REVISED
AGENDA MATERIAL

Meeting Date: July 25, 2017
Item Number: 51
Item Description: Commercial Cannabis Regulations and Licensing
Submitted by: Mayor Jesse Arreguin

The attached revised ordinances have been updated to reflect the recently passed SB 94, Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA).

This trailer bill, signed by Governor Brown on June 27th, makes significant changes to California’s commercial cannabis regulatory scheme. The new law, called the combines the medical and adult-use cannabis systems into one licensing structure with the same regulatory framework governing medical and adult use facilities.

Berkeley’s local licensing regulations must be consistent with this recently adopted state law.
ORDINANCE NO. _______–N.S.

AMENDING CHAPTER 12.23 OF THE BERKELEY MUNICIPAL CODE RELATING TO GENERAL CANNABIS REGULATION

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

Section 1. That Chapter 12.23 is of the Berkeley Municipal Code is amended to read as follows:

Chapter 12.23

COMMERCIAL (NON-MEDICAL) CANNABIS GENERAL REGULATIONS

Sections:

12.23.010 Purpose and Applicability
12.23.020 Definitions
12.23.030 Operating Standards – 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 all Cannabis Organizations.

It is the intent of the Council to adopt regulations consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act), California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to protect public health, safety, and welfare.

Nothing in this Division is intended to reduce the rights of a qualified patient or primary caregiver otherwise authorized by California Health and Safety Code sections 11362.5(d) and 11362.765, or of individuals twenty-one years of age or older, as authorized by the Adult Use of Marijuana Act.

This Division shall be interpreted in a manner consistent with state law. Nothing in this Division is intended to authorize the sale, distribution, possession, planting, cultivation, harvesting, drying, processing, manufacturing, compounding, converting, producing, deriving, or preparing of marijuana, or any other transaction, in violation of state law.

This Division applies to Commercial Cannabis Organizations as defined in Section 12.2X.020(J).
12.2X.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" shall have the same meaning as Section 26001(d) of the Business and Professions Code.

C. "Cannabis" shall have the same meaning as Section 26001(f) of the Business and Professions Code.

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

E. "Cannabis Organization" shall mean any licensee required by the state to be licensed as a type “A-license” or type “M-license” pursuant to the Business and Professions Code and starting with Section 26000; CO includes a Commercial Cannabis Organization and Medical Cannabis Organization.

F. "Concentrate" shall have the same meaning as “concentrated cannabis” as set forth in SEC. 113, Section 11006.5 of the Health and Safety Code.

G. "Commercial Cannabis Activity" shall have the same meaning as set forth in Section 26001(k) of the California Business and Professions Code.

H. "Cannabis Cultivation Business" or “Cultivation Business” means a Cannabis Organization whose primary activity is Cultivation.

I. "Cannabis Cultivation Facility" or "Facility" means a building or other location where Commercial Cannabis is cultivated.

J. "Cannabis Organization" or “CO” means any person required to hold a license pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code.

1. All CO’s authorized under this Chapter shall also maintain a valid state license authorized under Division 10 of the Business and Professions Code.

2. With the exception of testing laboratory licenses, which may be used to test cannabis and cannabis products regardless of whether they are intended for use by individuals who possesses a physician’s recommendation, all licenses issued under this Chapter shall bear a clear designation as used by the State indicating whether the license is for commercial marijuana adult-use cannabis activity, as distinct from licensed commercial medical cannabis activity, by prominently affixing an "A" or "M," respectively.

K. "Cannabis Product" shall have the same meaning as set forth in Section 11018.1 of the Health and Safety Code, except that it does not include "Medicinal cannabis" or "medicinal..."
cannabis product” (as defined by Section 26001(ai) of the Business and Professions Code) intended to be sold for use pursuant to the same meaning as in Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation.

L. “Testing Facility” shall have the same meaning as “Testing laboratory” as set forth in Section 26001(as) of Chapter 1 of Division 10 of the California Business and Professions Code.

M. “Commercial Cannabis Organization” or “CCO” means any licensee required by the state to be licensed as a type "A-license" for the cultivation, manufacture, or distribution of cannabis and cannabis products that are intended for adults 21 years of age and over and who do not possess physician's recommendations.

N. “Compound(s)” means any or all of the following chemicals, as the context requires:
   1. "THC" or "Δ9-THC" means Δ9-tetrahydrocannabinol, (Δ)-(6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a-tetrahydro-6H-benzo[c]chromen-1-ol.
   2. "THCA" or "Δ9-THCA" means the acid form of THC.
   3. "CBD" or "Cannabidiol" means 2-[(1R,6R)-6-isopropenyl-3-methylcyclohex-2-en-1-yl]-5-pentylenzene-1,3-diol.
   4. "CBDA" or "Cannabidiolic acid" means the acid form of CBD.
   5. "CBN" or "Cannabinol" means 6,6,9-trimethyl-3-pentylbenzo[c]chromen-1-ol.

O. "Contaminant" means any pesticide, residual solvent or microbiological organism or product thereof as further defined by Section 26101(d)(2) of the Business and Professions Code.

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

Q. “Customer” means a natural person 21 years of age or older.

R. “Delivery” shall have the same definition as Section 26001(h) of Chapter 1 of Division 10 of the California Business and Professions Code.

S. “Dispensary” means any licensee required to be licensed as a retailer, microbusiness, or nonprofit pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code and generally includes commercial (adult use) and medical retail cannabis organizations except where the applicable ordinance pertains solely to one and context requires the exclusion of either medical or commercial. Any Dispensary may operate for profit or not for profit and as an individual or in any entity or organizational format permitted by State law.

1. “Commercial Dispensary” means any licensee required by the state to be licensed as a type "A-license" for the distribution of cannabis and cannabis products that are intended for adults 21 years of age and over and who do not possess physician's recommendations, and includes both Commercial Retail Dispensaries and Commercial Delivery-Only Dispensaries.

   a. "Commercial Retail Dispensary" is a Commercial Dispensary that is authorized under Chapter 12.XX and Title 23 and Division 10 (commencing with Section 26000) of the Business and Professions Code to dispense Commercial Cannabis at a non-residential location and via delivery. A Commercial Retail Dispensary may also provide other
incidental services to its Customers to the extent permitted by state law, and authorized under this Chapter, Chapter 12.XX, and Title 23. Commercial Retail Dispensaries may also hold a license to operate as a Medical Dispensary as defined in this Chapter 12.23 and authorized under Chapters 12.26 and 12.27, and Division 10 of the Business and Professions Code.

b. “Commercial Delivery-Only Dispensary” is a Commercial Dispensary that is authorized by Chapter 12.XX and Title 23 and Division 10 (commencing with Section 26000) of the Business and Professions Code and is limited to delivering Commercial Cannabis to its Customers and that operates from a permitted location in Berkeley but does not have a location to which Customers may come to acquire Cannabis or any other good or service.

2. “Medical Cannabis Dispensary” means specifically any licensee required by the state to be licensed as a type “M-license” for the distribution of cannabis and cannabis products that are intended for Qualified Patients and their Caregivers, and includes both Medical Retail Dispensaries and Medical Delivery-Only Dispensaries. A Medical Cannabis Dispensary may also provide other incidental services to Qualified Patients and Caregivers to the extent permitted by state law, and authorized under this Chapter, Chapter 12.XX, and Title 23. Medical Cannabis Dispensaries may also hold a license to operate as a Commercial Dispensary as defined in this Chapter 12.23 and authorized under Chapters 12.XX and 12.XX, and Division 10 of the Business and Professions Code.

a. "Medical Retail Dispensary" shall mean an organization that is authorized under Chapter 12.XX and Title 23 and Division 10 (commencing with Section 26000) of the Business and Professions Code to dispense Medical Cannabis at a non-residential location and via delivery.

b. “Medical Delivery-Only Dispensary” is a Medical Dispensary that is authorized by Chapter 12.XX and Title 23 and Division 10 (commencing with Section 26000) of the Business and Professions Code and is limited to delivering Medical Cannabis to Qualified Patients and their Caregivers and that operates from a permitted location in Berkeley but does not have a location to which Qualified Patients and their Caregivers may come to acquire Cannabis or any other good or service.

A Dispensary shall not dispense Commercial Cannabis to any Customers under this section prior to receipt of a license from the Bureau of Cannabis Control, unless authorized by a State licensing authority as stated in Section 26050.1 of the Business and Professions Code.

T. “Edible Cannabis Product” (or “Edible”) means a Commercial Cannabis Product that is intended to be used, in whole or in part, for human consumption. 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.).

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

V. “Principal” shall have the same meaning as “Owner” under Section 26001(al)(1) of Chapter
1 of the Division 10 of the California Business and Professions Code and any rules or regulations promulgated by the Bureau of Cannabis Control within the Department of Consumer Affairs.

W. “Manufacture” shall have the same meaning as set forth in Section 26001(ag) of Chapter 1 of the Division 10 of the California Business and Professions Code.

X. “Manufacturer” shall have the same meaning as Section 26001(ah) of Chapter 1 of Division 10 of the California Business and Professions Code.

“Medical Cannabis Organization” or “CCO” means any licensee required by the state to be licensed as a type "M-license" for the cultivation, manufacture, or distribution of cannabis and cannabis products that are intended for Qualified Patients or their Caregivers.

Y. “Nursery” shall have the same meaning as Section 26001(ai) of Chapter 1 of Division 10 of the California Business and Professions Code.

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

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

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

12.23.030 Operating Standards – Eligibility
A. COs shall comply with California law governing Commercial Cannabis Activity, any other state laws that may be adopted concerning Commercial Cannabis, including but not limited to Division 8 AND 10 of the Business and Professions Code, and Chapters 12.2X, 12.2X and 12.2X 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.

1. To the extent the requirements of this Chapter and Chapters 12.2X, 12.2X and 12.2X are more restrictive than state law, they shall apply. To the extent the requirements of this Chapter and Chapters 12.2X, 12.2X and 12.2X are less restrictive than state law, the requirements of state law shall apply.

B. COs shall only obtain Cannabis from licensees authorized to distribute cannabis under Division 10 of the California Business and Professions Code no later than 2019, or as otherwise provided by state law.

C. A Dispensary shall verify the age or status as a Qualified Patient or Caregiver prior to admitting any person to the premises for the purpose of conducting Commercial Cannabis Activity. Commercial Retail Dispensaries may not admit any Customer without first verifying his or her status as an adult no less than 21 years of age except that, if a Commercial Dispensary that is dually operating as a Medical Dispensary as defined in Chapter 12.23, and authorized by Chapter 12.27, that Dispensary may admit any qualified patient or primary caregiver as provided in Chapter 12.23, 12.26, and 12.27 and as defined by state law.
D. A Dispensary shall immediately ban any person who diverts Cannabis in any manner not permitted by this Chapter, Chapter 12.26, Chapter 12.27, Chapter 12.XX or California law.

E. No person may be allowed to have any position with a CCO if he or she is under the age of twenty-one, except as provided by State law and in Chapter 12.27 or 12.25, or 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.

F. All COs shall maintain contemporaneous financial and operational records sufficient to show compliance with this Chapter and Chapters 12.2_, 12.2_ and 12.2_, and state law governing medical cannabis, which records shall be subject to inspection by the City.

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 CO or purported CO and whether that CO complies with any of the requirements of this Chapter or Chapters 12.26, 12.27 or 12.23, and to conduct inspections as provided in Chapter 1.16.

B. The City Manager or his or her designee shall promulgate an application process to implement this Chapter and Chapters 12.2_, 12.2_ and 12.2_ as soon as practicable. The City Manager or his or her designee may issue regulations to implement this Chapter and Chapters 12.2_, 12.2_ and 12.2_.

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.

D. The City finds that the public interest in not disclosing the information containing the names, addresses, social security numbers, tax information, security details, and operating procedures of any applicant or licensee submitted pursuant to Chapter 12.23, 12.24, 12.25, 12.26, or 12.27 outweighs the public interest in disclosing and, as such, all information submitted in connection with a license and/or application for any Cannabis license type shall be exempt from disclosure. California Government Code Section 6254. (see also BMC 15.12.110 Community right to know; public records.) In accordance with CA Health & Safety Code Section 11362.713, any and all information containing the names, addresses, or social security numbers of patients, their medical conditions, or the names of their primary caregivers, received and contained in the records of the Department of Public Health and by any county public health department are hereby deemed “medical information” within the meaning of the Confidentiality of Medical Information Act (Civil Code § 56, et seq.) and shall not be disclosed by the City except in accordance with the restrictions on disclosure of individually identifiable information under the Confidentiality of Medical Information Act, California Government Code Section 6254, or other California law. The City further finds that the public interest in not disclosing the information
containing the names, addresses, social security numbers, tax information, and operating procedures of any applicant or licensee submitted pursuant to this Chapter 12.27 outweighs the public interest in disclosing and, as such, all information submitted in connection with a license and/or application for any Medical Cannabis license type shall be exempt from disclosure. California Government Code Section 6254. (see also BMC 15.12.110 Community right to know; public records.)

E. The City Manager and all former or existing Berkeley officials, administrators and employees shall not do any of the following without a court order signed by a judge:

(1) Use agency money, facilities, property, equipment, or personnel to assist a federal agency to investigate, detain, detect, report, or arrest a person for commercial or non-commercial cannabis or medical cannabis activity that is authorized by law in the State of California and under this Chapter.
(2) Respond to a request made by a federal agency for personal information about an individual who is an authorized Commercial Cannabis Organization to possess, cultivate, transport, manufacture, sell, or possess for sale Cannabis Products, if that request is made for the purpose of investigating or enforcing federal marijuana law.
(3) Provide information about a person who has applied for or received a license to engage in commercial cannabis or commercial medical cannabis activity pursuant to this Chapter, MAUCRSA, MCRSA, and AUMA.
(4) Transfer an individual to federal law enforcement authorities for purposes of marijuana enforcement or detain an individual at the request of federal law enforcement for conduct that is legal under state law, and authorized under this chapter.

For purposes of this section, the following definitions shall apply:

(1) “AUMA” means the Control, Regulate and Tax Adult Use Marijuana Act, enacted by the approval of Proposition 64 at the November 8, 2016, statewide general election and generally codified in Division 10 (commencing with Section 26000) of the Business and Professions Code.
(2) “MCRSA” means the Medical Cannabis Regulation and Safety Act, generally codified in Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code, and other provisions regarding licensing of Cultivators, Manufacturers, Testing Laboratories, Distributors, and Dispensaries of medical cannabis and Medical Cannabis Products located in this article and in Article 2.5 (commencing with Section 11362.7) REPEALED by MAUCRSA.
(3) “MAUCRSA” the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017.

12.23.050 Abatement of violations
A. Violations of this Chapter or Chapters 12.2_, 12.2_ or 12.2_ 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, 12.23 or 12.2X 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.
Chapter 12.26

PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2008

Sections:

12.26.030 Reserved
12.26.040 Medical cannabis collectives.
12.26.050 Availability in pharmacies.
12.26.090 Medical cannabis paraphernalia.
12.26.100 Police procedures and training.
12.26.120 Emergency Distribution.
12.26.130 Medical cannabis organizations.
12.26.140 Compliance with all applicable laws.
   1. Violations of square footage limitations not punishable as public offenses--public nuisance.

Title.
This initiative shall be known and may be cited as the Patients Access to Medical Cannabis Act of 2008. (Ord. 7068-NS § 1, 12/08/08 as amended ______/17)

Findings And Declarations.
The People of the City of Berkeley find all of the following to be true:
   1. We strongly support the right of seriously ill patients to use medical 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.
   2. We strongly oppose the arrest, prosecution, and incarceration of persons legally-qualified under the Compassionate Use Act of 1996 (Proposition 215) and Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017 (MAUCRSA) by local, state, or federal law enforcement.
   3. There is a need in our community for safe and affordable access to medical cannabis.
   4. There is a need for specific instructions for City officials and staff in order to eliminate this inconsistency.
   5. There are no scientifically valid studies that determine the yield of medicine based on specific numbers of plants or the quantity of medication necessary for a
patient. Berkeley’s arbitrarily-low cultivation limits place undue burdens on local patients, and therefore require revision based on patient’s needs.

6. The People of the City of Berkeley further find and declare that we enact this initiative pursuant to the powers reserved to the State of California, the City of Berkeley, and its people under the Tenth Amendment to the United States Constitution. (Ord. 7068-NS § 2, 12/08/08)

Section 12.26.010 Purposes.
The purpose of this chapter is to implement California Health and Safety Code Section 11362.5, known as the Compassionate Use Act of 1996, and to regulate the location of facilities lawfully used for the storage, dispensing and use of medical cannabis, other than the cultivation or possession of medical cannabis by an individual patient or caregiver at the patient or caregiver’s home, lawfully incident to the residential use of that home. The Compassionate Use Act, the Medical Marijuana Program, and MAUCRSA remove state law penalties for qualified patients, and primary caregivers to those patients, for possession and cultivation of a personal amount of medical cannabis for qualified patients. This chapter is intended:

1. 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.

2. 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.

3. To encourage the federal government 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.

4. To protect citizens from the adverse impacts of irresponsible medical cannabis distribution, storage and use practices. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 1 (part), 2004: Ord. 6620-NS § 1, 2001)

Section 12.26.030 Reserved
(Ord. 7531-NS § 1, 2017: Ord. 7359-NS § 1, 2014: Ord. 7161-NS § 1, 2010; Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 1 (part), 2004: Ord. 6620-NS § 1, 2001)

Section 12.26.035 Adult-use cannabis.
Except as set forth in subsection (I) of Section 12.2X.030, no adult-use cannabis business may be approved under this Section until the City Council adopts a licensing process and standards for such uses. (Ord. 7512-NS § 1, 2016)
Section 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 acquiring or 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.
   1. Medical Cannabis Collectives may possess a reasonable quantity of dried cannabis and cannabis plants to meet the needs of their patient members. Medical Cannabis Collectives shall not accumulate more cannabis than is necessary to meet the personal medical needs of their Qualified Patients.
   2. Except as permitted in Title 23, cultivation of medical cannabis by a medical cannabis collective that is not a Medical cannabis dispensary may only be incidental to a residential use. Cultivation occupying more than the lesser of 200 square feet or 25% of building square footage shall not be considered incidental, and is prohibited. (MCRSA: Qualified patients are exempt from the state permit program if cultivating less than 100 square feet for personal medical use. Primary caregivers with five or fewer patients are allowed up to 500 square feet (AB 243, 11362.777(g) and SB 643, 19319) Should we edit now?)
   3. For purposes of this subdivision, "square feet" and "square footage" means the horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof).

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. Restriction on Excessive Cultivation and Possession. Nothing in this Section shall authorize any individual, organization, affiliation, collective, cooperative or other entity to (1) cultivate or possess a quantity of medical cannabis that is inappropriate for the personal medical need of the patient(s) for whom it is intended; (2) cultivate or possess any quantity of cannabis for non-medical purposes; or (3) cultivate or possess any quantity of cannabis greater than is permitted under State law. (Ord. 7161-NS § 2, 2010; Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

G. This Section shall be deemed repealed and of no further force or effect as of January 1, 2018.

**Section 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. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

**Section 12.26.060 Quality control encouraged.**
The City of Berkeley strongly encourages all qualified patients, primary caregivers, and medical cannabis organizations 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. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

**Section 12.26.070 Permissible quantities of medical cannabis.**
State law allows Qualified Patients or their Primary Caregivers to possess or cultivate cannabis for the Qualified Patient’s "personal medical purposes." Because each Qualified Patient will have different needs regarding appropriate Personal Medical Use, this Section seeks to ensure that each Qualified Patient or his or her Primary Caregiver can possess enough cannabis to meet the Qualified Patient’s personal medical need.

A. Cultivation of Medical Cannabis. Notwithstanding any other provision of law, and pursuant to California Health and Safety Code Section 11362.77(c) as amended, or
Chapter 3.5 of Division 10 of the Business and Professions Code, all cultivation of cannabis for medical purposes by a Qualified Patient or Primary Caregiver shall be lawful and shall in no way be subject to criminal prosecution when said cultivation is conducted solely for the personal medical purposes of Qualified Patients. Such lawful cultivation may include the cultivation and possession of both female and male plants at all stages of growth, clones, seedlings, and seeds, and related cultivation equipment and supplies. Medical Cannabis Collectives, Qualified Patients, Primary Caregivers, and cultivators may cultivate individually or collectively.

B. Possession of Medical Cannabis. Notwithstanding any other provision of law, and pursuant to California Health and Safety Code Section 11362.77(c) as amended, all possession of cannabis for medical purposes by a Qualified Patient or Primary Caregiver shall be lawful and shall in no way be subject to criminal prosecution when said possession is undertaken solely for the personal medical purposes of Qualified Patients. Medical Cannabis Collectives, Qualified Patients, Primary Caregivers, and cultivators may possess individually or collectively, as authorized by State law.

C. Property and Equipment. The rental, leasing, or providing of equipment or space utilized for cultivation, processing, or storage of medical cannabis in accordance with this Section shall be deemed lawful.

D. Size of Visible Cannabis Gardens. The City of Berkeley recognizes that large scale outdoor cultivation of cannabis may create a risk of theft. Accordingly, any Qualified Patient or Caregiver that cultivates cannabis plants outdoors (excluding secure rooftops, balconies, or other locations that are not visible from other buildings or land) or in a place that is visible with the naked eye from other public or private property, may cultivate no more than ten such visible plants at one time on a single parcel of property.

Section 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. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

Section 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. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

Section 12.26.100 Police procedures and training.
1. Within six months of the date that this chapter as modified 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.
2. Medical cannabis-related activities shall be the lowest possible priority of the Police Department.

3. Qualified patients, their primary caregivers, and representatives of medical cannabis organizations that 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.

4. Qualified patients, their primary caregivers, and representatives of medical cannabis organizations who come into contact with law enforcement and cannot establish or demonstrate their status as a qualified patient, or primary caregiver, or medical cannabis organization representative, 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 or primary caregiver, or medical cannabis organization representative is credible; and (3) proof of status as a qualified patient or primary caregiver, or medical cannabis organization representative can be provided to the Police Department within three business days of the date of contact with law enforcement. (Ord. 7068-NS § 3 (part), 12/08/08; Ord. 6620-NS § 1, 2001)

The purpose of this Section is to ensure that cannabis provision in Berkeley is conducted in a safe and orderly manner to protect the welfare of the community.

A. A cannabis commission is established. The commission shall consist of nine members. Appointments to the commission shall be made, and vacancies on the commission shall be filled, by council members, in accordance with the provisions of Sections 2.04.030 through 2.04.130. At least one commissioner shall be a member of a medical cannabis dispensary, one shall be a member of a collective that is not a dispensary, one shall be a Principal of a Commercial Cannabis Dispensary, and one shall be a cultivator who is not primarily associated with a single dispensary and provides medical cannabis to more than one dispensary.

1. The commission shall recommend to the City operational and safety standards for, and shall consult with any individual, organization, affiliation, collective, cooperative or other entity which seeks to open a new Cannabis Organization in Berkeley or to relocate an existing Cannabis Organization. The commission shall advise the City as to whether the proposed Cannabis Organization has a strategy for compliance with the published safety and operational standards before the new Cannabis Organization commences lawful operation.

2. The commission will monitor the compliance of Cannabis Organizations in Berkeley for the purpose of correcting any violations of the safety and operational standards. Cannabis Collectives or dispensaries found to be in willful or ongoing violation of the standards shall be deemed in violation of this Chapter and referred to the City for appropriate action. (Ord. 7161-NS § 3, 2010: Ord. 7068-NS § 3 (part), 12/08/08)
Section 12.26.120 Emergency Distribution.
The City of Berkeley strongly opposes the federal prosecution of medical cannabis patients, caregivers, and providers. The City shall make all reasonable accommodation for the provision of medical cannabis to Qualified Patients or their Primary Caregivers in the event that access to medical cannabis is interrupted or severely diminished as the result of civil or criminal federal law enforcement activity. The City shall accommodate distribution of medical cannabis as early as possible following such a disruption and no later than thirty (30) days after the disruption. (Ord. 7068-NS § 3 (part), 12/08/08)

Section 12.26.130 Medical cannabis organizations.
1. Six medical cannabis dispensaries shall be allowed within the limits of the City of Berkeley, in locations and subject to the requirements specified in Title 23.
2. All medical cannabis facilities and organizations shall maintain contemporaneous financial and operational records sufficient to show compliance with this Chapter and state law governing medical cannabis, which shall be subject to inspection by the City. Such records shall protect the confidentiality of their members.
3. The City Manager may issue regulations to implement this Section. (Ord. 7500-NS § 1, 2016; Ord. 7161-NS § 4, 2010; Ord. 7068-NS § 3 (part), 12/08/08; Ord. 6826-NS § 2 (part), 2004)

Section 12.26.140 Compliance with all applicable laws.
Nothing in this chapter shall be construed as excusing any person or entity from compliance with all other applicable federal, state and local laws. The City may make compliance with such laws a condition of deeming such person or entity in compliance with local law, except to the extent it would conflict with the purposes of this chapter. (Ord. 7068-NS § 3 (part), 12/08/08; Ord. 6826-NS § 2 (part), 2004)

Section 12.26.150 Violations of square footage limitations not punishable as public offenses—public nuisance.
1. Notwithstanding anything to the contrary, violations of square footage limitation in Section 12.26.040.D shall not be punishable as public offenses to the extent that doing so would conflict with state law.
2. Violations of this Chapter are hereby declared to be public nuisances and shall be subject to Chapters 1.24 and 1.26. (Ord. 7359-NS § 2, 2014; Ord. 7161-NS § 5, 2010)
ORDINANCE NO. _______________

AMENDING CHAPTER 12.27 OF THE BERKELEY MUNICIPAL CODE REGULATING MEDICAL CANNABIS ORGANIZATIONS OTHER THAN CULTIVATION

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 all Medical Cannabis Organizations, except Cultivation, as defined in Chapter 12.23. That Section 12.27.020 of the Berkeley Municipal Code is amended to read as follows:

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

12.27.020  Definitions
A. All terms set forth in this Chapter shall have the same definitions as set forth in Berkeley Municipal Code 12.23, Division 10 of the Business and Professions Code as established by the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), and as may be supplemented by rules or regulations issued by the Bureau of Cannabis Control within the Department of Consumer Affairs, the Department of Food and Agriculture or the Department of Health.
B. Starting January 1, 2018, all references to “Members” within the Berkeley Municipal Code shall be replaced with the term “Qualified Patient” or “Primary Caregiver” as applicable and as those terms are defined in Chapter 12.23.

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 Medical Dispensary may be a Principal for any other Medical Medical Dispensary in Berkeley.
B. Any Medical Cannabis Operation currently authorized under Chapter 12.26, 12.27, 12.23 or Title 23 of the Berkeley Municipal Code may continue to operate prior to issuance of a state license.
   1. An MCO that is finally denied or fails to apply for a state license within the time set forth in the Regulations and Bureau of Cannabis Control’s application process for non-temporary licenses shall no longer be authorized to operate under this Chapter.
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 Medical Dispensary.
   2. The scale of Cultivation by or on behalf of a Medical 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 Medical 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 Medical Dispensary may dispense to him or her, an amount of Medical Cannabis consistent with those needs;
      b. a Medical 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 Medical Dispensary premises.
   4. If a Member has an identification card issued pursuant to Health & Safety Code Section 11362.71 or 11362.735, a Medical 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 Medical Dispensary.

E. 1. Notwithstanding Subsections A(3), C(2), C(4), C(5) and C(6), Subsections 12.27.020(A) through (D) shall be deemed repealed and of no further force or effect on January 1, 2018. Following January 1, 2018, authorized medical dispensaries shall be subject to the rules and regulations, promulgated by the Bureau of Cannabis Control, and by MAUCRSAe.

F. 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 30 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 Medical 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 Medical 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 Medical Dispensary shall prohibit entrance of any Qualified Patient, Caregiver or person 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 Medical Dispensary. Prompt banishment of any Qualified Patient, Caregiver or person under this subdivision shall be considered in any enforcement proceeding against a Medical 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 Medical Dispensary that includes the
following language:

This Medical Dispensary only provides medical cannabis to Qualified Patients and Caregivers, who must have legally recognized California Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis, or to persons over the age of 21, as authorized by State law.

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 Medical Dispensary is registered in accordance with the laws of the City of Berkeley. The sale of marijuana and the diversion of marijuana for any purpose 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: 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.

<table>
<thead>
<tr>
<th>Constituent</th>
<th>Equipment/Methodology</th>
</tr>
</thead>
<tbody>
<tr>
<td>THCA</td>
<td>HPLC¹, or GC² with derivatization or other methodology approved by a state or the federal government as meeting a limit of quantitation of 0.1% by weight</td>
</tr>
<tr>
<td>THC</td>
<td></td>
</tr>
<tr>
<td>CBDA</td>
<td></td>
</tr>
<tr>
<td>CBD</td>
<td></td>
</tr>
<tr>
<td>CBN</td>
<td></td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Product type</th>
<th>Label information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannabis (flowers, leaf and concentrates, including water processed concentrates)</td>
<td>% by weight and mg/g</td>
</tr>
</tbody>
</table>
### 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.

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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.

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>Testing methodology</th>
<th>Permissible amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPA-controlled pesticides commonly used in cannabis cultivation</td>
<td>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, Elisa²</td>
<td>100 ppb (total of all quantitated pesticides)³</td>
</tr>
<tr>
<td>Microbiological contaminants</td>
<td>Any methodology approved by any U.S. or recognized international standards organizations</td>
<td>• APC⁴ &lt; 100,000 CFUs⁵</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Yeast/Mold = APC&lt;10,000 CFUs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Coliform ≤ 1,000 CFUs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Pseudomonas ≤ 1,000 CFUs⁶</td>
</tr>
<tr>
<td>Residual flammable solvents (concentrates only)</td>
<td>Head space analysis</td>
<td>400 ppm (total of all solvents)⁷</td>
</tr>
</tbody>
</table>
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, or Qualified Patients shall be contained in packaging that bears labels containing the following information, in addition to any other information that a Medical Dispensary may choose to provide or that may be required by law:
   a. the name and contact information for the Medical 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, and by Division 10 of the Business and Professions Code.
2. Compliance with State Food Safety Requirements. A Medical 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 Medical Dispensary to produce Edibles shall be constructed,
operated and inspected in accordance with the applicable building code and applicable food safety requirements.

H. Preparation of Edibles.
   1. 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.
   
   2b. 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.

   3c. Edibles that are produced or distributed at a Medical Dispensary may only be prepared by a Member of that Medical 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.

   4d. 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 Medical 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.

   5e. 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.

I. Packaging of Edibles.
   1. 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.

   2. 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.

   3. 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.

   4. 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.

J. 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 Chapter 8 of the Business and Professions Code is available.

K. Manufacturing
1. A manufacturer shall comply with Chapter 12.23, Title 23 and all zoning, health and fire code regulations and state law.
   a. Any facility used by a manufacturer Edibles, Concentrates or Manufacture other Medical Cannabis Products, shall be constructed, operated and inspected in accordance with the applicable building code and applicable food safety requirements.
2. A Manufacturer and Manufacturing Facility shall operate with a state-issued type 6 license comply, as provided in Division 10 of the Business and Professions Code.
3. A manufacturer shall hold either a Manufacturing Level 1 (Type 6) or Manufacturing Level 2 (Type 7) license type issued by the State and may hold a temporary license as set forth in SEC. 32. Section 26050.1 of the Business and Professions Code.

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 Medical Dispensary to all Members, and Qualified Patients 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, and Qualified Patients.
   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
   A. 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.
   B. All Medical Cannabis Operations shall be notified in writing within 30 days of the adoption of a resolution establishing or changing any fee or tax related to cannabis
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 __________, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:
ORDINANCE NO. _______—N.S.

AMENDING CHAPTER 12.23 OF THE BERKELEY MUNICIPAL CODE RELATING TO GENERAL CANNABIS REGULATION

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

Section 1. That Chapter 12.2_ is of the Berkeley Municipal Code is amended to read as follows:

Chapter 12.2_

COMMERCIAL (NON-MEDICAL) CANNABIS GENERAL REGULATIONS

Sections:

12.23.010 Purpose and Applicability
12.23.020 Definitions
12.23.030 Operating Standards – 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 all Cannabis Organizations.

It is the intent of the Council to adopt regulations consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act), California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to protect public health, safety, and welfare.

Nothing in this Division is intended to reduce the rights of a qualified patient or primary caregiver otherwise authorized by California Health and Safety Code sections 11362.5(d) and 11362.765, or of individuals twenty-one years of age or older, as authorized by the Adult Use of Marijuana Act.

This Division shall be interpreted in a manner consistent with state law. Nothing in this Division is intended to authorize the sale, distribution, possession, planting, cultivation, harvesting, drying, processing, manufacturing, compounding, converting, producing, deriving, or preparing of marijuana, or any other transaction, in violation of state law.

This Division applies to Commercial Cannabis Organizations as defined in Section 12.2X.020(J).
12.2X.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” shall have the same meaning as Section 26001(d) of the Business and Professions Code.

C. "Cannabis" shall have the same meaning as Section 26001(f) of the Business and Professions Code.

D. “Cannabis By-Products” means delta-8-THC and cannabiol when present in amounts greater than .2% of a product’s dry weight.

E. “Cannabis Organization” shall mean any licensee required by the state to be licensed as a type “A-license” or type “M-license” pursuant to the Business and Professions Code and starting with Section 26000; CO includes a Commercial Cannabis Organization and Medical Cannabis Organization.

F. “Concentrate” shall have the same meaning as “concentrated cannabis” as set forth in SEC. 113. Section 11006.5 of the Health and Safety Code.

G. “Commercial Cannabis Activity” shall have the same meaning as as set forth in Section 26001(k) of the California Business and Professions Code.

H. “Cannabis Cultivation Business” or “Cultivation Business” means a Cannabis Organization whose primary activity is Cultivation.

I. “Cannabis Cultivation Facility” or “Facility” means a building or other location where Commercial Cannabis is cultivated.

J. "Cannabis Organization" or “CO” means any person required to hold a license pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code.

1. All CO’s authorized under this Chapter shall also maintain a valid state license authorized under Division 10 of the Business and Professions Code.

2. With the exception of testing laboratory licenses, which may be used to test cannabis and cannabis products regardless of whether they are intended for use by individuals who possesses a physician’s recommendation, all licenses issued under this Chapter shall bear a clear designation as used by the State indicating whether the license is for commercial marijuana adult-use cannabis activity, as distinct from licensed commercial medical cannabis activity, by prominently affixing an "A" or "M," respectively.

K. “Cannabis Product” shall have the same meaning as set forth in Section 11018.1 of the
Health and Safety Code, except that it does not include "Medicinal cannabis" or "medicinal cannabis product" (as defined by Section 26001(ai) of the Business and Professions Code) intended to be sold for use pursuant to the same meaning as in Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation.

L. "Testing Facility" shall have the same meaning as "Testing laboratory" as set forth in Section 26001(as) of Chapter 1 of Division 10 of the California Business and Professions Code.

"Commercial Cannabis Organization" or "CCO" means any licensee required by the state to be licensed as a type "A-license" for the cultivation, manufacture, or distribution of cannabis and cannabis products that are intended for adults 21 years of age and over and who do not possess physician's recommendations.

M. "Compound(s)" means any or all of the following chemicals, as the context requires:
   1. "THC" or "Δ9-THC" means Δ8-tetrahydrocannabinol, (Δ)-(6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a-tetrahydro-6H-benzoc-[c]chromen-1-ol.
   2. "THCA" or "Δ9-THCA" means the acid form of THC.
   3. "CBD" or "Cannabidiol" means 2-[(1R,6R)-6-isopropenyl-3-methylcyclohex-2-en-1-yl]-5-pentylbenzene-1,3-diol.
   4. "CBDA" or "Cannabinolic acid" means the acid form of CBD.
   5. "CBN" or "Cannabinol" means 6,6,9-trimethyl-3-pentyl-benzoc-[c]chromen-1-ol.

N. "Contaminant" means any pesticide, residual solvent or microbiological organism or product thereof as further defined by Section 26101(d)(2) of the Business and Professions Code.

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

P. "Customer" means a natural person 21 years of age or older.

Q. "Delivery" shall have the same definition as Section 26001(h) of Chapter 1 of Division 10 of the California Business and Professions Code.

R. "Dispensary" means any licensee required to be licensed as a retailer, microbusiness, or nonprofit pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code and generally includes commercial (adult use) and medical retail cannabis organizations except where the applicable ordinance pertains solely to one and context requires the exclusion of either medical or commercial. Any Dispensary may operate for profit or not for profit and as an individual or in any entity or organizational format permitted by State law.

1. "Commercial Dispensary" means any licensee required by the state to be licensed as a type "A-license" for the distribution of cannabis and cannabis products that are intended for adults 21 years of age and over and who do not possess physician's recommendations, and includes both Commercial Retail Dispensaries and Commercial Delivery-Only Dispensaries.

   a. "Commercial Retail Dispensary" is a Commercial Dispensary that is authorized under Chapter 12.XX and Title 23 and Division 10 (commencing with Section 26000) of the Business
and Professions Code to dispense Commercial Cannabis at a non-residential location and via delivery. A Commercial Retail Dispensary may also provide other incidental services to its Customers to the extent permitted by state law, and authorized under this Chapter, Chapter 12.XX, and Title 23. ¶

Commercial Retail Dispensaries may also hold a license to operate as a Medical Dispensary as defined in this Chapter 12.23 and authorized under Chapters 12.26 and 12.27, and Division 10 of the Business and Professions Code.

b. “Commercial Delivery-Only Dispensary” is a Commercial Dispensary that is authorized by Chapter 12.XX and Title 23 and Division 10 (commencing with Section 26000) of the Business and Professions Code and is limited to delivering Commercial Cannabis to its Customers and that operates from a permitted location in Berkeley but does not have a location to which Customers may come to acquire Cannabis or any other good or service.

“Delivery” shall have the same definition as Section 26001(h) of Chapter 1 of Division 10 of the California Business and Professions Code.

2. “Medical Cannabis Dispensary” means specifically any licensee required by the state to be licensed as a type "M-license" for the distribution of cannabis and cannabis products that are intended for Qualified Patients and their Caregivers, and includes both Medical Retail Dispensaries and Medical Delivery-Only Dispensaries. A Medical Cannabis Dispensary may also provide other incidental services to Qualified Patients and Caregivers to the extent permitted by state law, and authorized under this Chapter, Chapter 12.XX, and Title 23. Medical Cannabis Dispensaries may also hold a license to operate as a Commercial Dispensary as defined in this Chapter 12.23 and authorized under Chapters 12.XX and 12.XX, and Division 10 of the Business and Professions Code.

a. "Medical Retail Dispensary" shall mean an organization that is authorized under Chapter 12.XX and Title 23 and Division 10 (commencing with Section 26000) of the Business and Professions Code to dispense Medical Cannabis at a non-residential location and via delivery.

b. “Medical Delivery-Only Dispensary” is a Medical Dispensary that is authorized by Chapter 12.XX and Title 23 and Division 10 (commencing with Section 26000) of the Business and Professions Code and is limited to delivering Medical Cannabis to Qualified Patients and their Caregivers and that operates from a permitted location in Berkeley but does not have a location to which Qualified Patients and their Caregivers may come to acquire Cannabis or any other good or service.

6. A Commercial Dispensary shall not dispense Commercial Cannabis to any Customers under this section prior to receipt of a Type 10 license, or any other dispensary license type from the California Department of Consumer Affairs, from the Bureau of Cannabis Control, or Marijuana Regulation, unless authorized by a State licensing authority as stated in Section 26050.1(c) of Chapter 5 of Division 10 of the Business and Professions Code.
R. “Edible Cannabis Product” (or “Edible”) means a Commercial Cannabis Product that is intended to be used, in whole or in part, for human consumption. 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.).

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

T. “Principal” shall have the same meaning as “Owner” under Section 26001(al)(1) of Chapter 1 of the Division 10 of the California Business and Professions Code and any rules or regulations promulgated by the Bureau of Cannabis Control within the Department of Consumer Affairs.

U. “Manufacture” shall have the same meaning as set forth in Section 26001(age) of Chapter 1 of the Division 10 of the California Business and Professions Code.

V. “Manufacturer” shall have the same meaning as Section 26001(ah) of Chapter 1 of Division 10 of the California Business and Professions Code.

“Medical Cannabis Organization" or "CCO" means any licensee required by the state to be licensed as a type “M-license” for the cultivation, manufacture, or distribution of cannabis and cannabis products that are intended for Qualified Patients or their Caregivers.

W. “Nursery” shall have the same meaning as Section 26001(aiw) of Chapter 1 of Division 10 of the California Business and Professions Code.

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

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

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

12.23X.030 Operating Standards – Eligibility

A. CCOs shall comply with California law governing Commercial Cannabis Activity, any other state laws that may be adopted concerning Commercial Cannabis, including but not limited to Division S 8 AND 10 of the Business and Professions Code, and Chapters 12.2X, 12.2X and 12.2X 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.

1. To the extent the requirements of this Chapter and Chapters 12.2X, 12.2X and 12.2X are more restrictive than state law, they shall apply. To the extent the requirements of this Chapter and Chapters 12.2X, 12.2X and 12.2X are less restrictive than state law, the requirements of state law shall apply.

B. CCOs shall only obtain Commercial Cannabis from licensees authorized to distribute
cannabis under Division 10 of the California Business and Professions Code no later than 2019, or as otherwise provided by state law.

C. A Dispensary shall verify the age or status as a Qualified Patient or Caregiver prior to admitting any person to the premises for the purpose of conducting Commercial Cannabis Activity. Commercial Retail Dispensaries may not admit any Customer without first verifying his or her status as an adult no less than 21 years of age except that, if a Commercial Dispensary that is dually operating as a Medical Dispensary as defined in Chapter 12.23, and authorized by Chapter 12.27, that Dispensary may admit any qualified patient or primary caregiver as provided in Chapter 12.23, 12.26, and 12.27 and as defined by state law.

D. A Dispensary shall immediately ban any person who diverts Cannabis in any manner not permitted by this Chapter, Chapter 12.26, Chapter 12.27, Chapter 12.XX or California law.

E. No person may be allowed to have any position with a CCCO if he or she is under the age of twenty-one, except as provided by State law and in Chapter 12.27 or 12.25, or 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.

F. All CCCOs shall maintain contemporaneous financial and operational records sufficient to show compliance with this Chapter and Chapters 12.2_. 12.2_ and 12.2_, and state law governing medical cannabis, which records shall be subject to inspection by the City.

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 CCCO or purported CCCO and whether that CCCO complies with any of the requirements of this Chapter or Chapters 12.26, 12.27 or 12.23, and to conduct inspections as provided in Chapter 1.16.

B. The City Manager or his or her designee shall promulgate an application process to implement this Chapter and Chapters 12.2_, 12.2_ and 12.2_ as soon as practicable. The City Manager or his or her designee may issue regulations to implement this Chapter and Chapters 12.2_, 12.2_ and 12.2_.

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.

D. The City finds that the public interest in not disclosing the information containing the names, addresses, social security numbers, tax information, security details, and operating procedures of any applicant or licensee submitted pursuant to Chapter 12.23, 12.24, 12.25, 12.26, or 12.27
outweighs the public interest in disclosing and, as such, all information submitted in connection with a license and/or application for any Cannabis license type shall be exempt from disclosure. California Government Code Section 6254. (see also BMC 15.12.110 Community right to know; public records.) In accordance with CA Health & Safety Code Section 11362.713, any and all information containing the names, addresses, or social security numbers of patients, their medical conditions, or the names of their primary caregivers, received and contained in the records of the Department of Public Health and by any county public health department are hereby deemed "medical information" within the meaning of the Confidentiality of Medical Information Act (Civil Code § 56, et seq.) and shall not be disclosed by the City except in accordance with the restrictions on disclosure of individually identifiable information under the Confidentiality of Medical Information Act, California Government Code Section 6254, or other California law. The City further finds that the public interest in not disclosing the information containing the names, addresses, social security numbers, tax information, and operating procedures of any applicant or licensee submitted pursuant to this Chapter 12.27 outweighs the public interest in disclosing and, as such, all information submitted in connection with a license and/or application for any Medical Cannabis license type shall be exempt from disclosure. California Government Code Section 6254. (see also BMC 15.12.110 Community right to know; public records.)

E. The City Manager and all former or existing Berkeley officials, administrators and employees shall not do any of the following without a court order signed by a judge:

(1) Use agency money, facilities, property, equipment, or personnel to assist a federal agency to investigate, detain, detect, report, or arrest a person for commercial or noncommercial cannabis or medical cannabis activity that is authorized by law in the State of California and under this Chapter.
(2) Respond to a request made by a federal agency for personal information about an individual who is an authorized Commercial Cannabis Organization to possess, cultivate, transport, manufacture, sell, or possess for sale Cannabis Products, if that request is made for the purpose of investigating or enforcing federal marijuana law.
(3) Provide information about a person who has applied for or received a license to engage in commercial cannabis or commercial medical cannabis activity pursuant to this Chapter, MAUCRSA, MCRSA, and AUMA.
(4) Transfer an individual to federal law enforcement authorities for purposes of marijuana enforcement or detain an individual at the request of federal law enforcement for conduct that is legal under state law, and authorized under this chapter.

(C) For purposes of this section, the following definitions shall apply:
(1) “AUMA” means the Control, Regulate and Tax Adult Use Marijuana Act, enacted by the approval of Proposition 64 at the November 8, 2016, statewide general election and generally codified in Division 10 (commencing with Section 26000) of the Business and Professions Code.
(2) “MCRSA” means the Medical Cannabis Regulation and Safety Act, generally codified in Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code, and other provisions regarding licensing of Cultivators, Manufacturers, Testing Laboratories, Distributors, and Dispensaries of medical cannabis and Medical Cannabis Products located in this article and in Article 2.5 (commencing with Section 11362.7) REPEALED by MAUCRSA.
(3) “MAUCRSA” the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017.
12.23.050 Abatement of violations
A. Violations of this Chapter or Chapters 12.2, 12.2 or 12.2 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, 12.23 or 12.2X 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.
ORDINANCE NO. 7,532-N.S.

AMENDING CHAPTER 12.27 OF THE BERKELEY MUNICIPAL CODE REGULATING MEDICAL CANNABIS COLLECTIVES AND ORGANIZATIONS, Dispensaries, and Other Than Cultivation

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 all Medical Cannabis Organizations, except Cultivation, dispensaries and Collectives as defined in Chapter 12.23. That Section 12.27.020 of the Berkeley Municipal Code is amended to read as follows:

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 Medical Dispensary that substantially complies with this Chapter by that date 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 Definitions

A. All terms set forth in this Chapter shall have the same definitions as set forth in Berkeley Municipal Code 12.23, Chapter 3.5 of Division 10 of the Business and Professions Code as established by the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), the Medical Cannabis Regulation and Safety Act, and as may be supplemented by rules or regulations issued by the Bureau of Cannabis Control within the Department of Consumer Affairs, the Department of Food and Agriculture or the Department of Health.

B. Starting January 1, 2018, all references to “Members” within the Berkeley Municipal Code shall be replaced with the term “Qualified Patient” or “Primary Caregiver” as applicable and as those terms are defined in Chapter 12.23.

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 Medical Dispensary may be a Principal for any...
medical dispensary in Berkeley.

B. Any Medical Cannabis Operation currently authorized under Chapter 12.26, 12.27, 12.23 or Title 23 of the Berkeley Municipal Code may continue to operate prior to issuance of a state license.

1. An MCO that is finally denied or fails to apply for a state license within the in a reasonable amount of time set forth in following the promulgation of the Bureau of Medical Cannabis Control Regulation’s application process for non-temporary licenses shall no longer be authorized to operate under this Chapter.

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 Medical Dispensary.

2. The scale of Cultivation by or on behalf of a Medical 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 Medical 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 Medical Dispensary may dispense to him or her, an amount of Medical Cannabis consistent with those needs;

b. a Medical 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 Medical Dispensary premises.

4. If a Member has an identification card issued pursuant to Health & Safety Code Section 11362.71 or 11362.735, a Medical 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 access 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 Medical Dispensary.

E. 1. Notwithstanding Subsections A(3), C(2), C(4), C(5) and C(6), Subsections 12.27.020(A) through (D) shall be deemed repealed and of no further force or effect on January 1, 2018. Following January 1, 2018, authorized medical dispensaries shall be subject to the rules and regulations, promulgated by the Bureau of Medical Cannabis Control, Regulation, and by MAUCRSAChapter 3.5 of Division 5 of the Business and Professions Code.

FE. 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 390 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 Medical 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 Medical 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 Medical Dispensary shall prohibit entrance of any Qualified Patient, Caregiver or person who intentionally or negligently violates any provision of this Chapter or who operates a motor vehicle after ingesting any Medical Cannabis Product at that Medical Dispensary. Prompt banishment of any Qualified Patient, Caregiver or person termination of membership under this subdivision shall be considered in any enforcement proceeding against a Medical 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 Medical Dispensary that includes the following language:

This Medical Dispensary only provides medical cannabis to Qualified Patients and Caregivers, its members, who must have legally recognized California Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis, or to persons over the age of 21, as authorized by State law.

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 Medical Dispensary is registered in accordance with
the laws of the City of Berkeley. The sale of marijuana and the diversion of marijuana for any 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.

<table>
<thead>
<tr>
<th>Constituent</th>
<th>Equipment/Methodology</th>
</tr>
</thead>
<tbody>
<tr>
<td>THCA</td>
<td>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</td>
</tr>
<tr>
<td>THC</td>
<td></td>
</tr>
<tr>
<td>CBDA</td>
<td></td>
</tr>
<tr>
<td>CBD</td>
<td></td>
</tr>
<tr>
<td>CBN</td>
<td></td>
</tr>
</tbody>
</table>

\(^1\) 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.

<table>
<thead>
<tr>
<th>Product type</th>
<th>Label information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannabis (flowers, leaf and concentrates, including water processed concentrates)</td>
<td>% by weight and mg/g</td>
</tr>
<tr>
<td>Edibles (other than beverages)</td>
<td>mg/package or mg/serving if applicable; nutritional and allergen information as required by the CDPH for cottage foods</td>
</tr>
<tr>
<td>Capsules/pills</td>
<td>mg/capsule</td>
</tr>
<tr>
<td>Oils, butters, tinctures (for internal</td>
<td>weight/volume</td>
</tr>
<tr>
<td>Contaminant</td>
<td>Testing methodology</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>EPA-controlled pesticides commonly used in cannabis cultivation</td>
<td>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)</td>
</tr>
<tr>
<td>Microbiological contaminants</td>
<td>Any methodology approved by any U.S. or recognized international standards organizations</td>
</tr>
<tr>
<td></td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Residual flammable solvents (concentrates only)</td>
<td>Head space analysis</td>
</tr>
</tbody>
</table>

\(^{1}\) 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.
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, or Qualified Patients shall be contained in packaging that bears labels containing the following information, in addition to any other information that a Medical Dispensary may choose to provide or that may be required by law:
   a. the name and contact information for the Medical 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, and by Chapter 2.5 of Division 10 of the Business and Professions Code.
2. Compliance with State Food Safety Requirements. A Medical 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 Medical Dispensary to produce Edibles shall be constructed, operated and inspected in accordance with the applicable building code and applicable food safety requirements.

H. Preparation of Edibles.
1e. 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.

2b. 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.

3c. Edibles that are produced or distributed at a Medical Dispensary may only be prepared by a Member of that Medical 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.

4d. 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 Medical 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.

5e. 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.


1e. 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.

2e. 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.

3e. 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.

4e. 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.
JH. 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 Chapter 8 of the Business and Professions Code is available.

K. Manufacturing
1. A manufacturer shall comply with Chapter 12.23, Title 23 and all zoning, health and fire code regulations and state law.
   a. Any facility used by a manufacturer Edibles, Concentrates or Manufacture other Medical Cannabis Products, shall be constructed, operated and inspected in accordance with the applicable building code and applicable food safety requirements.
2. A Manufacturer and Manufacturing Facility shall operate with a state-issued type 6 license comply, as provided in Chapter 3.5 of Division 106 of the Business and Professions Code.
3. Upon promulgation of Chapter 3.5 of Division 8 of the Business and Professions Code, a manufacturer shall hold either a Manufacturing Level 1 (Type 6) or Manufacturing Level 2 (Type 7) license type issued by the State and may hold a temporary license as set forth in SEC. 32. Section 26050.1 of the Business and Professions Code - Department of Health.

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 Medical Dispensary, Dispensary to all Members, and Qualified Patients 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, and Qualified Patients.
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
A. 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.

B. All Medical Cannabis Operations shall be notified in writing within 30 days of the adoption of a resolution establishing or changing any fee or tax related to cannabis operations.

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 Confidentiality

The City finds that the public interest in not disclosing the information containing the names, addresses, social security numbers, tax information, and operating procedures of any applicant or licensee submitted pursuant to this Chapter 12.XX outweighs the public interest in disclosing and, as such, all information submitted in connection with a license and/or application for any Cannabis license type shall be exempt from disclosure. California Government Code Section 6254. (see also BMC 15.12.110 Community right to know: public records.) In accordance with CA Health & Safety Code Section 11362.713, any and all information containing the names, addresses, or social security numbers of patients.
their medical conditions, or the names of their primary caregivers, received and
tained in the records of the Department of Public Health and by any county public
health department are hereby deemed “medical information” within the meaning of the
Confidentiality of Medical Information Act (Civil Code § 56, et seq.) and shall not be
disclosed by the City except in accordance with the restrictions on disclosure of
individually identifiable information under the Confidentiality of Medical Information Act,
California Government Code Section 6254, or other California law. The City further finds
that the public interest in not disclosing the information containing the names,
addresses, social security numbers, tax information, and operating procedures of any
applicant or licensee submitted pursuant to this Chapter 12.27 outweighs the public
interest in disclosing and, as such, all information submitted in connection with a license
and/or application for any Medical Cannabis license type shall be exempt from
disclosure. California Government Code Section 6254. (see also BMC 15.12.110
Community right to know; public records.)

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 Arreguín.

Noes: Hahn.

Absent: Wengraf.

At a regular meeting of the Council of the City of Berkeley held on February 14,
2017, this Ordinance was adopted by the following vote:
Ayes: Bartlett, Davila, Droste, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Abstain: Hahn.

Absent: None.
ORDINANCE NO. __________ -N.S.

ADDING CHAPTER 12.2X OF THE BERKELEY MUNICIPAL CODE REGULATING COMMERCIAL CANNABIS ORGANIZATIONS

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

Section 12.2X.010 Purpose; Applicability

A. This Chapter applies to Commercial Cannabis Organizations as defined in Chapter 12.23.

B. It is the intent of the Council to adopt regulations consistent with California Health and Safety Code sections 11362.5 (Compassionate Use Act), California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) Medical Cannabis Regulation and Safety Act, and the Adult Use of Marijuana Act (Proposition 64, or AUMA) to protect public health, safety, and welfare.

C. Nothing in this Division is intended to reduce the rights of a qualified patient or primary caregiver otherwise authorized by California Health and Safety Code sections 11362.5(d) and 11362.765, or of individuals twenty-one years of age or older, as authorized by the Adult Use of Marijuana Act.

D. This Division shall be interpreted in a manner consistent with state law. Nothing in this Division is intended to authorize the sale, distribution, possession, planting, cultivation, harvesting, drying, processing, manufacturing, compounding, converting, producing, deriving, or preparing of cannabis, or any other transaction, in violation of state law.

E. This Division applies to Commercial Cannabis Organizations as that term is defined in 12.2X.020(I).

Section 12.2x.020 DEFINITIONS

All terms set forth in this Chapter shall have the same definition as set forth in Berkeley Municipal Code 12.23x and MAUCRSA, the Control, Regulate and Tax Adult Use of Marijuana
Section 12.2X.030 Eligibility and Authorization Requirements

A. No Principal of any Commercial Dispensary may be a Principal for any other Commercial Dispensary in Berkeley except that any Principal may be a Principal for any Dispensary that is licensed to operate both a Medical and Nonmedical Commercial Cannabis Organization at a single location.

B. All Commercial Cannabis Organizations shall comply with Division 10 of the California Business and Professions Code.

   1. A Commercial Cannabis Organization may operate for profit or not for profit and as an individual or in any entity or organizational format permitted by State law.

C. There shall be a combined total of six Commercial Retail Dispensaries and 2 Commercial Delivery Dispensaries permitted as of right within the City of Berkeley until otherwise determined by the City Council.

D. The City shall issue licenses for Commercial Cannabis Organizations in accordance with the license types permitted under State law. If the City does not offer a license or express approval for a specific state-issued AUMA license type then that license type shall be prohibited.

E. All licenses issued under this division shall bear a clear designation indicating that the license is for Commercial Cannabis Activity as distinct from Medical Cannabis Activity pursuant to licensed under Chapter 3.5 of Division 10 of the Business and Professions Code. Examples of such a designation include, but are not limited to, "Type 1—Nonmedical," or "Type INM."

F. The City may deny the application for licensure or renewal of a license if the applicant is denied a license or renewal by the State.

G. A license issued pursuant to this Chapter shall be valid for 12 months from the date of issuance. The license may be renewed annually.

H. The City Council shall establish procedures for the issuance and renewal of Commercial
Cannabis Organization licenses.

1. Medical retail dispensaries authorized as of January 1, 2017 under Chapter 12.27 and in substantial compliance with Chapters 12.26 and 12.27 and Title 23 as reasonably determined by the City Manager shall not be required to participate in the ranking and allocation process for commercial dispensaries that may be set forth by the City Council at the time the City Council starts accepting applications.

2. Except as otherwise set forth in this Chapter 12.XX, the City shall not accept additional applications for Commercial Dispensary licenses until January 1, 2020.

I. The City Council shall give priority in issuing licenses under this Section to an applicant that can demonstrate it operated in compliance with the Compassionate Use Act and its implementing laws before September 1, 2016, or currently operates in compliance with Chapter 12.26 and 12.27 of the Berkeley Municipal Code and Chapter 3.5 of Division 10-6 of the Business and Professions Code.

1. A Medical Cannabis Organization authorized by the City of Berkeley as of January 1, 2017, may apply for a Commercial Cannabis Organization license from the City before or after applying to the state for any license and shall be entitled to continue to operate while seeking a State license for any nonmedical license type or Commercial Cannabis Organization and, upon issuance of such license, be given priority for a license to operate the same license type from the City of Berkeley.

2. Notwithstanding subdivision (H)(2), the City of Berkeley may authorize a Medical Cannabis Organization to operate as a Commercial Cannabis Organization pursuant to Section 26050.1(e) of Chapter 5 of Division 10 of the Business and Professions Code.

   a. The existing Medical Retail Dispensaries permitted as of January 1, 2016, under Berkeley Municipal Code section 12.26.130 shall, if in substantial compliance with Chapters 12.26, 12.27 and Title 23 and open and operating upon codification of this Chapter, be authorized to operate as a Commercial Retail Dispensary as defined in Chapter 12.2X.XX and be provided a temporary license there for by the City.

   b. Any Medical Retail Dispensaries permitted as of January 1, 2017, but not open and operating upon codification of this Chapter may once in operation be issued
temporary licenses, pursuant to subdivision (l)(2), and given priority status over other applicants.

c. Any such Medical or Commercial Cannabis Organization that does not substantially comply with this ordinance by that date may apply to operate under Berkeley Municipal Code section 12.2X.XXX on the same basis as any other applicant.

J. Authorized Commercial Cannabis Dispensaries may also operate a Medical Cannabis Dispensary as defined in Chapters 12.23 and authorized under Chapter 12.27 at a single location.

K. A prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession of, possession for sale, sale, manufacture, transportation, or cultivation of marijuana shall not be grounds for denial of a license. Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.

L. Personal Cultivation
(1) Personal cultivation of Cannabis shall be authorized under paragraph (3) of subdivision (a) of Section 11362.1 of the Health and Safety Code is subject to the following restrictions:

(2) A person shall plant, cultivate, harvest, dry, or process plants in accordance with in accordance with subsection (b) of Section 11362.1 of the Health and Safety Code.

(3) The living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of that private residence, are in a locked space, and are not visible by normal unaided vision from a public place.

(4) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence for nonmedical use, at one time.
Section 12.2X.XXX Operating Standards

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

A. All prospective Customers must be advised in writing, as follows: "WARNING: There may be health risks associated with the consumption of cannabis products."

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

1. Accounts for all Cannabis;

2. Tracks each Batch of 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.

5. Section 12.27.050 shall be deemed repealed and of no further force or effect once Batch tracking as set forth in Section 26068 Article 10 of Chapter 3.5 of the Business and Professions Code is available.

C. Dispensing.

1. Except as authorized in Chapter 12.27, Commercial Cannabis Dispensaries may not dispense to any person who is not twenty-one years of age or older, and may not dispense without first verifying proof of age eligibility.
2. **Commercial Cannabis** Dispensaries may not dispense more Commercial Cannabis to any one Customer as authorized under state law.

D. Customers and employees.
   1. All employees must be at least 21 years of age.
   2. **Commercial Cannabis** Dispensaries may not admit any person under 21 years of age, except for qualified patients and caregivers as provided in this Chapter and Chapter 12.27.

E. Security.
   1. **Commercial Cannabis** Dispensaries shall provide adequate security and lighting on-site for 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. **Commercial Cannabis** Dispensaries must maintain security guards and camera coverage of their entire grounds for the safety of persons and to 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 30 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 12.2x.110.
   3. **Commercial Cannabis** 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 **Commercial Cannabis** 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 **Commercial Cannabis** 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 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. Commercial Cannabis 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. Commercial Cannabis Dispensaries shall be operated to ensure neighborhood compatibility, and shall take all reasonable steps to not create neighborhood disturbances. Such measures shall include, but not be limited to, providing a security guard to patrol the area surrounding the Commercial Cannabis Dispensary during all hours of operation.

2. Upon licensure Commercial Cannabis 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. Commercial Cannabis Dispensaries shall encourage neighbors to call this person to try to solve any operating problems.

3. All Commercial Cannabis 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. Commercial Cannabis 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. Commercial Cannabis Dispensaries shall ensure all graffiti is removed from property and parking lots under their control within 72 hours of its appearance.
6. **Commercial Cannabis** Dispensaries shall operate only between the hours of 9:00 a.m. and 9:00 p.m.

G. Consumption of Cannabis, Tobacco and Alcohol.

1. Smoking of Cannabis is prohibited at **Commercial Cannabis** Dispensaries and within 50 feet of **Commercial Cannabis** 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 Cannabis, including but not limited to any device manufactured, distributed, marketed, or sold as a vaporizer, 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 **Commercial Cannabis** Dispensaries.

3. Sale, service and consumption of alcoholic beverages at **Commercial Cannabis** Dispensaries is prohibited, and **Commercial Cannabis** Dispensaries shall prohibit any person in possession of an open alcoholic beverage from entering or remaining on the premises. Nothing in this Section shall prohibit the possession or use of Cannabis Products otherwise authorized under State law.

4. The City shall allow for the smoking, vaporizing, and ingesting of Cannabis or Cannabis Products on the premises of a retailer or microbusiness licensed by the State if:
   (a) Access to the area where Cannabis consumption is allowed is restricted to persons 21 years of age and older;
   (b) Cannabis consumption is not visible from any public place or non-age restricted area; and
   (c) Sale or consumption of alcohol or tobacco is not allowed on the premises.

H. **Accessibility.** **Commercial Cannabis** Dispensaries shall comply with all physical accessibility requirements that would be applicable to a newly-constructed building, except that pre-existing **Commercial Cannabis** 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 Customer.**

   A **Commercial Cannabis** Dispensary shall not admit any Customer, Qualified Patient or Caregiver of whom it is aware who purposely or repeatedly violates the limitations in this Section
or who operates a motor vehicle after ingesting any Cannabis Product at that Dispensary. Prompt action taken under this subdivision shall be considered in any enforcement proceeding against a Dispensary.

Section 12.2X.XX Signage

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

This Dispensary provides cannabis only to customers who have legally recognized identification cards verifying their age as 21 or over.

1. If the dispensary is both a medical and commercial Dispensary, the language shall also include, “or a qualified patient or qualified caregiver as defined in Chapter 12.23.” 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 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: 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 12.2X.XXX Product Safety, Quality Assurance and Labeling
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.

<table>
<thead>
<tr>
<th>Constituent</th>
<th>Equipment/Methodology</th>
</tr>
</thead>
<tbody>
<tr>
<td>THCA</td>
<td>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</td>
</tr>
<tr>
<td>THC</td>
<td></td>
</tr>
<tr>
<td>CBDA</td>
<td></td>
</tr>
<tr>
<td>CBD</td>
<td></td>
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<tr>
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</tr>
</tbody>
</table>

\(^1\) High-performance liquid chromatography  
\(^2\) Gas chromatography

B. The quantitative information required by subdivision A shall be printed on labels for all Cannabis as set forth in the following table.

<table>
<thead>
<tr>
<th>Product type</th>
<th>Label information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannabis (flowers, leaf and concentrates, including water processed concentrates)</td>
<td>% by weight and mg/g</td>
</tr>
<tr>
<td>Edibles (other than beverages)</td>
<td>mg/package or mg/serving if applicable; nutritional and allergen information as required by the CDPH for cottage foods</td>
</tr>
<tr>
<td>Capsules/pills</td>
<td>mg/capsule</td>
</tr>
</tbody>
</table>
| 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. Cannabis shall be tested for contaminants as set forth in the following table. Cannabis that contains more than the permissible levels may not be provided to any Customer or any other person, and shall either be destroyed or returned to their source(s) at the option of the owner.

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>Testing methodology</th>
<th>Permissible amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPA-controlled pesticides commonly used in cannabis cultivation</td>
<td>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)</td>
<td>100 ppb (total of all quantitated pesticides)(^3)</td>
</tr>
</tbody>
</table>
| Microbiological contaminants | Any methodology approved by any U.S. or recognized international standards organizations | • APC<sup>4</sup> < 100,000 CFUs<sup>5</sup>  
• Yeast/Mold = APC<sub>10</sub> < 10,000 CFUs  
• Coliform ≤ 1,000 CFUs  
• Pseudomonas ≤ 1,000 CFUs<sup>6</sup>  
• Salmonella = 0 CFU  
• E. coli = 0 CFU  

| Residual flammable solvents (concentrates only) | Head space analysis | 400 ppm (total of all solvents)<sup>7</sup>  

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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 12.2X.XXX(G)(4)(b), and must use cannabis that has been tested for contaminants.

E. Commercial Cannabis Organizations 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 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 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 Cannabis.
   1. Cannabis that is made available to Customers 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 and pursuant to regulations promulgated by the Bureau of Cannabis Control.
   2. Compliance with State Food Safety Requirements. A Commercial Cannabis Organization Dispensary that prepares, dispenses, or in any manner distributes Edible 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 Commercial Edible Products shall thoroughly wash their hands before commencing production and before handling the finished product. Gloves must be worn when packaging edible products containing 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 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 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 Cannabis Products must be a State certified food handler. The valid certificate number of such handlers 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 package. Additional label information must include: (i) a warning if nuts or other known allergens are used; (ii) a warning that the item contains 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; (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. Sections 12.2X.XXX(A) through (G) shall be deemed repealed and of no further force or effect upon implementation of testing and labeling requirements once promulgated and set forth by the State.

I. Manufacturing
   1. A Manufacturer shall comply with Chapter 12.23, Title 23 and all zoning, health and fire code regulations and state law.
      a. Any facility used by a manufacturer Edibles, Concentrates or Manufacture other Cannabis Products, shall be constructed, operated and inspected in accordance with the applicable building code and applicable food safety requirements.
   2. By January 1, 2019, a Manufacturer shall hold a Manufacturing Level 1 (Type 6), or Manufacturing Level 2 (Type 7) license type issued by the State Department of Health.

J. Commercial Testing Facilities - RESERVED

Section 12.2X7.XXX Fees; Taxes

(A) 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.

(B) All Commercial and Medical Cannabis Organizations shall be notified in writing within 30 days of the adoption of a resolution establishing or changing any fee or tax related to
cannabis operations.

(C) The total fees assessed pursuant to this Section shall be set at an amount that will fairly and proportionately generate sufficient total revenue solely to cover the total costs of administering this Chapter.

Section 12.2X.XXX Authority of City Manager

A) 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 Commercial Cannabis.

B) B) The City Manager or his or her designee shall promulgate an application process to implement this Chapter and Chapters 12.2_, 12.2_ and 12.2_ as soon as practicable. The City Manager or his or her designee may issue regulations to implement this Chapter and Chapters 12.2_, 12.2_ and 12.2_. The City Manager and all former or existing Berkeley officials, administrators and employees shall not do any of the following without a court order signed by a judge:

1. Use agency money, facilities, property, equipment, or personnel to assist a federal agency to investigate, detain, detect, report, or arrest a person for commercial or non-commercial cannabis or medical cannabis activity that is authorized by law in the State of California and under this Chapter.

2. Respond to a request made by a federal agency for personal information about an individual who is an authorized Commercial Cannabis Organization to possess, cultivate, transport, manufacture, sell, or possess for sale Cannabis Products, if that request is made for the purpose of investigating or enforcing federal marijuana law.

3. Provide information about a person who has applied for or received a license to engage in commercial cannabis or commercial medical cannabis activity pursuant to this Chapter, MAUCRSA, MCRSA, and AUMA.

4. Transfer an individual to federal law enforcement authorities for purposes of marijuana enforcement or detain an individual at the request of federal law enforcement for conduct that is
legal under state law, and authorized under this chapter.

(C) For purposes of this section, the following definitions shall apply:

(1) "AUMA" means the Control, Regulate and Tax Adult-Use Marijuana Act, enacted by the approval of Proposition 64 at the November 8, 2016, statewide general election and generally codified in Division 10 (commencing with Section 26000) of the Business and Professions Code.

(2) "MCRSA" means the Medical Cannabis Regulation and Safety Act, generally codified in Chapter 3.5 (commencing with Section 10300) of Division 6 of the Business and Professions Code, and other provisions regarding licensing of Cultivators, Manufacturers, Testing Laboratories, Distributors, and Dispensaries of medical cannabis and Medical Cannabis Products located in this article and in Article 2.5 (commencing with Section 11362.7) REPEALED by MAUCRSA.

(3) "MAUCRSA" the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017.

Section 12.2X.XX 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 12.2X.XXX 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 _______ 2017, this Ordinance was passed to print and ordered published by posting by the following vote:
Chapter 12.26

PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2008

Sections:

12.26.030 Reserved
12.26.040 Medical cannabis collectives.
12.26.050 Availability in pharmacies.
12.26.090 Medical cannabis paraphernalia.
12.26.100 Police procedures and training.
12.26.120 Emergency Distribution.
12.26.130 Medical cannabis organizations.
12.26.140 Compliance with all applicable laws.

1. Violations of square footage limitations not punishable as public offenses--public nuisance.

Title.
This initiative shall be known and may be cited as the Patients Access to Medical Cannabis Act of 2008. (Ord. 7068-NS § 1, 12/08/08 as amended ______/17)

Findings And Declarations.
The People of the City of Berkeley find all of the following to be true:

1. We strongly support the right of seriously ill patients to use medical 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.

2. We strongly oppose the arrest, prosecution, and incarceration of persons legally-qualified under the Compassionate Use Act of 1996 (Proposition 215) and Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017 (MAUCRSA) by local, state, or federal law enforcement.

3. There is a need in our community for safe and affordable access to medical cannabis.

4. There is a need for specific instructions for City officials and staff in order to eliminate this inconsistency.
5. There are no scientifically valid studies that determine the yield of medicine based on specific numbers of plants or the quantity of medication necessary for a patient. Berkeley’s arbitrarily low cultivation limits place undue burdens on local patients, and therefore require revision based on patient’s needs.

6. The People of the City of Berkeley further find and declare that we enact this initiative pursuant to the powers reserved to the State of California, the City of Berkeley, and its people under the Tenth Amendment to the United States Constitution. (Ord. 7068-NS § 2, 12/08/08)

Section 12.26.010 Purposes.
The purpose of this chapter is to implement California Health and Safety Code Section 11362.5, known as the Compassionate Use Act of 1996 and Chapter 3.5 of Division 8 of the Business and Professions Code, as amended by MAUCRSA, and to regulate the location of facilities lawfully used for the storage, dispensing and use of medical cannabis, other than the cultivation or possession of medical cannabis by an individual patient or caregiver at the patient or caregiver’s home, lawfully incident to the residential use of that home. The Compassionate Use Act, the Medical Marijuana Program, and MAUCRSA is the state law removing state law penalties for qualified patients, and primary caregivers to those patients, for possession and cultivation of a personal amount of medical cannabis for qualified patients. This chapter is intended:

1. 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.

2. 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.

3. To encourage the federal government 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.

4. To protect citizens from the adverse impacts of irresponsible medical cannabis distribution, storage and use practices. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 1 (part), 2004: Ord. 6620-NS § 1, 2001)

Section 12.26.030 Reserved
(Ord. 7531-NS § 1, 2017: Ord. 7359-NS § 1, 2014: Ord. 7161-NS § 1, 2010; Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 1 (part), 2004: Ord. 6620-NS § 1, 2001)

Section 12.26.035 Adult-use Recreational cannabis.
Except as set forth in subsection (I) of Section 12.2X.030, no adult-use/recreational cannabis business may be approved under this Section until the City Council adopts a licensing process and standards for such uses. (Ord. 7512-NS § 1, 2016)

Section 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 acquiring or 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.

1. Medical Cannabis Collectives may possess a reasonable quantity of dried cannabis and cannabis plants to meet the needs of their patient members. Medical Cannabis Collectives shall not accumulate more cannabis than is necessary to meet the personal medical needs of their Qualified Patients.

2. Except as permitted in Title 23, cultivation of medical cannabis by a medical cannabis collective that is not a Medical cannabis dispensary may only be incidental to a residential use. Cultivation occupying more than the lesser of 200 square feet or 25% of building square footage shall not be considered incidental, and is prohibited. (MCRSA: Qualified patients are exempt from the state permit program if cultivating less than 100 square feet for personal medical use. Primary caregivers with five or fewer patients are allowed up to 500 square feet (AB 243, 11362.777g and SB 643, 19319) Should we edit now?)

3. For purposes of this subdivision, "square feet" and "square footage" means the horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof).

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. Restriction on Excessive Cultivation and Possession. Nothing in this Section shall authorize any individual, organization, affiliation, collective, cooperative or other entity to (1) cultivate or possess a quantity of medical cannabis that is inappropriate for the personal medical need of the patient(s) for whom it is intended; (2) cultivate or possess any quantity of cannabis for non-medical purposes; or (3) cultivate or possess any quantity of cannabis greater than is permitted under State law. (Ord. 7161-NS § 2, 2010; Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

G. This Section shall be deemed repealed and of no further force or effect as of January 1, 2018.

Section 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. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

Section 12.26.060 Quality control encouraged.
The City of Berkeley strongly encourages all qualified patients, primary caregivers, and medical cannabis organizations 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. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

The Compassionate Use Act allows Qualified Patients or their Primary Caregivers to possess or cultivate cannabis for the Qualified Patient’s "personal medical purposes." Because each Qualified Patient will have different needs regarding appropriate Personal Medical Use, this Section seeks to ensure that each Qualified Patient or his or her Primary Caregiver can possess enough cannabis to meet the Qualified Patient’s personal medical need.
Section 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. 7068-NS § 3 (part), 12/08/08; Ord. 6620-NS § 1, 2001)

Section 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. 7068-NS § 3 (part), 12/08/08; Ord. 6620-NS § 1, 2001)

Section 12.26.100 Police procedures and training.
1. Within six months of the date that this chapter as modified 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.

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

3. Qualified patients, their primary caregivers, and representatives of medical cannabis organizations collectives that 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.

4. Qualified patients, their primary caregivers, and representatives of medical cannabis organizations collectives who come into contact with law enforcement and cannot establish or demonstrate their status as a qualified patient, or primary caregiver, or medical cannabis organization representative 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 or primary caregiver, or medical cannabis organization representative collective is credible; and (3) proof of status as a qualified patient or primary caregiver, or medical cannabis organization representative collective can be provided to the Police Department within three business days of the date of contact with law enforcement. (Ord. 7068-NS § 3 (part), 12/08/08; Ord. 6620-NS § 1, 2001)

The purpose of this Section is to ensure that cannabis provision in Berkeley is conducted in a safe and orderly manner to protect the welfare of the community.
A. A medical cannabis commission is established. The commission shall consist of nine members. Appointments to the commission shall be made, and vacancies on the commission shall be filled, by council members, in accordance with the provisions of Sections 2.04.030 through 2.04.130. At least one commissioner shall be a member of a medical cannabis dispensary, one shall be a member of a collective that is not a dispensary, one shall be a Principal of a Commercial Cannabis Dispensary, and one shall be a cultivator who is not primarily associated with a single dispensary and provides medical cannabis to more than one dispensary.

1. The commission shall recommend to the City operational and safety standards for Medical Cannabis Organizations and Commercial Cannabis Organizations Collectives and Dispensaries, and shall consult with any individual, organization, affiliation, collective, cooperative or other entity which seeks to open a new Cannabis Organization Medical Cannabis Collective or dispensary in Berkeley or to relocate an existing Cannabis Organization Medical Cannabis Collective or dispensary. The commission shall advise the City as to whether the proposed Cannabis Organization Medical Cannabis Collective or dispensary has a strategy for compliance
with the published safety and operational standards before the new Medical Cannabis Organization Collective or dispensary commences lawful operation.

2. The commission will monitor the compliance of Medical Cannabis Organization Collectives and dispensaries in Berkeley for the purpose of correcting any violations of the safety and operational standards. Medical Cannabis Collectives or dispensaries found to be in willful or ongoing violation of the standards shall be deemed in violation of this Chapter and referred to the City for appropriate action. (Ord. 7161-NS § 3, 2010: Ord. 7068-NS § 3 (part), 12/08/08)

Section 12.26.120 Emergency Distribution.
The City of Berkeley strongly opposes the federal prosecution of medical cannabis patients, caregivers, and providers. The City shall make all reasonable accommodation for the provision of medical cannabis to Qualified Patients or their Primary Caregivers in the event that access to medical cannabis is interrupted or severely diminished as the result of civil or criminal federal law enforcement activity. The City shall accommodate distribution of medical cannabis as early as possible following such a disruption and no later than thirty (30) days after the disruption. (Ord. 7068-NS § 3 (part), 12/08/08)

Section 12.26.130 Medical cannabis organizations.

1. Six medical cannabis dispensaries shall be allowed within the limits of the City of Berkeley, in locations and subject to the requirements specified in Title 23.

2. All medical cannabis facilities and organizations shall maintain contemporaneous financial and operational records sufficient to show compliance with this Chapter and state law governing medical cannabis, which shall be subject to inspection by the City. Such records shall protect the confidentiality of their members.

3. The City Manager may issue regulations to implement this Section. (Ord. 7500-NS § 1, 2016; Ord. 7161- NS § 4, 2010: Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 2 (part), 2004)

Section 12.26.140 Compliance with all applicable laws.
Nothing in this chapter shall be construed as excusing any person or entity from compliance with all other applicable federal, state and local laws. The City may make compliance with such laws a condition of deeming such person or entity in compliance with local law, except to the extent it would conflict with the purposes of this chapter. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 2 (part), 2004)

Section 12.26.150 Violations of square footage limitations not punishable as public offenses—public nuisance.

1. Notwithstanding anything to the contrary, violations of square footage limitation in Section 12.26.040.D shall not be punishable as public offenses to the extent that doing so would conflict with state law.

2. Violations of this Chapter are hereby declared to be public nuisances and shall be subject to Chapters 1.24 and 1.26. (Ord. 7359-NS § 2, 2014: Ord. 7161-NS § 5, 2010)
BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 12.2X.010 Purpose; Applicability

A. This Chapter applies to Commercial Cannabis Organizations as defined in Chapter 12.23.

B. It is the intent of the Council to adopt regulations consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act), California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to protect public health, safety, and welfare.

C. Nothing in this Division is intended to reduce the rights of a qualified patient or primary caregiver otherwise authorized by California Health and Safety Code sections 11362.5(d) and 11362.765, or of individuals twenty-one years of age or older, as authorized by the Adult Use of Marijuana Act.

D. This Division shall be interpreted in a manner consistent with state law. Nothing in this Division is intended to authorize the sale, distribution, possession, planting, cultivation, harvesting, drying, processing, manufacturing, compounding, converting, producing, deriving, or preparing of cannabis, or any other transaction, in violation of state law.

E. This Division applies to Commercial Cannabis Organizations as that term is defined in 12.2X.020(I).

Section 12.2X.020 DEFINITIONS

All terms set forth in this Chapter shall have the same definition as set forth in Berkeley Municipal Code 12.23 and MAUCRSA, as may be supplemented by rules or regulations issued by the Bureau of Cannabis Control within the Department of Consumer Affairs, the Department of Food and Agriculture, or the Department of Health.
Section 12.2X.030 Eligibility and Authorization Requirements

A. No Principal of any Commercial Dispensary may be a Principal for any other Commercial Dispensary in Berkeley except that any Principal may be a Principal for any Dispensary that is licensed to operate both a Medical and Nonmedical Commercial Cannabis Organization at a single location.

B. All Commercial Cannabis Organizations shall comply with Division 10 of the California Business and Professions Code.
   1. A Commercial Cannabis Organization may operate for profit or not for profit and as an individual or in any entity or organizational format permitted by State law.

C. There shall be a combined total of six Commercial Retail Dispensaries and 2 Commercial Delivery Dispensaries permitted as of right within the City of Berkeley until otherwise determined by the City Council.

D. The City shall issue licenses for Commercial Cannabis Organizations in accordance with the license types permitted under State law. If the City does not offer a license or express approval for a specific state-issued license type then that license type shall be prohibited.

E. All licenses issued under this division shall bear a clear designation indicating that the license is for Commercial Cannabis Activity as distinct from Medical Cannabis Activity.

F. The City may deny the application for licensure or renewal of a license if the applicant is denied a license or renewal by the State.

G. A license issued pursuant to this Chapter shall be valid for 12 months from the date of issuance. The license may be renewed annually.

H. The City Council shall establish procedures for the issuance and renewal of Commercial Cannabis Organization licenses.
   1. Medical retail dispensaries authorized as of January 1, 2017 under Chapter 12.27 and in substantial compliance with Chapters 12.26 and 12.27 and Title 23 as reasonably determined by the City Manager shall not be required to participate in the ranking and
allocation process for commercial dispensaries that may be set forth by the City Council at the time the City Council starts accepting applications.

2. Except as otherwise set forth in this Chapter 12.XX, the City shall not accept additional applications for Commercial Dispensary licenses until January 1, 2020.

I. The City Council shall give priority in issuing licenses under this Section to an applicant that can demonstrate it operated in compliance with the Compassionate Use Act and its implementing laws before September 1, 2016, or currently operates in compliance with Chapter 12.26 and 12.27 of the Berkeley Municipal Code and Division 10 of the Business and Professions Code.

1. A Medical Cannabis Organization authorized by the City of Berkeley as of January 1, 2017, may apply for a Commercial Cannabis Organization license from the City before or after applying to the state for any license and shall be entitled to continue to operate while seeking a State license for any license type and, upon issuance of such license, be given priority for a license to operate the same license type from the City of Berkeley.

2. Notwithstanding subdivision (H)(2), the City of Berkeley may authorize a Medical Cannabis Organization to operate as a Commercial Cannabis Organization pursuant to Section 26050.1 of Chapter 5 of Division 10 of the Business and Professions Code.
   a. The existing Medical Retail Dispensaries permitted as of January 1, 2016, under Berkeley Municipal Code section 12.26.130 shall, if in substantial compliance with Chapters 12.26, 12.27 and Title 23 and open and operating upon codification of this Chapter, be authorized to operate as a Commercial Retail Dispensary as defined in Chapter 12.2X.XX and be provided a temporary license there for by the City.

   b. Any Medical Retail Dispensaries permitted as of January 1, 2017, but not open and operating upon codification of this Chapter may once in operation be issued temporary licenses, pursuant to subdivision (I)(2), and given priority status over other applicants.

   c. Any such Medical or Commercial Cannabis Organization that does not substantially comply with this ordinance by that date may apply to operate under Berkeley Municipal Code section 12.2X.XXX on the same basis as any other
applicant.

J. Authorized Commercial Cannabis Dispensaries may also operate a Medical Cannabis Dispensary as defined in Chapters 12.23 and authorized under Chapter 12.27 at a single location.

K. A prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession of, possession for sale, sale, manufacture, transportation, or cultivation of marijuana shall not be grounds for denial of a license. Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.

L. Personal Cultivation
   (1) Personal cultivation of Cannabis shall be authorized under paragraph (3) of subdivision (a) of Section 11362.1 of the Health and Safety Code is subject to the following restrictions:

   (2) A person shall plant, cultivate, harvest, dry, or process plants in accordance with in accordance with subsection (b) of Section 11362.1 of the Health and Safety Code.

   (3) The living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of that private residence, are in a locked space, and are not visible by normal unaided vision from a public place.

   (4) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence for nonmedical use, at one time.

Section 12.2X.XXX Operating Standards
Dispensaries shall also comply with the operating standards set forth in this Section and State law.

A. All prospective Customers must be advised in writing, as follows: "WARNING: There may be health risks associated with the consumption of cannabis products."
B. Non-diversion. Commercial Cannabis Dispensaries shall take all practicable steps necessary to prevent and deter diversion of Cannabis to unauthorized persons. Commercial Cannabis Dispensaries must limit access to Cannabis to authorized personnel only, and must maintain an inventory management system that:

1. Accounts for all Cannabis;

2. Tracks each Batch of 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.

5. Section 12.27.050 shall be deemed repealed and of no further force or effect once Batch tracking as set forth in Section 26068 the Business and Professions Code is available.

C. Dispensing.

1. Except as authorized in Chapter 12.27, Commercial Cannabis Dispensaries may not dispense to any person who is not twenty-one years of age or older, and may not dispense without first verifying proof of age eligibility.

2. Commercial Cannabis Dispensaries may not dispense more Commercial Cannabis to any one Customer as authorized under state law.

D. Customers and employees.

1. All employees must be at least 21 years of age.

2. Commercial Cannabis Dispensaries may not admit any person under 21 years of age, except for qualified patients and caregivers as provided in this Chapter and Chapter 12.27.
E. Security.

1. Commercial Cannabis Dispensaries shall provide adequate security and lighting on-site for 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. Commercial Cannabis Dispensaries must maintain security guards and camera coverage of their entire grounds for the safety of persons and to 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 30 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 12.2x.110.

3. Commercial Cannabis 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 Commercial Cannabis 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 Commercial Cannabis 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 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. Commercial Cannabis 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. Commercial Cannabis Dispensaries shall be operated to ensure neighborhood compatibility, and shall take all reasonable steps to not create neighborhood disturbances. Such measures shall include, but not be limited to, providing a security guard to patrol the area surrounding the Commercial Cannabis Dispensary during all hours of operation.
   2. Upon licensure Commercial Cannabis 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. Commercial Cannabis Dispensaries shall encourage neighbors to call this person to try to solve any operating problems.
   3. All Commercial Cannabis 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. Commercial Cannabis 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. Commercial Cannabis Dispensaries shall ensure all graffiti is removed from property and parking lots under their control within 72 hours of its appearance.
   6. Commercial Cannabis Dispensaries shall operate only between the hours of 9:00 a.m. and 9:00 p.m.

G. Consumption of Cannabis, Tobacco and Alcohol.
   1. Smoking of Cannabis is prohibited at Commercial Cannabis Dispensaries and within 50 feet of Commercial Cannabis 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 Cannabis, including but not limited to any device manufactured, distributed, marketed, or sold as a vaporizer, 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 Commercial Cannabis Dispensaries.
3. Sale, service and consumption of alcoholic beverages at Commercial Cannabis Dispensaries is prohibited, and Commercial Cannabis Dispensaries shall prohibit any person in possession of an open alcoholic beverage from entering or remaining on the premises. Nothing in this Section shall prohibit the possession or use of Cannabis Products otherwise authorized under State law.
4. The City shall allow for the smoking, vaporizing, and ingesting of Cannabis or Cannabis Products on the premises of a retailer or microbusiness licensed by the State if:
   (a) Access to the area where Cannabis consumption is allowed is restricted to persons 21 years of age and older;
   (b) Cannabis consumption is not visible from any public place or non-age restricted area; and
   (c) Sale or consumption of alcohol or tobacco is not allowed on the premises.

H. Accessibility. Commercial Cannabis Dispensaries shall comply with all physical accessibility requirements that would be applicable to a newly-constructed building, except that pre-existing Commercial Cannabis 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 Customer.
A Commercial Cannabis Dispensary shall not admit any Customer, Qualified Patient or Caregiver of whom it is aware who purposely or repeatedly violates the limitations in this Section or who operates a motor vehicle after ingesting any Cannabis Product at that Dispensary. Prompt action taken under this subdivision shall be considered in any enforcement proceeding against a Dispensary.

Section 12.2X.XX Signage

A. A sign shall be posted at the entrance to any Commercial Cannabis Dispensary that includes the following language:
This Dispensary provides cannabis only to customers who have legally recognized identification cards verifying their age as 21 or over.

1. If the dispensary is both a medical and commercial Dispensary, the language shall also include, “or a qualified patient or qualified caregiver as defined in Chapter 12.23.” 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 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: 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 12.2X.XXX Product Safety, Quality Assurance and Labeling

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.

<table>
<thead>
<tr>
<th>Constituent</th>
<th>Equipment/Methodology</th>
</tr>
</thead>
<tbody>
<tr>
<td>THCA</td>
<td>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</td>
</tr>
<tr>
<td>THC</td>
<td></td>
</tr>
<tr>
<td>CBDA</td>
<td></td>
</tr>
<tr>
<td>CBD</td>
<td></td>
</tr>
<tr>
<td>CBN</td>
<td></td>
</tr>
</tbody>
</table>

\(^1\) High-performance liquid chromatography
\(^2\) Gas chromatography
B. The quantitative information required by subdivision A shall be printed on labels for all Cannabis as set forth in the following table.

<table>
<thead>
<tr>
<th>Product type</th>
<th>Label information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannabis (flowers, leaf and concentrates, including water processed concentrates)</td>
<td>% by weight and mg/g</td>
</tr>
<tr>
<td>Edibles (other than beverages)</td>
<td>mg/package or mg/serving if applicable; nutritional and allergen information as required by the CDPH for cottage foods</td>
</tr>
<tr>
<td>Capsules/pills</td>
<td>mg/capsule</td>
</tr>
<tr>
<td>Oils, butters, tinctures (for internal consumption)</td>
<td>weight/volume</td>
</tr>
<tr>
<td></td>
<td>mg/g</td>
</tr>
<tr>
<td>Topicals (external application)</td>
<td>mg/g or mg/mL, as applicable</td>
</tr>
<tr>
<td>Beverages</td>
<td>mg/container and mg/serving, if applicable; nutritional and allergen information as required by the CDPH for cottage foods.</td>
</tr>
</tbody>
</table>

C. Cannabis shall be tested for contaminants as set forth in the following table. Cannabis that contains more than the permissible levels may not be provided to any Customer or any other person, and shall either be destroyed or returned to their source(s) at the option of the owner.

<table>
<thead>
<tr>
<th>Contaminant</th>
<th>Testing methodology</th>
<th>Permissible amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPA-controlled pesticides commonly used in cannabis cultivation</td>
<td>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&lt;sup&gt;1&lt;/sup&gt;, Elisa&lt;sup&gt;2&lt;/sup&gt;</td>
<td>100 ppb (total of all quantitated pesticides)&lt;sup&gt;3&lt;/sup&gt;</td>
</tr>
<tr>
<td>Microbiological contaminants</td>
<td>Any methodology approved by any U.S. or recognized international standards organizations</td>
<td>• APC&lt;sup&gt;4&lt;/sup&gt; &lt; 100,000 CFUs&lt;sup&gt;5&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Yeast/Mold = APC&lt;sub&gt;10,000&lt;/sub&gt; CFUs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Coliform ≤ 1,000 CFUs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Pseudomonas ≤ 1,000 CFUs&lt;sup&gt;6&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Salmonella = 0 CFU</td>
</tr>
</tbody>
</table>
Residual flammable solvents (concentrates only) | Head space analysis | E. coli = 0 CFU
---|---|---
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 12.2X.XXX(G)(4)(b), and must use cannabis that has been tested for contaminants.

E. Commercial Cannabis Organizations shall maintain a written or computerized log documenting:
   1. the date, type, and amount of Product tested;
   2. the source(s) of any contaminated 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 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 Cannabis.
   1. Cannabis that is made available to Customers 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 and pursuant to regulations promulgated by the Bureau of Cannabis Control.

2. Compliance with State Food Safety Requirements. A Commercial Cannabis Organization that prepares, dispenses, or in any manner distributes Edible 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 Commercial Edible Products shall thoroughly wash their hands before commencing production and before handling the finished product. Gloves must be worn when packaging edible products containing 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 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 Cannabis.
   
   c. Edibles that are produced or distributed at a Dispensary 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
d. Certified Food Handler. A CCO who produces Edible Cannabis Products must be a State certified food handler. The valid certificate number of such handlers 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 package. Additional label information must include: (i) a warning if nuts or other known allergens are used; (ii) a warning that the item contains 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; (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. Sections 12.2X.XXX(A) through (G) shall be deemed repealed and of no further force or effect upon implementation of testing and labeling requirements once promulgated and set forth by the State.

I. Manufacturing
1. A Manufacturer shall comply with Chapter 12.23, Title 23 and all zoning, health and fire code regulations and state law.
   a. Any facility used by a manufacturer Edibles, Concentrates or Manufacture other Cannabis Products, shall be constructed, operated and inspected in accordance with the applicable building code and applicable food safety requirements.
2. By January 1, 2019, a Manufacturer shall hold a Manufacturing Level 1 (Type 6), or Manufacturing Level 2 (Type 7) license type issued by the State Department of Health.

J. Commercial Testing Facilities - RESERVED

Section 12.2X7.XXX  Fees; Taxes
(A) 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.

(B) All Commercial and Medical Cannabis Organizations shall be notified in writing within 30 days of the adoption of a resolution establishing or changing any fee or tax related to cannabis operations.

(C) The total fees assessed pursuant to this Section shall be set at an amount that will fairly and proportionately generate sufficient total revenue solely to cover the total costs of administering this Chapter.

Section 12.2X.XXX  Authority of City Manager
A) 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 Commercial Cannabis.

B) The City Manager or his or her designee shall promulgate an application process to implement this Chapter and Chapters 12.2, 12.2 and 12.2 as soon as practicable. The City Manager or his or her designee may issue regulations to implement this Chapter and Chapters 12.2, 12.2 and 12.2.

Section 12.2X.XX  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 12.2X.XXX  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 ________ 2017, this Ordinance was passed to print and ordered published by posting by the following vote: