

ORDINANCE NO. 7,529–N.S.

ADDING A NEW CHAPTER 12.25 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 12.25 is added to the Berkeley Municipal Code is amended to read as follows:

**Chapter 12.25
MEDICAL CANNABIS CULTIVATION**

Sections:

- Article I General**
- 12.25.010 Applicability**
- 12.25.020 Reserved**

- Article II Medical Cannabis Cultivation Businesses and Facilities**
- 12.25.030 Eligibility requirements**
- 12.25.040 Information requirements**
- 12.25.050 Operating Standards**
- 12.25.060 Signage**
- 12.25.070 Product Safety, Quality Assurance and Labeling**
- 12.25.080 Energy use**
- 12.25.090 Records**
- 12.25.100 Ranking and allocation procedure and criteria**
- 12.25.110 Confidentiality of information**

- Article III Enforcement**
- 12.25.120 Authority of City Manager**
- 12.25.130 Abatement of violations**
- 12.25.140 Fees**
- 12.25.150 Severability**
- 12.25.160 Effective Date**

Article I General

12.25.010 Applicability

This Chapter applies to Medical Cannabis Cultivation.

12.25.020 Reserved

Article II Medical Cannabis Cultivation Businesses and Facilities

12.25.030 Eligibility requirements

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

12.25.040 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.

12.25.050 Operating Standards

A. General operating standards.

1. A Principal or designated Member of the Board of a Cultivation Business must be a member of the Dispensary or Collective that the Cultivation Business supplies.

2. 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 12.25.110.

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 of alcoholic beverages at Facilities is prohibited.

4. This subdivision does not prohibit the use of non-combustible Medical Cannabis, Medical Cannabis Products or Edibles on the premises of the facility 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.

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

12.25.060 Signage

No signage is required. Signage is discouraged.

12.25.070 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.

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, or other methodology approved by a state or the federal government as meeting a limit of quantitation of 0.1% by weight
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, including water processed concentrates)	% by weight and mg/g
Capsules/pills	mg/capsule
Oils, butters, tinctures (for internal consumption)	weight/volume mg/g
Topicals (external application)	mg/g or mg/mL, as applicable

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) at the option of the owner.

Contaminant	Testing methodology	Permissible amount
EPA-controlled pesticides commonly used in cannabis cultivation	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-MS ¹ , Elisa ²	100 ppb (total of all quantitated pesticides) ³
Microbiological contaminants	Any methodology approved by any U.S. or recognized international standards organization	• APC ⁴ < 100,000 CFUs ⁵
		• Yeast/Mold = APC<10,000 CFUs
		• Coliform ≤ 1,000 CFUs
		• Pseudomonas ≤ 1,000 CFUs ⁶
		• Salmonella = 0 CFU
• E. coli = 0 CFU		
Residual flammable solvents (concentrates only)	Head space analysis	400 ppm (total of all solvents) ⁷
<p>¹ Gas chromatography-mass spectrometry</p> <p>² Enzyme-linked immunosorbent assay</p> <p>³ Parts per billion</p> <p>⁴ Aerobic plate count</p> <p>⁵ Colony-forming unit</p> <p>⁶ This limit shall apply as of July 1, 2016. Prior to that date, the limit for Pseudomonas shall be 10,000 CFU.</p> <p>⁷ Parts per million</p>		

- 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. This Section shall be deemed repealed and of no further force or effect once testing as set forth in Article 10 of Chapter 3.5 of the Business and Professions Code is available.

12.25.080 Energy use

A. A Facility may not be approved unless it includes all feasible 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.

F. The annual amount paid by a Cultivation Business to both mitigate carbon dioxide emissions caused by the generation of electrical energy to its Facility and to offset the carbon content of all electrical energy delivered to its Facility shall not exceed 10% of the Facility's annual energy bill. This fee shall be reconsidered after five years to determine whether it should be readjusted to reflect lower energy rates or higher costs of renewable energy certificates.

12.25.090 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, if any. 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.

12.25.100 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.

12.25.110 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 12.25.090 shall be deemed to be "financial information" covered by Chapter 7.26.

B. The information required by Section 12.25.040 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

12.25.120 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.

12.25.130 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.

12.25.140 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.

12.25.150 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.

12.25.160 Effective Date

Chapter 12.25 of the Berkeley Municipal code shall not be effective until such time as an amendment to the Berkeley Zoning Ordinance which limits the maximum number of cultivation sites to six locations has become effective.

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.

At a regular meeting of the Council of the City of Berkeley held on January 31, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Maio, Worthington and Arreguin.

Noes: Hahn.

Absent: Wengraf.

ORDINANCE NO. 7,530–N.S.

ADDING A NEW CHAPTER 12.23 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 12.23 is added to the Berkeley Municipal Code is amended to read as follows:

Chapter 12.23

MEDICAL CANNABIS GENERAL REGULATIONS

Sections:

- 12.23.010 Purpose and Applicability**
- 12.23.020 Definitions**
- 12.23.030 Operating Standards – Membership – Eligibility**
- 12.23.040 Authority of City Manager**
- 12.23.050 Abatement of violations**
- 12.23.060 Severability**

12.23.010 Purpose and Applicability

The purpose of this Chapter is to collect in one location in this Code all of the definitions and general operating standards applicable to Medical Cannabis Organizations.

12.23.020 Definitions

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 a specific quantity of medical cannabis or medical cannabis products that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture or is from the same crop grown in the same location and harvested in the same manner and at the same time.

C. "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."

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

E. "Compound(s)" means any or all of the following chemicals, as the context requires:

- a. "THC" or " Δ^9 -THC" means Δ^9 -tetrahydrocannabinol, (Δ)-(6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a-tetrahydro-6H-benzo[c]chromen-1-ol.
- b. "THCA" or " Δ^9 -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.

F. "Concentrate" means any oil or butter into which any Compound has been infused or otherwise dissolved.

G. "Contaminant" means any pesticide, residual solvent or microbiological organism or product thereof.

H. "Cultivate" and "Cultivation" mean any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

I. Medical Cannabis.

1. "Medical Cannabis" means Cannabis in any form, whether for inhalation, topical application, oral ingestion, or any other form, 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.*).

J. "Medical cannabis collective" or "Collective" shall mean an 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 collectively provide for or assist in the cultivation and distribution of Medical Cannabis to its members. Collectives may have more than one location. Each location of a Collective shall be subject to the

applicable regulations in Chapter 12.27.120. Medical cannabis collectives shall not be located in commercial or manufacturing zoning districts, and shall only be allowed in residential zoning districts, and only to the extent they are incidental to a lawfully established residential use in a building located completely within a residential zoning district. A Collective may be organized as any statutory business entity permitted under California law, provided it operates in a Not-For-Profit manner as defined in Chapter 12.27.

K. Dispensary.

1. "Dispensary" means both Retail Dispensaries and Delivery-Only Dispensaries.

2. "Retail Dispensary" shall mean an organization that is authorized under Chapter 12.27 and Title 23 to dispense Medical Cannabis at a non-residential location. A Dispensary may also provide other incidental services to its Members to the extent permitted by state law, such as cultivating, acquiring, baking, storing, processing, testing, transporting and delivering Medical Cannabis. In dispensing Medical Cannabis to its Members, a Dispensary may be reimbursed for the cost of its services and materials. A Dispensary may be organized as any statutory business entity permitted under California law, provided it operates in a Not-For-Profit manner as defined in Chapter 12.27.

3. "Delivery-Only Dispensary" is a Dispensary that is limited to acquiring Medical Cannabis and delivering it to its Members, and does not have a location to which Members may come to acquire Medical Cannabis or any other good or service.

L. "Medical Cannabis Organization" or "MCO" includes Collectives, Dispensaries and Medical Cannabis Cultivation Businesses.

M. "Medical Cannabis Cultivation Business" or "Cultivation Business" means a Medical Cannabis Organization whose primary activity is Cultivation.

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

O. "Member" means a qualified patient or primary caregiver as defined in California law who is also a member of a Medical Cannabis Organization pursuant to its rules and consistent with California law.

P. "Not-for-Profit" means that an MCO 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.

Q. "Primary caregiver" shall have the same meaning as provided in California Health and Safety Code Section 11362.7.

R. "Principal" means any person that has direct or non-delegated indirect authority over the management or policies of an MCO.

S. "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.

T. "Solvent" means any substance in which another substance is dissolved, forming a solution.

U. "Tincture" means an extract of Cannabis or solution of such, typically made with alcohol.

V. "Qualified patient" shall have the same meaning as provided in California Health and Safety Code Section 11362.7.

12.23.030 Operating Standards – Membership – Eligibility

A. MCOs shall comply with Health and Safety Code Sections 11362.7 *et seq.* and any other state laws that may be adopted concerning Medical Cannabis, including but not limited to Chapter 3.5 of Division 8 of the Business and Professions Code, and Chapters 12.26, 12.27 and 12.25 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. To the extent the requirements of this Chapter and Chapters 12.26, 12.27 and 12.25 are more restrictive than state law, they shall apply. To the extent the requirements of this Chapter and Chapters 12.26, 12.27 and 12.25 are less restrictive than state law, the requirements of state law shall apply.

B. MCOs may consist only of Members.

C. MCOs may only obtain Medical Cannabis from, and supply Medical Cannabis to, their Members, except as provided by state law.

D. MCOs 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.

E. 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.

F. Except as may be provided in Chapter 12.27 or 12.25, no person may be allowed to have any position with an MCO 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 Section 11361 or Articles 1, 3,
5. within the preceding 5 years any felony violation of Health and Safety Code Section 11358, Section 11359 or Section 11360.

G. An MCO may only be operated by a Collective, and shall operate in a Not-for-Profit manner.

H. All MCOs shall maintain contemporaneous financial and operational records sufficient to show compliance with this Chapter and Chapters 12.26, 12.27 and 12.25, and state law governing medical cannabis, which records shall be subject to inspection by the City. Such records shall protect the confidentiality of Members.

12.23.040 Authority of City Manager

A. The City Manager or his or her designee shall have authority to determine the nature of any MCO or purported MCO and whether that MCO complies with any of the requirements of this Chapter or Chapters 12.26, 12.27 or 12.25, and to conduct inspections as provided in Chapter 1.16.

B. The City Manager or his or her designee may issue regulations to implement this Chapter and Chapters 12.26, 12.27 and 12.25.

C. 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 or Chapters 12.26, 12.27 or 12.25.

12.23.050 Abatement of violations

A. Violations of this Chapter or Chapters 12.26, 12.27 or 12.25 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 or Chapters 12.26, 12.27 or 12.25 shall not be punishable as public offenses to the extent that doing so would conflict with state law.

12.23.060 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 January 31, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Maio, Worthington and Arreguin.

Noes: Hahn.

Absent: Wengraf.

ORDINANCE NO. 7,531–N.S.

AMENDING SECTION 12.26.030 OF THE BERKELEY MUNICIPAL CODE DEFINING
MEDICAL CANNABIS COLLECTIVES AND DISPENSARIES

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

Section 1. That Section 12.26.030 of the Berkeley Municipal Code is amended to read as follows:

12.26.030 Reserved

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 January 31, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Maio, Worthington and Arreguin.

Noes: Hahn.

Absent: Wengraf.

ORDINANCE NO. 7,532–N.S.

AMENDING CHAPTER 12.27 OF THE BERKELEY MUNICIPAL CODE REGULATING
MEDICAL CANNABIS COLLECTIVES AND DISPENSARIES

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

Section 1. That Section 12.27.010 of the Berkeley Municipal Code is amended to read as follows:

12.27.010 Applicability

A. This Chapter applies to dispensaries and Collectives as defined in Chapter 12.23.

B. The three existing Retail 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 Retail Dispensary that substantially complies with this Chapter 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 Retail 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.

Section 2. That Section 12.27.020 of the Berkeley Municipal Code is amended to read as follows:

12.27.020 Reserved

Section 3. That Section 12.27.030 of the Berkeley Municipal Code is amended to read as follows:

12.27.030 Eligibility requirements

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

Section 4. That Section 12.27.050 of the Berkeley Municipal Code is amended to read as follows:

12.27.050 Operating Standards

Dispensaries shall also comply with the operating standards set forth in this Section.

A. Membership.

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

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

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

4. 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 to authorized personnel only, and must maintain an inventory management system that:

1. Accounts for all Medical Cannabis;
2. Tracks each Batch of Medical Cannabis 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 for a Member than is necessary for the personal medical use of the Qualified Patient for whom the Medical Cannabis is intended, and may not dispense more than one ounce of dried Medical Cannabis in leaf form 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 or Edibles by a Member; or

c. a Qualified Patient needs a greater quantity due to a planned absence from the area.

3. Retail 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.

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

6. 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."

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 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.

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.

Section 5. That Section 12.27.060 of the Berkeley Municipal Code is amended to read as follows:

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.

Section 6. That Section 12.27.070 of the Berkeley Municipal Code is amended to read as follows:

12.27.070 Product Safety, Quality Assurance and Labeling

Medical Cannabis 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 or other methodology approved by a state or the federal government as meeting a limit of quantitation of 0.1% by weight
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 as set forth in the following table.

Product type	Label information
Cannabis (flowers, leaf and concentrates, including water processed 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 shall be tested for contaminants as set forth in the following table. Medical Cannabis that contains 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) at the option of the owner.

Contaminant	Testing methodology	Permissible amount
EPA-controlled pesticides commonly used in cannabis cultivation	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-MS ¹ , Elisa ²	100 ppb (total of all quantitated pesticides) ³
Microbiological contaminants	Any methodology approved by any U.S. or recognized international standards organizations	• APC ⁴ < 100,000 CFUs ⁵
		• Yeast/Mold = APC < 10,000 CFUs
		• Coliform ≤ 1,000 CFUs
		• Pseudomonas ≤ 1,000 CFUs ⁶
		• Salmonella = 0 CFU
		• E. coli = 0 CFU
Residual flammable solvents (concentrates only)	Head space analysis	400 ppm (total of all solvents) ⁷

- ¹ Gas chromatography-mass spectrometry
- ² Enzyme-linked immunosorbent assay
- ³ Parts per billion

- ⁴ Aerobic plate count
- ⁵ Colony-forming unit
- ⁶ This limit shall apply as of July 1, 2016. Prior to that date, the limit for Pseudomonas shall be 10,000 CFU.
- ⁷ 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;
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 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.

1. Medical Cannabis 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. A label indicating the nature of the product shall be distinctly and clearly legible on the front of the package. Additional label information 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.

b. 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.

c. 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.

d. 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. Section 12.27.070 shall be deemed repealed and of no further force or effect once testing as set forth in Article 10 of Chapter 3.5 of the Business and Professions Code is available.

Section 7. That Section 12.27.080 of the Berkeley Municipal Code is amended to read as follows:

12.27.080 Medical cannabis for low income Members

A. At least 2% (by weight) of the annual amount of Medical Cannabis in dried plant form 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.

Section 8. That Section 12.27.140 of the Berkeley Municipal Code is amended to read as follows:

12.27.140 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.

Section 9. That Section 12.27.150 of the Berkeley Municipal Code is amended to read as follows:

12.27.150 Authority of City Manager

The City Manager may promulgate regulations for the administration and implementation of this Chapter, including, but not limited to, regulations relating to non-diversion, record-keeping, and tracking and tracing Medical Cannabis.

Section 10. That Section 12.27.160 of the Berkeley Municipal Code is amended to read as follows:

12.27.160 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 11. That Section 12.27.170 of the Berkeley Municipal Code is amended to read as follows:

12.27.170 Reserved

Section 12. That Section 12.27.180 of the Berkeley Municipal Code is amended to read as follows:

12.27.180 Reserved

Section 13. 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 January 31, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Maio, Worthington and Arreguin.

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Absent: Wengraf.