may join together with or without their primary caregivers to form medical cannabis collectives for the purpose of cultivating and manufacturing medical cannabis solely for the personal medical use of the members who are qualified patients. The City recognizes that not all members of a medical cannabis collective will perform the same tasks or contribute to the collective in an equal manner. Accordingly, medical cannabis collectives are free to decide how to best pool their resources and divide responsibilities in cultivating medical cannabis for the personal medical use of their members who are qualified patients.

B. Restriction on Membership. Membership in a medical cannabis collective must be restricted to qualified patients and their primary caregivers. However, primary caregivers shall not be allowed to obtain cannabis for their own personal use. In addition, a primary caregiver cannot be a member of a medical cannabis collective, unless the primary caregiver's qualified patient is also a member.

C. Restriction on Distribution to Non-Members. Medical cannabis collectives and each member thereof, shall not sell, barter, give away, or otherwise distribute cannabis to non-members of the medical cannabis collective.

D. Amount of Dried Cannabis and Plants. The limits on quantity of dried medical cannabis and cannabis plants set forth in this chapter for qualified patients are not increased by membership in a medical cannabis collective. Medical cannabis collectives are subject to the same quantity limits on possession of dried medical cannabis and limits on the number of cannabis plants that are set forth in this chapter, multiplied by the number of qualified patients in the collective, but are also subject to maximum cap amounts set forth below.

Thus, if a medical cannabis collective has five qualified patients, then the total amount of dried medical cannabis that the medical cannabis collective can possess is 7.5 pounds of cannabis cultivated indoors or 12.5 pounds of cannabis cultivated outdoors, minus the amount of dried medical cannabis that each qualified patient and/or his or her primary caregiver possesses individually. In addition, a medical cannabis collective cannot possess more than 12.5 pounds of dried cannabis at any one time, regardless of the number of members. Similarly, if a medical cannabis collective has five qualified patients, then the total amount of cannabis plants that the medical cannabis collective can possess is 50 in compliance with Section 12.26.040(E) of this chapter, minus the number of cannabis plants that each qualified patient and/or his or her primary caregiver possesses individually. In addition, a medical cannabis collective cannot cultivate more than 50 cannabis plants at any one time, regardless of the number of members.

E. Size of Visible Cannabis Gardens. The City of Berkeley recognizes that large scale outdoor cultivation of medical cannabis will create a risk of theft and violence due to the high monetary value of a large number of cannabis plants and the relative ease of theft by trespassing. Large-scale outdoor cannabis cultivation will also unfairly create tension and fear among the surrounding residents of trespassing, thefts, and violence. Accordingly, any medical cannabis collective or Collectives that cultivate medical cannabis plants outdoors (excluding secure rooftops or balconies that are not visible from other buildings or land) or in any place that is visible with the naked eye from any public or other private property, can only cultivate 10 such plants at one time on a single parcel or adjacent parcels of property.

F. Size of Indoor Cannabis Gardens That Are Not Visible. A medical cannabis collective can cultivate 10 cannabis plants per qualified patient up to a maximum of 50 cannabis plants total at one time, provided however, that no more than 10 of those plants are planted outdoors (excluding secure

rooftops or balconies that are not visible from other buildings or land) or in any place that is visible with the naked eye from any public or other private property. Nothing in this chapter shall be construed as creating an exemption for the cultivator or cultivators of any such cannabis garden from complying with any permit or other requirements imposed by local law that may be applicable. (Ord. 6620-NS § 1, 2001)

12.26.050 Availability in pharmacies.

To encourage the standardization of medical cannabis, the City of Berkeley urges the federal government to reschedule cannabis so that it may be made available to qualified patients through legally licensed pharmacies and urges the state government to urge the federal government to do so as well. (Ord. 6620-NS § 1, 2001)

12.26.060 Quality control encouraged.

The City of Berkeley strongly encourages all qualified patients, primary caregivers, and medical cannabis collectives to consult the available cannabis cultivation literature to ensure that the medical cannabis lawfully cultivated under state law is free of undesired toxins or molds. The City of Berkeley cautions that natural molding from improper storage, certain soils for indoor growing, foreign materials that unintentionally becomes lodged in cultivated cannabis, and pesticides, can all potentially render the medical cannabis totally unsafe for consumption. Collectives are encouraged to use their best effort to determine whether or not cannabis is organically grown. (Ord. 6620-NS § 1, 2001)

12.26.070 Permissible quantities of medical cannabis.

The Compassionate Use Act allows qualified patients or their primary caregivers to possess or cultivate medical cannabis for the qualified patient's "personal medical purposes." While each qualified patient will have different needs regarding appropriate personal medical use, this section seeks to standardize the maximum

allowable amounts of medical cannabis that qualified patients and their primary caregivers can possess or cultivate under state law, in the absence of a medical doctor's authorization to possess or cultivate a greater amount of cannabis as a result of the patient's particular illness or health condition.

A. Dried Cannabis Cultivated Indoors. Qualified patients who cultivate cannabis indoors may possess up to 1.5 pounds of dried cannabis for personal medical use. This 1.5 pound allotment may be possessed by the qualified patient, or may be held in trust by the qualified patients' primary caregiver(s), but the total amount of dried cannabis possessed by the qualified patient and his or her primary caregiver(s) shall not exceed 1.5 pounds for that qualified patient.

B. Indoor Cannabis Plants. In addition, qualified patients may also possess up to 10 cannabis plants for personal medical use. This 10 cannabis plant allotment may be possessed by the qualified patient, or may be held in trust by the qualified patients' primary caregiver(s), but the total amount of plants possessed by the qualified patient and his or her primary caregiver(s) shall not exceed 10 cannabis plants for that qualified patient.

C. Dried Cannabis Cultivated Outdoors. Qualified patients who cultivate cannabis outdoors may possess up to 2.5 pounds of dried cannabis for personal medical use. This 2.5 pound allotment may be possessed by the qualified patient, or may be held in trust by the qualified patient and his or her primary caregiver(s), but the total amount of dried cannabis possessed by the qualified patient and his or her primary caregiver(s) shall not exceed 2.5 pounds for that qualified patient.

D. Outdoor Cannabis Plants. In addition, qualified patients who cultivate cannabis outdoors may also possess up to 10 cannabis plants, for personal medical use, provided that such cultivation meets the guidelines set forth in Section 12.24.040(E) of this chapter. This 10 plant allotment may be possessed by the qualified patient, or may be held in trust by the qualified patients' pri

mary caregiver(s), but the total amount of plants possessed by the qualified patient and his or her primary caregiver(s) shall not exceed 10 plants for that qualified patient. (Ord. 6620-NS § 1, 2001)

12.26.080 Transportation of medical cannabis.

A qualified patient or a primary caregiver of a qualified patient may transport medical cannabis within the City of Berkeley to the extent that the quantity transported and the method, timing, and distance of the transportation are reasonably related to the qualified patient's current medical need at the time of transport. (Ord. 6620-NS § 1, 2001)

12.26.090 Medical cannabis paraphernalia.

A qualified patient and the primary caregiver of a qualified patient may possess paraphernalia that the qualified patient needs to smoke or otherwise consume medical cannabis. (Ord. 6620-NS § 1, 2001)

12.26.100 Police procedures and training.

A. Within six months of the date that this chapter becomes effective, the training materials handbooks, and printed procedures of the Police Department shall be updated to reflect its provisions. These updated materials shall be made available to police officers in the regular course of their training and service.

B. Medical cannabis-related activities shall be the lowest possible priority of the Police Department.

C. Qualified patients, their primary caregivers, and medical cannabis collectives who come into contact with law enforcement will not be cited or arrested and dried cannabis or cannabis plants in their possession will not be seized if they are in compliance with the provisions of this chapter.

D. Qualified patients, their primary caregivers, and medical cannabis collectives who come into contact with law enforcement and cannot establish or demonstrate their status as a qualified patient, primary caregiver, or medical cannabis

collective, but are otherwise in compliance with the provisions of this chapter, will not be cited or arrested and dried cannabis or cannabis plants in their possession will not be seized if (1) based on the activity and circumstances, the officer determines that there is no evidence of criminal activity; (2) the claim to be a qualified patient, primary caregiver, or medical cannabis collective is credible; and (3) proof of status as a qualified patient, primary caregiver, or medical cannabis collective can be provided to the Police Department within three business days of the date of contact with law enforcement. (Ord. 6620-NS § 1, 2001)