



Office of the City Manager

PUBLIC HEARING

March 12, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Timothy Burroughs, Director, Planning and Development Department  
 Subject: Cannabis Ordinance Revisions; Amending the Berkeley Municipal Code

RECOMMENDATION

Conduct a public hearing and upon conclusion, provide direction regarding proposed ordinance language alternatives and adopt the first reading of five ordinances amending the Berkeley Municipal Code (BMC) which would:

1. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for all cannabis business types;
2. Revise ordinance language to reflect State regulations;
3. Create a path to allow a new business type (Retail Nursery Microbusinesses);
4. Protect youth by restricting cannabis advertising within the city; and
5. Allow temporary cannabis events at Cesar Chavez Park.

The ordinances would adopt BMC Chapters 12.21 and 20.40, amend Chapters 12.22, and 23C.25, Sub-Titles 23E and 23F, and repeal Chapters 12.23, 12.25 and 12.27.

SUMMARY

The five proposed cannabis ordinances would revise definitions and establish operating standards for all cannabis businesses in Berkeley, and include new regulations based on commission recommendations, Council direction, and Resolution 68,326-N.S. which established Berkeley as a sanctuary city for recreational cannabis use. The new ordinances would replace three existing Berkeley Municipal Code (BMC) chapters (12.23, 12.25 and 12.27), which were developed to regulate medicinal cannabis businesses only and do not fully incorporate new State regulations. The new ordinances would fully address both medicinal and adult use cannabis businesses, adopt new buffers for Retailers, establish a use type that could both grow and sell clones and seeds (Retail Nursery Microbusinesses (RNM), establish advertising regulations for cannabis businesses and products, and respond to a recent referral by creating an avenue to allow temporary cannabis events involving on-site sales and consumption of cannabis products.

The proposed BMC ordinances have been reviewed by the Cannabis Commission (CC) and the Community Health Commission (CHC). The Planning Commission (PC)

reviewed only those changes related to the Zoning Ordinance (Title 23). The minutes which contain the recommendations from these commissions, as well as a letter from the CHC detailing its recommendations, are included as attachments to this report. Where commission recommendations do not conform to staff recommendations, alternative language is provided, and in each of these instances Council is asked to specify which alternative it is adopting.

These ordinances do not include regulations concerning delivery-only businesses, equity, lounges, levels of discretion, expansion of cultivation beyond the Manufacturing (M) district, and recommendations from the CHC related to cautionary signage and product labelling and packaging. These issues need further research and discussion. Regulations pertaining to these issues are expected in mid-2019.

#### FISCAL IMPACTS OF RECOMMENDATION

The new regulations would have fiscal impacts related to the staff time necessary to monitor new cannabis businesses and activities, as well as the revenue impacts of having additional cannabis businesses paying taxes to the City.

#### Costs

The ordinances would require all cannabis businesses to obtain a City operating permit. City staff would be responsible for reviewing and issuing permits, conducting at least two inspections per year to determine compliance with local regulations, and responding to community complaints. These costs, as well as those for temporary cannabis events, will be covered by permit fees. The City currently has an operating permit fee for Retailers; operating permit fees for other cannabis businesses will be developed in the next year.

The department primarily involved in reviewing and issuing operating permits and inspecting businesses would be Health, Housing and Community Services (Environmental Health Division). Special event permits for temporary cannabis events would be reviewed by multiple agencies, including the Environmental Health Division, Police and Fire Departments, Department of Public Works, and the City Manager's Office.

#### Revenue

Since 2012, medical cannabis businesses paid taxes equaling \$25 per \$1,000 of gross receipts. In 2017, this generated \$1,645,012 in revenue for the City. With the legalization of adult use cannabis in 2018, the majority of sales is expected to be focused on the adult use market. Since the taxes for adult use cannabis (\$50 per \$1,000 of gross receipts) are greater than that for medicinal cannabis, revenue from cannabis businesses is expected to increase in 2018.

### CURRENT SITUATION AND ITS EFFECTS

The proposed ordinances would clarify and update Berkeley's current cannabis ordinance language, ensure that all cannabis businesses are subject to the same basic requirements, address additional uses which are not in the current ordinance, including general Microbusinesses, RNMs, and temporary cannabis events, and modify current regulations. The adoption of Chapter 12.21 would increase clarity by placing all of the definitions and general regulations related to cannabis in one chapter, and will replace Chapter 12.23. Amendments to Chapter 12.22 would place all specific regulations for cannabis business types and activities in one chapter, and would replace Chapters 12.25 and 12.27. Changes to the Zoning Ordinance will adopt development standards for all six cannabis business types (Retailers, Cultivators, Manufacturers, Distributors, Testing Laboratories, and Microbusinesses), and modify retailer quotas and buffers, per Council input.

The following are brief synopses of each proposed change to Berkeley's cannabis ordinances. The ordinance language reflects staff recommendations. In cases where a commission's recommendation does not match that of staff, alternatives are provided. The staff recommendation is labelled as Alternative A and the commission recommendations are labelled Alternative B or C as necessary.

The Council should note that some land use changes, particularly buffers from schools, could impact businesses that have been approved by the Council but which are not yet established. Staff would treat these businesses in the same way as businesses that have received entitlements through a discretionary permit process; these businesses are considered "grandfathered" and are not subject to land use changes which occur after their initial approval.

#### **A. Ordinance amending Title 12 (Health & Safety) of the Berkeley Municipal Code to establish general regulations and specific operating standards for cannabis businesses and activities**

The proposed ordinance would:

- Add Chapter 12.21 (Cannabis Businesses: General Regulations) to the BMC. This would provide updated definitions, general regulations and eligibility requirements for all cannabis businesses in one chapter of the BMC and would provide updated language to match State regulations.
- Modify the existing BMC Chapter 12.22 (Cannabis Business Operating Standards) to provide specific regulations for all cannabis business types and add enforcement language. It would also:
  - Create delivery requirements for storefront Retailers, including qualifications for delivery drivers, prohibition of advertising on vehicles, and limits on the amount of cash and cannabis which a driver can transport at any time;

- Require all cannabis businesses to obtain annual operating permits, which will involve bi-annual inspections and which can be revoked if the City's regulations are not met;
- Establish operating standards for Microbusinesses, including RNM, consistent with those for related cannabis uses;
- Permit temporary cannabis events at Cesar Chavez Park. These events would allow on-site sales and consumption of cannabis, and would be required to apply for a special event permit from the City as well as a permit from the State of California. This would be limited to up to three events per year, and Council will revisit the provisions of the ordinance following the first year of implementation; and
- Remove the sections related to residential Collectives, as these will not be legal per State law after January 9, 2019.
- Remove BMC Chapter 12.23 (Cannabis General Regulations). These regulations were incorporated into BMC Chapter 12.21 to increase clarity.
- Remove BMC Chapter 12.25 (Cannabis Cultivation). These regulations were incorporated into BMC Chapter 12.22 to increase clarity.
- Remove BMC Chapter 12.27 (Medical Cannabis Dispensaries and Collectives). These regulations were incorporated into BMC Chapter 12.22 to increase clarity.

The direction on temporary cannabis events is in response to a referral approved by Council on February 19, 2019. The draft ordinance language reviewed by the Cannabis and Community Health Commissions in early 2018 would have prohibited temporary cannabis events in Berkeley; this reflected State law in place at the time. In September 2018, the State changed the law, allowing temporary cannabis events at any location subject to state and local approval. Staff planned to bring the issue of temporary cannabis events back to the commissions in early 2019 along with other issues needing further research and discussion.

Additional changes to the City's Smoking Ordinance (Health and Safety Code, Chapter 12.70) will be necessary to allow smoking or vaping in City parks. This would be similar to the language in BMC section 13.36.070 which allows sales and consumption of alcohol in City parks at City-sanctioned special events. No temporary cannabis events could be approved until changes to the smoking ordinance are adopted.

#### Main issues discussed by City Commissions

The CC and the CHC reviewed the proposed ordinance summarized above.

Important issues identified by the CC included the following:

- As is described in more detail below, the CC recommends removing the requirement for guards at cultivators and distributors, and, once they are permitted, at delivery-only Retailers. They also discussed allowing deliveries to occur at locations other than residences.

- The CC also expressed concern about the State prohibition of residential collectives, which will not permitted to operate as of January 9, 2019.
- The Commission supported the staff definitions and operating standards for RNMs.

Important issues identified by the CHC included the following:

- As is described in more detail below, the CHC focused its comments and recommendations on limiting access and exposure of youth to cannabis products. It recommends greater restrictions on cannabis consumption at businesses and cannabis deliveries.
- The Commission supported the staff definitions and operating standards for RNMs.

The following subsections include options for alternative ordinance language based on recommendations by one or more of the Commissions:

- 12.21.040.H.2- Security.
  - *Description:* Requires all Retailers, Distributors and Cultivators to have security guards in addition to security cameras, alarms and lighting.
  - *Staff Rationale (Alternative A):* Staff believes that these businesses could be targets of crime based on the product and cash on-hand, and that greater security measures would adequately address this issue. The City does not currently have any Distributors and Cultivators, and is exhibiting caution by requiring guards for these uses. Once these businesses start locating in the City, staff will develop a better understanding of their security needs, and can recommend removal of security requirements as appropriate.
  - *Alternate recommendation and reasoning (Alternative B):* The Cannabis Commission recommends removing the security guard requirement from Distributors and Cultivators, reasoning that since these businesses are not open to the public, they will not require the same level of security as a Retailer.
- 12.21.040.I.1- Neighborhood Compatibility.
  - *Description:* Requires all Retailers, Distributors and Cultivators to either secure exterior windows and doors with bars or metal gates, or have a security guard on site during non-business hours.
  - *Staff Rationale (Alternative A):* Staff believes that these businesses could be targets of crime based on the product and cash on-hand and that additional security measures would adequately address this issue. The City does not currently have any Distributors and Cultivators, and is exhibiting caution by requiring guards for these uses. Once these businesses start locating in the City, staff will develop a better understanding of their security needs, and can recommend removal of security requirements as appropriate.
  - *Alternate recommendation and reasoning (Alternative B):* The Cannabis Commission recommends removing the security guard requirement from

Distributors, Cultivators, reasoning that since these businesses are not open to the public, they will not require the same level of security as a Retailer.

- 12.22.040.G.2 – Consumption of Cannabis
  - *Description*: Allows consumption of cannabis and cannabis products at Retailers that allow customer visits, with the exception of smoking.
  - *Staff Rationale (Alternative A)*: Cannabis consumption is prohibited in public, in most businesses, and in many apartments. Providing a place to consume cannabis legally is important for patients who have no other options. Impaired driving resulting from on-site consumption will be addressed in the same way as impaired driving from bars and restaurants.
  - *Alternate recommendation and reasoning (Alternative B)*: The CHC recommends that adult use cannabis consumption should not be permitted in any businesses as this will contribute to exposure of others to cannabis vapor and contribute to impaired driving.
  
- 12.22.040.H.1 – Delivery Requirements
  - *Description*: Establishes requirements for Retailers that deliver medicinal and adult-use cannabis to customer residences. For the moment this would only apply to store-front Retailers, as Delivery-only Retailers are currently not permitted in Berkeley.
  - *Staff Rationale (Alternative A)*: The state allows retailers to deliver cannabis and cannabis products to physical addresses in California, as long as those addresses are not on publicly-owned land or in a building leased by a public agency. The State does not make a distinction between medicinal and adult-use cannabis deliveries, and neither do neighboring jurisdictions which allow delivery services. Prohibiting delivery of adult-use cannabis would be difficult for City staff to enforce. In general, the State does not distinguish between medicinal and adult-use cannabis; items are determined to be medicinal when they are sold to a person with a State-issued patient card.
  - *Alternate recommendation and reasoning (Alternative B)*: The CHC believes that cannabis deliveries should be limited to medicinal cannabis to reduce youth access to cannabis.

## **B. Ordinance amending Chapter 20.40 of the BMC to establish cannabis business signs and cannabis product advertising regulations**

The ordinance would add a new chapter to the BMC to provide advertising and signage regulations for cannabis businesses. The language related to advertising is based on Chapter 20.66 (Tobacco Product Advertising); it will prohibit advertising in any publicly visible location in the City. Signage regulations would limit signage allowed for storefront Retailers to half the area allowed for other retailers, limit delivery-only Retailers to business complex sign standards, and limit non-retail businesses to 12 square feet of signage. Logos depicting cannabis or cannabis products on signs would be prohibited.

There were no differences between the staff and commission recommendations regarding advertising and signage.

### **C. Ordinance amending Chapter 23C.25 of the BMC to modify the Cannabis Uses Ordinance**

The ordinance would modify Chapter 23C.25 by modifying the two existing sections and adding two new sections:

- Section .010 would provide development standards for cannabis Retailers. These include buffers from schools and other cannabis Retailers, ownership changes, level of discretion and permitted locations. A detailed description of these changes is included below.
- Section .040 would provide development standards for Microbusinesses. It includes specific quotas, buffer and location standards for Retail Nursery Microbusinesses, which are cannabis Retailers that cultivate and sell cannabis seeds and immature plants (clones). More detail on these regulations is included below.
- Sections .020 (Cannabis Cultivation) and .030 (Cannabis Manufacturing, Testing Labs and Distribution) would be modified to correct references to other BMC Chapters.

The following subsections include options for alternative ordinance language based on recommendations by one or more of the Commissions:

- 23C.25.010.B – Retail buffers
  - *Description:* Requires buffers between Retailers and the following uses:  
Public or private elementary schools (K-5) = 600 feet  
Public or private middle or high schools = 1,000 feet  
City–operated community centers and skate parks = 600 feet  
Other Retailers = 600 feet
  - *Staff Rationale (Alternative A):* This language incorporates input received from the City Council at the October 2018 Work Session. Larger buffers were developed for middle schools and high schools because those students are more likely to experiment with cannabis. A buffer was added for the five City-operated community centers and the skate park because children are often at these facilities without adult supervision. This recommendation provides protection for youth while providing opportunities for cannabis businesses to locate within the city.
  - *Alternate Recommendation and reasoning (Alternative B):* The CHC recommends a 1,000-foot buffer from all schools, including junior colleges, colleges and universities, as well as buffers around additional uses such as parks and libraries. These additional restrictions are designed to limit cannabis in places that children, youth and young adults might frequent.

- *Alternate recommendation and reasoning (Alternative C):* The CC and PC only reviewed the original staff recommendation, which did not consider the expanded buffers for middle and high schools or buffers from community centers and the skate park. The commissions agreed with this initial recommendation. There was no discussion of the current staff recommendation, which was revised to incorporate Council direction from the October work session.

See Attachment 7 for maps of the three alternatives.

- 23C.25.010.F.1 – Cannabis Retailers
  - *Description:* Maintains the existing storefront Retailer quota of six, and will not allow additional storefront Retailers unless the ordinance is amended in the future. Note that at its February 19, 2019 meeting, Council provided direction to staff to create one new dispensary license for equity applicants, which would increase the storefront Retailer quota to seven. Staff will provide Council with ordinance revisions in mid-2019 that reflect this direction, along with potential options for an equity program.
  - *Staff Rationale (Alternative A):* This language incorporates Council deliberation at the October 2018 Work Session. Currently, only four of the six approved Retailers are open. The Council expressed a desire to potentially hold off on any expansion plans until all six are operational, and to make a decision regarding any potential further expansion at a later date.
  - *Alternate Recommendation and reasoning (Alternative B):* The CC recommended expanding the quota to 32 storefront Retailers, with quotas distributed throughout the City by zoning district. The Commission believes that the cannabis industry should be treated like other businesses. They also believe that additional limits on the numbers of businesses which can operate in the City will hinder the growth of the cannabis industry in Berkeley and limit customers' access to product.
  - *Alternate Recommendation and reasoning (Alternative C):* The PC recommended expanding the quota to 18 storefront Retailers. The main focus was to allow the opportunity for additional Retailers; there was no strong reasoning behind the numeric limit selected.
- 23C.25.040.B.2.b - Retail Nursery Microbusinesses
  - *Description:* Allows two existing conventional nurseries to convert to a cannabis business (Retail Nursery Microbusiness) with a Zoning Certificate. Nurseries which are either completely or partially in a Residential District would require a Use Permit in order to modify a non-conforming use.
  - *Staff Rationale (Alternate A):* A cannabis nursery is expected to be similar to a conventional nursery. The business would be subject to State and local regulations, and an annual operational permit from the City, which could be revoked if operating standards are not met. Buffers from schools will address concerns regarding youth exposure to cannabis products.



- *Alternate Recommendation and reasoning (Alternative B):* The PC and CHC recommended requiring a Use Permit in addition to an annual operating permit for any conversion of a conventional nursery into a Retail Nursery Microbusiness, regardless of location. This would allow the public to discuss concerns and provide comment on the proposed location at a public meeting. Council could also consider requiring an Administrative Use Permit, which does not require a public hearing but does require noticing to adjacent properties and can be appealed.

#### **D. Amending BMC Sub-Title 23E (Provisions Applicable in All Non-Residential Districts)**

##### Description of ordinance

The ordinance would add references to cannabis uses to the use tables of commercial and manufacturing chapters, clarifying how cannabis businesses relate to other businesses in the Zoning Ordinance. For example, cannabis Retailers would be included in the Retail Sales sections of the use tables for commercial districts. This information reflects the language given in Chapter 23C.25 regarding location of business and the level of discretion required. Section 23E.16.070 (Cannabis Dispensaries) was incorporated in Chapter 23C.25.

#### **E. Amending BMC Sub-Title 23F (Definitions)**

##### Description of ordinance

The ordinance would add or modify definitions for cannabis uses in the Definitions chapter to clarify how these businesses relate to other businesses in the Zoning Ordinance.

#### **BACKGROUND**

In 2018, the State established the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), a regulatory framework for the medicinal and adult use cannabis industry. Six different cannabis business types are allowed to operate:

- Cultivators (produce seeds, immature plants (clones) and mature plants which are harvested)
- Manufacturers (take raw product and create other products, including edibles)
- Testing Laboratories (test product for potency, pesticides and impurities)
- Retailers (selling product to the public)
- Distributors (transport product between businesses and collect State taxes)
- Microbusinesses (combination of at least three of the other businesses except testing labs)

Through a combination of ballot measures and ordinances, all six types of cannabis businesses can operate in Berkeley. However, many of the current regulations are outdated, either addressing only medical cannabis or addressing Retailers and Cultivators in much greater detail than other uses.

Work on comprehensive cannabis regulations started in the fall of 2017. Draft regulations were developed with the participation of numerous City departments, including the Planning, Finance, Police, and Fire Departments, the Department of Health, Housing & Community Services, the City Attorney's Office, and the Code Enforcement Division in the City Manager's Office. The draft ordinances presented here were also discussed by the Cannabis, Planning, and Community Health Commissions in early 2018. Based on direction from the October 9, 2018 Council Work Session, language related to retail nurseries was drafted by staff and reviewed by the three commissions in November and December 2018. No commissions have reviewed the language permitting temporary cannabis events at Cesar Chavez Park.

#### ENVIRONMENTAL SUSTAINABILITY

The proposed amendments will continue to allow a complete supply chain for the cannabis industry in Berkeley, allowing the public to purchase products produced locally. The amendments will maintain the energy efficiency features and carbon-offsetting requirements already adopted by the Council for Cultivators. Other cannabis businesses are comparable to non-cannabis businesses in terms of energy consumption, and will be subject to the same standards for building efficiency. Temporary cannabis events will have the same requirements as non-cannabis special events. The impact of cannabis delivery by existing Berkeley-based storefronts or cannabis businesses established in other jurisdictions has not been analyzed.

#### RATIONALE FOR RECOMMENDATION

The adoption of these proposed ordinance amendments would ensure that Berkeley's cannabis regulations are consistent with the State's regulations. It would also ensure that all license types are subject to the same general operating standards, and clarifies specific standards for each license type. These regulations will be consistent with the voter direction given with the passage of Measures JJ (2008) and T (2010) and Proposition 64 (2016), and will increase the likelihood of these businesses operating harmoniously within Berkeley neighborhoods.

#### ALTERNATIVE ACTIONS CONSIDERED

Alternative recommendations are described in this report and provided as alternative language in the relevant ordinances.

#### CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7437  
Elizabeth Greene, Senior Planner, Planning and Development Department, 510-981-7484

Attachments:

1. Ordinance Amending the Berkeley Municipal Code Title 12 (Health and Safety)
2. Ordinance Adding Chapter 20.40 (Cannabis Business Signs and Cannabis Product Advertising) to the Berkeley Municipal Code
3. Ordinance Amending the Berkeley Municipal Code Chapter 23C.25 (Cannabis Uses)
4. Ordinance Amending the Berkeley Municipal Code Sub-Title 23.E (Provisions Applicable in All Non-Residential Districts)
5. Ordinance Amending the Berkeley Municipal Code Sub-Title 23.F (Definitions)
6. Minutes from Cannabis, Community Health and Planning Commissions
7. 9-13-18 CHC recommendation letter to Council
8. Maps of Retail Buffer Alternatives
9. Public Hearing Notice



ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 12 TO ESTABLISH GENERAL REGULATIONS AND SPECIFIC OPERATING STANDARDS FOR CANNABIS BUSINESSES; ADDING CHAPTER 12.21, AMENDING CHAPTER 12.22, AND REPEALING CHAPTERS 12.23, 12.25, AND 12.27

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

Section 1. That Berkeley Municipal Code Chapter 12.21 is added to read as follows:

**Chapter 12.21  
CANNABIS BUSINESSES: GENERAL REGULATIONS**

**Sections:**

- 12.21.010 Purpose and Applicability**
- 12.21.020 Definitions**
- 12.21.030 Information Requirements**
- 12.21.040 Operating Standards**
- 12.21.050 Records**
- 12.21.060 Operating Procedure and Criteria**
- 12.21.070 Confidentiality of Information**
- 12.21.080 Authority of City Manager**
- 12.21.090 Abatement of Violations**
- 12.21.100 Fees**
- 12.21.110 Severability**

**12.21.010 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 Cannabis Businesses and to implement the provisions contained in the Medicinal and Adult-Use of Cannabis Regulation and Safety Act, codified in Division 10 of the Business and Professions Code, Section 1602 and 1617 of the Fish and Game Code, Sections 37104, 54036, and 81010 of the Food and Agriculture Code, Division 10 of the Health and Safety Code, Division 2 of the Revenue and Taxation Code, Sections 23222 and 2429.7 of the Vehicle Code, and Sections 1831, 1847, and 13276 of the Water Code ("MAUCRSA"), as amended from time to time.

**12.21.020 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. "Adult Use Cannabis" means Cannabis and Cannabis Products intended for consumption by adults 21 and over, and that is not Medicinal Cannabis.

C. "Adulterant" means any poisonous or deleterious substance that may render Cannabis or Cannabis Products impure or injurious to health, as determined by the City's Environmental Health or Public Health Divisions.

D. "Adulterated" means any Cannabis or Cannabis Product with Contaminates exceeding any testing thresholds and/or containing any Adulterant.

E. "Batch" shall have the same meaning as set forth in MAUCRSA, as amended from time to time,

F. "Cannabis" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time, and includes both adult-use and medicinal cannabis.

G. "Cannabis Business" is a business possessing a State license as specified in Section 26050 of the Business and Professions Code, as amended from time to time, and includes Cannabis Businesses with an "A" designation ("ACB") and Cannabis Businesses with an "M" designation ("MCB").

H. "Cannabis By-Products" means delta-8-THC and cannabinol when present in amounts greater than 0.2% of a product's dry weight.

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

1. "THC" or " $\Delta^9$ -THC" means  $\Delta^9$ -tetrahydrocannabinol, ( $\Delta$ )-(6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a-tetrahydro-6H-benzo[c]chromen-1-ol.
2. "THCA" or " $\Delta^9$ -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 "Cannabidiolic acid" means the acid form of CBD.

5. "CBN" or "Cannabinol" means 6,6,9-trimethyl-3-pentyl-benzo[c]chromen-1-ol.

J. "Cannabis Cultivation Facility" or "Facility" shall have the same meaning as "cultivation site" as set forth in Section 26001 of the Businesses and Professions Code. It includes "Major Cannabis Cultivation Facility", defined as follows:

"Major Cannabis Cultivation Facility" means a Facility that is between 10,000 sf and 22,000 sf in total canopy area.

K. "Cannabis Products" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time, and includes both medicinal and adult-use Concentrates and Cannabis Products.

L. "Cannabis Waste" means contaminated Cannabis or Cannabis Products that cannot be rendered safe and any Cannabis or Cannabis Products that have been designated as a waste by a Cannabis Business, or regulatory authority. Cannabis Waste does not include materials from the cultivation and manufacturing processes not known to be contaminated with pesticide or heavy metal residues and which may be composted by an approved process.

M. "Concentrate" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time.

N. "Contaminant" means any pesticide, residual solvent or microbiological organism or product thereof, heavy metal, or any other Adulterant as determined by the Environmental Health Division.

O. "Cosmetic Cannabis Product" means any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced to, or otherwise applied to, the human body, or any part of the human body, that is not an Edible Cannabis product and includes tinctures.

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

Q. "Cultivator" means an individual or entity required to be licensed to cultivate cannabis pursuant to MAUCRSA, as amended from time to time.

R. "Deliver" and "Delivery" shall mean any transit of Cannabis or Cannabis Product from a Retailer to a Customer at a residence.

S. "Distributor" means an individual or entity required to be licensed as a distributor

pursuant to MAUCRSA, as amended from time to time.

T. "Edible Cannabis Product" (or "Edible") means a cannabis product that is intended to be used, in whole or in part, for human consumption, including but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

U. "Manufacturer" means an individual or entity required to be licensed as a manufacturer pursuant to MAUCRSA, as amended from time to time.

V. "Medicinal Cannabis" means Cannabis and Cannabis Products intended as medicine for those with a valid physician's recommendation in compliance with California law.

W. "Microbusiness" shall have the same meaning set forth in MAUCRSA, as amended from time to time, and includes "Retail Nursery Microbusiness", defined as follows:

1. "Retail Nursery Microbusiness" is restricted to either a Class 1 or Class 2 Nursery that sells plants and seeds on a retail basis, either at a location to which Customers may come to acquire cannabis plants or seeds, or by delivering plants or seeds. No other cannabis products may be sold at this type of use. Distribution is limited to those products directly related to this business. No cannabis consumption is permitted on site.

X. "Nursery" means an individual or entity required to be licensed as a Type 4 Cultivator pursuant to MAUCRSA, as amended from time to time, and includes "Class 1 Nursery" and "Class 2 Nursery," defined as follows:

1. "Class 1 Nursery" means a nursery that only produces immature plants, such as cuttings or clones.
2. "Class 2 Nursery" means a nursery that produces mature plants with flowers for the purpose of producing seeds, whether for distribution to a Retailer or for research purposes. A Class 2 Nursery may also produce cuttings or clones.

Y. "Primary Caregiver" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time.

Z. "Principal" means any person that has direct or non-delegated indirect authority over the management or policies of a Cannabis Business.



AA. "Protected Health Information" means documentation of a an MCB's Qualified Patient's medical history or condition other than a physician's recommendation, an identification card issued pursuant to Health and Safety Code Section 11362.7 et seq., or the written designation of a Primary Caregiver by a Qualified Patient or identification card holder. Protected Health Information shall not include information conveyed by a Qualified Patient to a Retailer regarding such Qualified Patient's medical condition, information conveyed by a Qualified Patient to a Retailer regarding efforts to ameliorate or otherwise address symptoms associated with such Qualified Patient's medical condition, or information regarding Cannabis or Medicinal Cannabis Products provided to a Qualified Patient.

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

CC. Retailer

1. "Retailer" means both Retailers with a location to which Customers, Qualified Patients, or Primary Caregivers may come to acquire Cannabis or any other good or service, and Delivery-Only Retailers.

2. "Retailer" shall mean an ACB ("A-Retailer") or MCB ("M-Retailer") that is authorized under Chapter 12.22, Title 23, and California law to dispense Cannabis at a non-residential location. A Retailer may deliver to its Qualified Patients, Primary Caregivers, or adult consumers and provide other incidental services to its Qualified Patients, Primary Caregivers, or adult consumers to the extent permitted by California law.

3. "Delivery-Only Retailer" is a Retailer that is limited to acquiring Cannabis and delivering it to its Qualified Patients, Primary Caregivers, and adult consumers, and does not have a location to which Qualified Patients, Primary Caregivers, and adult consumers may come to acquire Cannabis or any other good or service.

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

EE. "Tincture" means an extract of Cannabis or solution of such, typically made with food-grade alcohol or glycerin.

FF. "Temporary Cannabis Event" shall mean an activity required to be licensed as a temporary cannabis event pursuant to MAUCRSA, as amended from time to time. Such events may involve onsite sale and consumption of cannabis goods and must be operated by a state-licensed event organizer.

### **12.21.030 Information Requirements**

Every Cannabis Business shall provide the following information to the City's Environmental Health Division, and shall be updated whenever there is any material change.

A. A description of the Cannabis Business and its location, which shall include such information as the City may require that demonstrates compliance with applicable provisions of this Chapter.

B. The name, address and 24-hour contact information for each Principal, including a photocopy of at least one primary form of photo identification, such as a California Driver's License or US Passport. This information shall also include any aliases, maiden or married names or other former legal names.

C. Proof of the nature of the Cannabis Business's organizational status, such as articles of incorporation, by-laws, partnership agreements, and other documentation as may be appropriate or required by the City.

### **12.21.040 Operating Standards**

A. All Cannabis Businesses shall comply with the operating standards set forth in this Section.

B. Cannabis Businesses shall comply with Health and Safety Code Sections 11362.7 et seq. and any other California laws that may be adopted concerning Adult-Use and Medicinal Cannabis, including but not limited to the Medicinal and Adult-use of Cannabis Regulation and Safety Act, and Chapters 12.22 or 12.26 and Title 23 of the Berkeley Municipal Code, and any other applicable City laws or regulations, and shall pay all applicable state or local taxes and fees. To the extent the requirements of this Chapter and Chapters 12.22 and 12.26 are more restrictive than California law, they shall apply. To the extent the requirements of this Chapter and Chapters 12.22 and 12.26 are less restrictive than California law, the requirements of California law shall apply except in instances where the state has expressly allowed localities to be less strict.

C. MCBs may retain memberships.

D. Cannabis Businesses shall only obtain Cannabis from licensed cultivators as authorized by California law.

E. All employees and volunteers of a Cannabis Business must be at least 21 years of age.

F. The Environmental Health Division may require any Cannabis Business to submit an odor control plan to be approved by the Division.

G. Non-diversion. ACBs shall take all practicable steps necessary to prevent and deter diversion of Cannabis and Cannabis Products to persons under 21 years of age, including by using the state-mandated Track-and-Trace system. MCBs shall take all practicable steps necessary to prevent and deter diversion Medicinal Cannabis and Medicinal Cannabis Products to persons other than Qualified Patients or their Primary Caregivers, or non-MCBs, including by using the state-mandated Track-and-Trace system.

H. Security.

1. Cannabis Businesses 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 premises.

2. ALTERNATIVE A: STAFF RECOMMENDATION - Retailers, Distributors and Cultivators must maintain security guards and camera coverage of their entire grounds to an extent sufficient to ensure the safety of persons and deter crime. Cameras must be maintained in good condition, and use a format approved by the City Manager, which is of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime. The cameras shall be in use 24 hours per day, seven (7) days per week. The areas to be covered by the security cameras include, but are not limited to, dispensing areas, storage areas, cultivation areas, all doors, parking lots, and any other area determined by the City Manager. Surveillance footage must be retained for a period of 90 days and made available to the Berkeley Police Department for purposes of investigation of alleged crimes, promptly upon request without the necessity of a warrant or subpoena. Retention and maintenance of security camera recordings shall comply with Section 12.21.070.

2. ALTERNATIVE B: CC RECOMMENDATION - Retailers, Distributors and Cultivators must maintain camera coverage of their entire grounds to an extent sufficient to ensure the safety of persons and deter crime. Cameras must be maintained in good condition, and use a format approved by the City Manager, which is of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime. The cameras shall be in use 24 hours per day, seven (7) days per week. The areas to be covered by the security cameras include, but are not limited to, dispensing areas, storage areas, cultivation areas, all doors, parking lots, and any other area determined by the

City Manager. Surveillance footage must be retained for a period of 90 days and made available to the Berkeley Police Department for purposes of investigation of alleged crimes, promptly upon request without the necessity of a warrant or subpoena. Retention and maintenance of security camera recordings shall comply with Section 12.21.070. Retailers must also maintain security guards.

3. Cannabis Businesses 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, Retailers, Distributors and Cultivators 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 Cannabis Businesses shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times. Security personnel may not be armed.
  6. All Cannabis Businesses must securely store all Cannabis at all times, except for limited amounts used for display purposes, samples or immediate sale, and the entrance to all storage areas shall be locked and under the control of staff at all times.
  7. Cannabis Businesses shall make transactions with payment methods other than cash whenever feasible. All cash received, except that needed for retail customer transactions shall be kept in a secure receptacle such as a drop safe or other type of safe.
  8. If any of the requirements in this section conflict with state law, the stricter requirement will apply.
- I. Neighborhood compatibility
1. ALTERNATIVE A: STAFF RECOMMENDATION - Cannabis Businesses shall be operated to ensure neighborhood compatibility, and shall take all steps necessary to ensure that Customers do not create neighborhood disturbances. Such measures shall include, but not be limited to, providing a security guard to patrol the area surrounding any Retailer, Distributor or Cultivator during all hours of operation.

1. ALTERNATIVE B: CC RECOMMENDATION - Cannabis Businesses shall be operated to ensure neighborhood compatibility, and shall take all steps necessary to ensure that Customers do not create neighborhood disturbances. Such measures shall include, but not be limited to, providing a security guard to patrol the area surrounding any Retailer during all hours of operation.
2. Retailers 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. Retailers shall encourage neighbors to call this person to try to solve any operating problems.
3. All Cannabis Businesses 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. Cannabis Businesses shall also provide the Police Department with the current name and phone numbers of at least one 24-hour-on-call manager. This information shall be updated as necessary to keep it current.
4. Cannabis Businesses shall take all reasonable steps to discourage and correct objectionable conditions that constitute a public or private nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties. Such conditions include, but are not limited to: smoking; creating a noise disturbance; loitering; littering; and graffiti.
5. Cannabis Businesses shall ensure all graffiti is removed from property and parking lots under their control within 72 hours of its appearance.

J. Sale and Consumption of Cannabis, Tobacco and Alcohol

1. Sale or consumption of tobacco is prohibited at Cannabis Businesses.
2. Sale and/or service of alcoholic beverages at Cannabis Businesses is prohibited.

K. Holding requirements. Any juice or beverage produced in accordance with Section 40270 of the California Code of Regulations Title 17, Division 1, Chapter 13, Subchapter 3, Article 4 that requires refrigeration to prevent the rapid growth of undesirable organisms or the formation of alcohol through fermentation shall be held below 41 Fahrenheit to prevent the cannabis product from becoming adulterated during the manufacturing, processing, packing, holding, and transporting. Transporting includes both by a

Distributor among licensees and by Retailers conducting delivery to Customers, Qualified Patients, and Qualified Caregivers. Fixed facilities shall hold such cannabis products in equipment certified to ASTM commercial food safety equipment standards by an organization such as but not limited to NSF, UL, or ETL.

#### **12.21.050 Records**

A. General. All Cannabis Businesses shall maintain contemporaneous financial and operational records sufficient to show compliance with this Chapter, Chapter 12.26, and applicable California law, as well as satisfaction of commitments made in the Cannabis Business's application and during the ranking and allocation process. Such records shall be maintained in a secure location under the control of the Cannabis Business within the City of Berkeley, and shall be subject to inspection by the City upon reasonable notice during regular operational hours or by appointment.

B. Finances.

1. Cannabis Businesses shall make their financial records available to the City on an annual basis. Such audited records shall be limited to information necessary for the City to determine fair payment of taxes and for M-Retailers very low income 2% distribution verification.

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

1. The total number of very low-income members and the amount distributed;
2. The total and net amount of revenue collected during the year;
3. The consideration paid for each Batch;
4. Monetary and non-monetary contributions;
5. Total monetary and non-monetary distributions to suppliers;
6. Salaries and overhead; and
7. A complete list of the types of Cannabis, Cannabis Products and Edibles available, and the prices thereof.

#### **12.21.060 Operating Procedure and Criteria**

No Cannabis Business may operate in the City of Berkeley without all applicable City of Berkeley licenses. The Council may by resolution establish procedures and criteria for accepting applications to operate Cannabis Businesses and determining which, if any, to approve.

#### **12.21.070 Confidentiality of Information**

A. The City's review of information submitted or maintained pursuant to this Chapter shall preserve the confidentiality of all information about Principals and members to the maximum extent consistent with state and local law. The City shall incur no liability for the inadvertent or negligent disclosure of such information. Disclosure of any Principal or Member information to the City for purposes of this Chapter shall not be deemed a waiver of confidentiality. Financial information provided to the City pursuant to Section 12.21.050 shall be deemed to be "financial information" covered by Chapter 7.26.

B. The information required by Section 12.21.040 and recordings from security cameras, shall be confidential and shall not be subject to public inspection or disclosure except to City and State employees for purposes of law enforcement.

#### **12.21.080 Authority of City Manager**

A. The City Manager or his or her designee shall have authority to determine the nature of any Cannabis Business or purported Cannabis Business and whether that entity complies with any of the requirements of this Chapter, Chapters 12.22 and 12.26, and Title 23, and to conduct inspections as provided in Chapter 1.16.

B. The City Manager or his or her designee 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 Cannabis.

C. The City Manager or his or her designee may require any Cannabis Business to obtain operating permits from the City of Berkeley Fire Department, Toxics Management Division, Environmental Health Division, and any other department or division.

D. 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, Chapters 12.22 and 12.26, and Title 23, and to adopt regulations to implement this Chapter, Chapters 12.22 and 12.26, and Title 23.

#### **12.21.090 Abatement of Violations**

A. Violations of this Chapter or Chapters 12.22 or 12.26 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 12.22 or 12.26 shall not be punishable as public offenses to the extent that doing so would conflict with California law.

### **12.21.100 Fees**

The City Council may establish by resolution the fees that shall be charged to Cannabis Businesses for administration and implementation of this Chapter. The adoption of such fees shall not prevent the City from recovering enforcement costs from Cannabis Businesses not specified in such resolution.

### **12.21.110 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. That Berkeley Municipal Code Chapter 12.22 is amended to read as follows:

## **Chapter 12.22 CANNABIS BUSINESS OPERATING STANDARDS**

### **Sections:**

#### Article I General

- 12.22.010** ~~Reserved~~Applicability and Purpose
- 12.22.020** ~~Reserved~~Selection Process

#### Article II Cannabis Businesses

- 12.22.030** ~~Reserved~~Eligibility Requirements
- 12.22.040** ~~Reserved~~Retailers
- 12.22.050** **Distributors**
- 12.22.060** ~~Reserved~~Manufacturers
- 12.22.070** ~~Reserved~~Cultivators



- 12.22.080 **ReservedTesting Laboratories**
- 12.22.090 **ReservedMicrobusinesses**
- 12.22.100 **ReservedTemporary Cannabis Events**
- 12.22.110 **Reserved Collectives Prohibited**

Article III Collectives Enforcement

- 12.22.120 **ReservedFees**
- 12.22.130 **ReservedAuthority of City Manager**
- 12.22.140 **ReservedSeverability**

Article IV Enforcement

- 12.22.150 **Reserved**
- 12.22.160 **Reserved**
- 12.22.170 **Reserved**
- 12.22.180 **Reserved**

**12.22.010 ReservedApplicability and Purpose**

A. This Chapter applies to all Cannabis Businesses as defined in Chapter 12.21. The purpose of the Chapter is to provide specific operating standards applicable to these businesses and to implement the provisions contained in the Medicinal and Adult-Use of Cannabis Regulation and Safety Act, codified in Division 10 of the Business and Professions Code, Section 1602 and 1617 of the Fish and Game Code, Sections 37104, 54036, and 81010 of the Food and Agriculture Code, Division 10 of the Health and Safety Code, Division 2 of the Revenue and Taxation Code, Sections 23222 and 2429.7 of the Vehicle Code, and Sections 1831, 1847, and 13276 of the Water Code (“MAUCRSA”), as amended from time to time.

**12.22.020 ReservedSelection Process**

The Council may by resolution establish procedures and criteria for accepting applications to operate Retailers or Major Cannabis Cultivators and determining which, if any, to approve.

**12.22.030 ReservedEligibility requirements**

A. No Principal of any business of a certain license type may be a Principal for any other business of a different license type in the City of Berkeley, except that a State “M” licensee may also be a State “A” licensee of the same license type.

**12.22.040 ReservedRetailers**

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

A. Retailers must obtain operating permits from and allow inspections by the City of Berkeley Environmental Health Division.

B. Retailers shall only allow Customer visits between the hours of 9:00 a.m. and 9:00 p.m.

C. A Retailer may deliver cannabis only to the extent allowed by its State license.

D. Retailers may not distribute free samples.

E. Accessibility. Retailers shall comply with all physical accessibility requirements that would be applicable to a newly-constructed building, except that pre-existing Retailers 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.

F. Signage.

1. All Retailers must either provide to each Customer or prominently display at all points of sale a notice containing the language set forth in this Section.

a. If provided to each Customer, the notice shall be printed on paper that is no less than 5 inches by 8 inches in size, and shall be printed in no smaller than 18-point font.

b. If prominently displayed at all points of sale, the notice shall be printed on a poster no less than 8-1/2 by 11 inches in size, and shall be printed in no smaller than a 28-point font.

2. All Retailers must prominently display a notice as set forth in subsection 12.22.040.F that contains the following language:

“The use of cannabis may impair a person’s ability to drive a motor vehicle or operate heavy machinery.”

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.F.

3. All Retailers must prominently display a notice as set forth in subsection 12.22.040.F that contains the following language:

“WARNING: Cannabis is not tested by local, state or federal governmental agencies for health, safety, or efficacy. There may be health risks associated with the consumption of cannabis or cannabis products.”

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each Customer as set forth in subsection 12.22.040.F.

4. Any M-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.F that contains the following language::

“This M-Retailer provides medicinal cannabis only to Qualified Patients and their Primary Caregivers, who must have a valid California Medical Marijuana Identification Card or a verifiable, written recommendation from a physician for medicinal cannabis.”

All M-Retailers that provide delivery services, including Delivery-only M-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.F.

5. All M-Retailers must prominently display a notice as set forth in subsection 12.22.040.F that contains the following language:

“This Medicinal Cannabis Retailer is licensed in accordance with the laws of the City of Berkeley and the State of California. The sale or diversion of medicinal cannabis for non-medical purposes is a violation of State and local laws.”

All M-Retailers that provide delivery services, including Delivery-only M-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.F.

6. Any A-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.F that contains the following language:

“This Adult-Use Cannabis Retailer is licensed in accordance with the laws of the City of Berkeley and the State of California. The sale or diversion of adult- use cannabis to persons under the age of 21 is a violation of State and local laws.”

All A-Retailers that provide delivery services, including Delivery-only A-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.F.

## G. Consumption of Cannabis

1. The consumption of Cannabis or Cannabis Products in public places is prohibited.

2. ALTERNATIVE A: STAFF RECOMMENDATION - Notwithstanding subsection 12.22.040.G.1, the consumption of Cannabis and Cannabis Products is permitted at Retailers that allow Customer visits, with the exception of smoking. Smoking of Cannabis is prohibited at Retailers. 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 an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. This is a limited exception to BMC Section 12.70.040.

2. ALTERNATIVE B: CHC RECOMMENDATION - Notwithstanding subsection 12.22.040.G.1, the consumption of Cannabis and Cannabis Products is permitted at Retailers that allow Customer visits, with the exception of smoking. Smoking of Cannabis is prohibited at Retailers. 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 an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. This is a limited exception to BMC Section 12.70.040.

#### H. Delivery Requirements

1. ALTERNATIVE A: STAFF RECOMMENDATION - Medicinal and Adult Use cannabis may be delivered by a Retailer, as long as the deliveries comply with the appropriate State license.

1. ALTERNATIVE B: CHC RECOMMENDATION - Only Medicinal cannabis may be delivered by a Retailer, as long as the deliveries comply with the appropriate State license.

2. All Retailers that provide delivery services must comply with the following requirements and all applicable requirements of State law. In the event of a conflict, State law shall prevail.

a. All vehicles used for delivery shall be maintained and operated in a manner and in a condition required by law and applicable regulations.

b. The following persons may not drive delivery vehicles:

- i. a person who does not possess a valid driver's license;
  - ii. a person who has been at fault within the immediately preceding two years in any motor vehicle accident causing death or personal injury;
  - iii. a person who has been at fault in three or more motor vehicle accidents within the previous 12 months;
  - iv. a person who has been under suspension, revocation or probation within the last five years by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle;
  - v. a person who has been convicted of any of the following misdemeanor offenses within the past five years: driving under the influence or reckless driving involving alcohol or reckless driving involving bodily injury;
  - vi. a person who has been convicted of any of the following offenses: a second or subsequent conviction for driving under the influence, or any felony conviction for driving under the influence (with or without injury), or vehicular manslaughter, or habitual traffic offender.
- c. The following persons may not be involved in making deliveries:
- i. any person who is required to register as a sex offender under Section 290 of the California Penal Code;
  - ii. any person who has within the past ten years been convicted of any felony offense involving moral turpitude.
- d. Persons involved in making deliveries must have in their possession a copy of the document memorializing the City's approval of the delivery service.
- e. Persons involved in making deliveries may not be armed.
- f. Delivery vehicles may not advertise any activity related to Cannabis, carry symbols or emblems related to Cannabis, or advertise the name of the Retailer.

g. Delivery of Cannabis shall be directly to the residence of the Customer unless said residence is in a park, school or hospital. Deliveries to parks, schools, hospitals, and all non-residential locations are prohibited.

h. Deliveries may occur only between the hours of 8:00 a.m. and 10:00 p.m.

i. Delivery vehicles shall not carry or transport at any one time an amount of Cannabis, Cannabis Products, cash and/or cash equivalents worth, in total, more than three thousand dollars (\$3,000).

j. All orders to be delivered shall be packaged by the name or identification number of the Customer for whom the delivery is intended.

k. In addition to the requirements of Section 12.27.050 subdivisions A and B, the person responsible for making deliveries shall have a copy of the record of all delivery requests while making deliveries.

l. All Retailers that provide delivery service shall maintain at all times Commercial General Liability insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000). The Commercial General Liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, shall specify that insurance coverage afforded to the City shall be primary, and shall name the City, its officials and employees as additional insured. Failure to maintain insurance as required herein at all times shall be grounds for immediate suspension of the privilege of providing delivery service.

#### I. M-Retailers

1. M-Retailers must not admit any person without first verifying his or her status as a Qualified Patient or Primary Caregiver.
2. No physician recommendations for Medicinal Cannabis may be provided on site.

3. M-Retailers may not provide more Medicinal Cannabis to a Qualified Patient or Primary Caregiver than is necessary for the personal medicinal use of the Qualified Patient for whom the Medicinal Cannabis is intended, and may not dispense more Medicinal Cannabis to a Qualified Patient or Primary Caregiver per day than permitted by State law.
4. M-Retailers must take all practicable steps necessary to prevent and deter diversion of Medicinal Cannabis to any person who is not a Qualified Patient or Primary Caregiver. M-Retailers must limit access to Medicinal Cannabis to authorized personnel only. M-Retailers must maintain an inventory management system that accounts for all Medicinal Cannabis separately from Adult Use Cannabis if both types are sold or distributed at the Retailer.
5. M-Retailers must not admit any Qualified Patient under 18 years of age pursuant to MAUCRSA.
6. Medicinal Cannabis for low income persons
  - a. At least 2% (by weight) of the annual amount of Medicinal Cannabis in dried plant form provided by a M-Retailer to Qualified Patients and Primary Caregivers shall be provided at no cost to very low-income Qualified Patients who are Berkeley residents or their Primary Caregivers. This amount shall be calculated every six months, based on the amount dispensed during the immediately preceding six months. Medicinal Cannabis provided under this Section shall be the same quality on average as Medicinal Cannabis that is dispensed to other persons.
  - b. For purposes of this Section, income shall be verified using federal income tax returns or another reliable method approved by the City Manager.
  - c. For purposes this Section, "very low income" shall mean the household income levels established by the U.S. Department of Housing and Urban Development.
  - d. M-Retailers shall keep an accurate roster of very low-income Qualified Patients who are Berkeley residents, which shall include a copy of either a California Medical Cannabis Identification Card or a physician's recommendation, and, if using a Primary Caregiver, a written authorization from the Qualified Patient to be represented by such Primary Caregiver. Such

records shall be maintained in a manner that protects the confidentiality of the Qualified Patient and Primary Caregiver.

e. M-Retailers shall track distributions to very low-income Qualified Patients (or their Primary Caregivers) in an inventory management system compatible with the state Track-and-Trace program. M-Retailers shall generate a report every six (6) months showing the total percentage of Medicinal Cannabis sales distributed to Berkeley residents. If an M-Retailer voluntarily expands the program to residents outside of Berkeley, that percentage shall be calculated separately.

J. A-Retailers must not admit any person under 21 years of age. If an A-Retailer also holds an M-Retailer license, access to the M-Retailer portion of the establishment is subject to the requirements of subsection 12.22.040.I.

### **12.22.050 Distributors**

A. Distributors must obtain operating permits from and are subject to inspections by the City of Berkeley Environmental Health Division.

~~B. Distributors must arrange for the testing of Cannabis and Cannabis Products consistent with the City of Berkeley testing procedures specified in Section 12.27.100 of this Chapter until such time as testing procedures specified by the Bureau of Cannabis Control are available and conducted locally.~~

~~C. Testing as specified by the Bureau of Cannabis Control shall be conducted no later than July 1, 2018 at which time BMC Sections 12.25.070.\_\_\_\_ and 12.27.070.\_\_\_\_ are repealed.~~

**DB.** Distributors must maintain a written or computerized log compatible with the State Track-and-Trace system documenting:

1. the date, type, and amount of Product tested;
2. the source(s) of any contaminated Cannabis
3. the results of the testing, including the name and level of the substance detected; and



4. the disposition of the Cannabis from which any 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 be made available to the City upon request.

**EC.** Distributors are subject to the provisions of the California Retail Food Code and the Sherman Food, Drug and Cosmetic Law, even if those laws are not directly applicable to Edible or Cosmetic Cannabis Products. Handwashing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Handwashing facilities shall be located in 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.

**FD.** 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.

#### **12.22.060 ReservedManufacturers**

A. All Manufacturers must obtain operating permits from and are subject to inspections by the City of Berkeley Environmental Health Division.

B. Compliance with State Food and Product Safety Requirements.

1. A Manufacturer that prepares Cannabis Products must comply with the relevant provisions of all State and local laws regarding the preparation, distribution, labeling and sale of food and cosmetics, even if those laws are not directly applicable to Edible or Cosmetic Cannabis Products.

2. Preparation of Edible and Cosmetic Cannabis Products.

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

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 Edibles or Cosmetic Cannabis Products 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 Edibles or Cosmetic Cannabis Products.

c. All employees of Manufacturers who produce Edibles must be State certified food handlers. The valid certificate number of such Manufacturers must be on record at each Retailer 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.

3. 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.

#### 4. Manufacture of Concentrates

a. Cold-water and mechanical extraction equipment shall be maintained in sanitary condition and approved for use by the City of Berkeley Environmental Health Division.

b. Any manufacture method using compressed gases or flammable solvents, whether volatile or non-volatile, shall be approved in advance and inspected by the City of Berkeley Fire Department and Toxics Management Division.

c. All Concentrates shall be produced under sanitary conditions and maintained free of filth and contaminants.

#### **12.22.070 Reserved Cultivators**

A. Cultivators must obtain operating permits from and are subject to inspections by the City of Berkeley Environmental Health Division.

B. Cultivator license types shall be the same as defined in MAUCRSA, with the exception of Nursery, as defined in Section 12.21.020.

C. Energy Use. Cultivators must include all feasible (under the current Title 24, Part 6) cost-effective water and energy efficiency measures, including but not limited to natural

daylighting, high efficiency lighting, networked lighting and mechanical controls, and natural cooling.

1. Cultivators must include the following systems to the extent feasible: on-site renewable energy generation; energy storage batteries; water collection, filtration and reuse; and rainwater harvesting.

2. Cultivators must include in any application for a Cannabis Cultivation Facility a description of all energy and water systems, measures employed to maximize efficient resource use, and the following metrics, with supporting documentation:

a. Planned lighting power density (watts/sf)

b. Planned lighting Energy Utilization Index (kBtu/sf/year)

c. Planned total site Energy Utilization Index (kBtu/sf/year)

d. Planned potable water consumption (gallons/sf/year)

3. Cultivators must mitigate the carbon dioxide emissions caused by the generation of electrical energy delivered to its Facility by participating in East Bay Community Energy's (EBCE) 100% renewable content option for electricity or equivalent. Until businesses have the option to purchase power through EBCE, the offset will be achieved through purchase of renewable energy certificates certified by the Center for Resource Solutions.

4. If a Facility uses natural gas to generate electricity for consumption at the site, the Cultivator must offset the carbon content of all electrical energy delivered to the Facility by participating in a program that is included in one of the Offset Project Registries approved by the California Air Resources Board and consists of a project or projects that are solely located in the United States and are either producing energy or reducing energy consumption.

5. For purposes of calculating carbon emissions, the carbon dioxide content of natural gas shall be 5.302 metric tons per 1,000 therms and the carbon dioxide content for electricity shall be the value, at the time of filing, from the most recent Power Content Label published by the California Energy Commission.

6. Cultivators shall be responsible for demonstrating compliance with this Section on a calendar-year basis. Documentation shall include copies of energy and water bills, as well as an authorization to energy and water providers to disclose energy and water consumption at the Facility directly to the City. All

parties that are responsible for energy and water bills shall also be responsible for providing such documentation and authorization.

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

D. Class 2 Nurseries must track the amount of, and disposition of, flower remaining after seed harvesting.

E. Cultivators must store in a safe manner all pesticides approved for use. Only pesticides approved for use may be stored onsite. Any unapproved pesticides found onsite may trigger a crop hold until the live plants are tested and found free of unapproved pesticide. Plants with any level of unapproved pesticides may be destroyed in the presence of City officials designated by the City Manager.

F. Cultivators must maintain all growing rooms in a clean, safe and sanitary manner and free of visible molds and fungal growth.

G. Cannabis Cultivation Facilities shall not harbor infestations of rodents or non-beneficial insects.

H. In Facilities using CO2 enrichment, ambient oxygen sensors shall be installed in any hallways, offices, or other enclosed occupied spaces.

#### **12.22.080 ~~Reserved~~ Testing Laboratories**

Testing Laboratories must obtain operating permits from and are subject to inspections by the City of Berkeley Environmental Health Division.

#### **12.22.090 ~~Reserved~~ Microbusinesses**

A. Microbusinesses must obtain separate City-issued operating permits for each activity conducted on the premises.

B. Microbusinesses are subject to the operating standards set forth in this Chapter for each activity conducted on the premises.

C. If the operating standards for the activities are different, the more restrictive standard shall apply, except as follows:

1. Signage for Retail Nursery Microbusinesses shall be subject to the regulations for storefront Retailers.

D. If the operating permit for one of the activities is revoked, the entire Microbusiness must cease operation until all operating permits at the premises are reinstated.

#### **12.22.100 ~~Reserved~~ Temporary Cannabis Events**

A. Temporary Cannabis Events as defined in MAUCRSA are permitted in Cesar Chavez Park, subject to approval of a Special Event Permit issued by the City Manager's Office.

A.B. Up to three events can be permitted annually.

#### **12.22.110 ~~Reserved~~ Collectives Prohibited**

Collectives previously authorized by the California Health and Safety Code shall be prohibited and must cease operation after January 9, 2019 pursuant to California Health and Safety Code Sections 11362.765 and 11362.775 and California Business and Professions Code Section 26033.

#### **12.22.120 ~~Reserved~~ Fees.**

The City Council may establish by resolution the fees that shall be charged for administration and implementation of this Chapter. The adoption of such fees shall not prevent the City from recovering enforcement costs not specified in such resolution.

#### **12.22.130 ~~Reserved~~ Authority of City Manager**

A. The City Manager or his or her designee shall have authority to determine the nature of any Cannabis Business or purported Cannabis Business and whether that entity complies with any of the requirements of this Chapter, Chapters 12.21 and 12.26, and Title 23, and to conduct inspections as provided in Chapter 1.16.

B. The City Manager or his or her designee 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 Cannabis.

C. The City Manager or his or her designee may require any Cannabis Business to obtain operating permits from the City of Berkeley Fire Department, Toxics Management Division, Environmental Health Division, or any other department or division.

D. 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, Chapters 12.21 and 12.26, and Title 23, and to adopt regulations to implement this Chapter, Chapters 12.21 and 12.26, and Title 23.

E. The City Manager or his or her designee may promulgate regulations for the selection of Retailers, Cultivators, and other Cannabis Businesses that require a selection process.

### **12.22.140 ~~Reserved~~ Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

**12.22.150 Reserved**

**12.22.160 Reserved**

**12.22.170 Reserved**

**12.22.180 Reserved**

Section 3. That Berkeley Municipal Code Chapter 12.23 is repealed.

Section 4. That Berkeley Municipal Code Chapter 12.25 is repealed.

Section 5. That Berkeley Municipal Code Chapter 12.27 is repealed.

Section 6: 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 Berkeley City Hall, 2134 Martin Luther King Jr. Way. Within 15 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. -N.S.

ADDING BERKELEY MUNICIPAL CODE CHAPTER 20.40 TO ESTABLISH CANNABIS BUSINESS SIGNS AND CANNABIS PRODUCT ADVERTISING REGULATIONS

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

Section 1. That Berkeley Municipal Code Chapter 20.40 is added to read as follows:

**Chapter 20.40**  
**CANNABIS BUSINESS SIGNS AND CANNABIS**  
**PRODUCT ADVERTISING**

**Sections:**

- 20.40.010 Purpose.**
- 20.40.020 Definitions.**
- 20.40.030 Cannabis product advertising prohibited.**
- 20.40.040 Exceptions.**
- 20.40.050 Violations deemed a public nuisance.**
- 20.40.060 Enforcement.**
- 20.40.070 Reinspection fee.**
- 20.40.080 Exemptions.**
- 20.40.090 Joint and several liability.**
- 20.40.100 Severability.**
- 20.40.110 Permitted signs.**
- 20.40.120 Number of signs permitted on premises.**
- 20.40.130 Sign area limitations.**

**20.40.010 Purpose.**

The purposes of this chapter are to:

- A. To promote the general welfare and reduce illegal purchase and consumption of cannabis or cannabis products by persons under the age of 21, which is accomplished by limiting the exposure of persons under the age of 21 to cannabis product advertising; and
- B. To provide design criteria and development standards to be used in the review of applications for cannabis business signage to ensure that the cannabis



businesses are compatible with the other land uses in the City.

**20.40.020 Definitions.**

“Cannabis” and “Cannabis Products” shall have the same meaning as set forth in Berkeley Municipal Code Section 12.21.020.

"Cannabis product advertising" means any billboard, sign, poster, placard, device, graphic display, or other item which promotes or is designed to promote the sale, use or consumption of a particular brand of cannabis or cannabis products, but shall not mean any advertising on the packaging of the product itself.

"Owner or operator" includes the owner of the property at which the advertising subject to this chapter is located, the owner of any billboard or other structure on which cannabis product advertising is located, as well as the operator of any commercial or other establishment at that location.

"Person" means any individual, firm corporation, partnership, cooperative association, receiver, trustee, assignee public or private entity, or other legal entity.

"Publicly visible location" means any outdoor location and any window of a commercial establishment that is visible to the public from any street sidewalk, or other public thoroughfare. This shall not be construed to include the inside of any commercial establishment, with the exception of its windows.

**20.40.030 Cannabis product advertising prohibited.**

No person shall place or maintain, or cause or allow to be placed or maintained any cannabis product advertising in any publicly visible location, except as provided in this Chapter.

**20.40.040 Exceptions.**

This chapter shall not apply to cannabis product advertising which is:

A. Inside any commercial establishment, except that no cannabis product advertising may be placed in a publicly visible location inside any commercial

establishment.

**20.40.050 Violations deemed a public nuisance.**

Any violation of the provisions of this chapter is declared to be a public nuisance. The procedures for the abatement of such nuisances shall be governed by Berkeley Municipal Code Chapter 1.24 as may hereafter be amended.

**20.40.060 Enforcement.**

A. Infraction. Any person violating any provision or failing to comply with any requirement of this chapter shall be deemed guilty of an infraction as set forth in Chapter 1.20 of this code.

1. Each separate display of cannabis product advertising in violation of this chapter is deemed to be a separate offense.
2. Each day an item of cannabis product advertising remains in violation of this chapter is deemed to be a separate offense.

B. Civil Action. In addition to any other remedy provided by this chapter, any violation of this chapter may be enforced by a civil action brought by the City or any other interested person. The City or any other interested person may seek and the court shall grant as appropriate:

1. Injunctive relief, both temporary and permanent;
2. Reasonable attorney fees and costs of suit.

C. Remedies Not Exclusive. Nothing in this chapter shall preclude the City from seeking any other remedy provided by law.

**20.40.070 Reinspection fee.**

The City Council may adopt a resolution establishing a fee which must be paid by the owner or operator of a specified location whenever the City Manager, or his or her designee, determines upon reinspection that a person has failed to comply with any orders, notices or directions issued by the City under this chapter.

**20.40.080 Exemptions.**

This chapter shall apply to all existing cannabis product advertising in violation of this chapter unless the owners or operators of the location at which such advertising is located provide written documentation to the City Manager, or his or her designee, within thirty days from the effective date of the ordinance codified in this chapter that this chapter unreasonably interferes with any contracts executed before the date of adoption of said ordinance.

A. Failure to provide such timely, written documentation shall be deemed a waiver of the right to seek an exemption.

B. The City Manager is authorized to grant an exemption from enforcement of this chapter for up to 6 months from the date of adoption. The decision of the City Manager with respect to such exemption is final.)

**20.40.090 Joint and several liability.**

The advertiser, the property owner and any operator of any location at which prohibited cannabis product advertising exists shall be jointly and severally liable for violations of this chapter.

**20.40.100 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.

**20.40.110 Permitted signs.**

A. Retailers that have a storefront and allow customer visits are allowed on-premises signs as set forth in BMC Chapter 20.24.

B. Delivery-only Retailers are allowed business complex signs as set forth in BMC

Section 20.16.070.

C. Non-retailers are allowed on-premises signs as set forth in BMC Chapter 20.32.

**20.40.120 Number of signs permitted on premises.**

A. The number of on-premises signs for Cannabis Retailers are limited to BMC Section 20.24.030.

B. The number of on-premises signs for Cannabis non-retailers are limited to BMC Section 20.32.030.

**20.40.130 Sign area limitations.**

A. The sign area for all signs of Retailers that have a storefront shall not exceed seven and a half (7.5) percent of the building face of the premises or seventy-five (75) square feet, whichever is less.

B. The sign area for all signs of Delivery only Retailers are subject to BMC Section 20.16.070.

C. The sign area for all signs of non-Retailers shall not exceed twelve (12) square feet.

D. Signage may not include depictions of cannabis or cannabis products. Logos with such depictions are also prohibited on signs.

Section 2. 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 Berkeley City Hall, 2134 Martin Luther King Jr. Way. Within 15 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. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23C.25 TO MODIFY THE  
CANNABIS USES ORDINANCE

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

Section 1. That Berkeley Municipal Code Chapter 23C.25 is amended to read as follows:

**Chapter 23C.25  
CANNABIS USES**

**Sections:**

**23C.25.010 ReservedRetail Uses**

**23C.25.020 Cannabis Cultivation**

**23C.25.030 Manufacturing, Testing and Distribution**

**23C.25.040 Microbusinesses**

**Section 23C.25.010 ReservedRetail Uses**

A. Retailer is defined in Section 12.21.020.

B. ALTERNATIVE A: STAFF RECOMMENDATION - Retailers may not be located within 600 feet of another Retailer or a public or private elementary school, 1,000 feet of a public or private middle or high school or 600 feet of a City-operated community center or skatepark.

B. ALTERNATIVE B: CHC RECOMMENDATION - Retailers may not be located within 1,000 feet of any public or private K-12 school, junior college, college, university, day care center, park, youth center or library.

B. ALTERNATIVE C: PC and CC RECOMMENDATION - Retailers may not be located within 600 feet of another Retailer or a public or private elementary school, middle school or high school.

C. Expansion of an approved Retailer shall follow the conversion regulations for the Zoning District in which it is located and shall comply with subdivision (B) of this Section.

D. An M-Retailer existing and authorized as of January 1, 2010, that does not comply with this Section, may continue at its current medical cannabis dispensing location and shall be considered a legal nonconforming use. Notwithstanding Section 23C.04.060 or subdivision (B) of this Section, the Zoning Officer may approve an Administrative Use

Permit to allow the expansion of a legal nonconforming medical cannabis dispensary use on any parcel or on two adjacent parcels where a dispensary was located on one of the parcels as of July 1, 2010.

E. No changes in ownership or approved location shall be approved until such time as the City Council established procedures and criteria to allow such changes.

F. Cannabis Retailers

1. ALTERNATIVE A: STAFF RECOMMENDATION - Six Cannabis Retailers as defined in Section 12.21.020 shall be permitted as of right with a Zoning Certificate in C-prefixed zones if they comply with the parking requirements applicable to the uses they include, and any security requirements promulgated by the Chief of Police.

1. ALTERNATIVE B: CC RECOMMENDATION - Thirty-two Cannabis Retailers as defined in Section 12.21.020 shall be permitted as of right with a Zoning Certificate in C-prefixed zones if they comply with quota for the district, the parking requirements applicable to the uses they include, and any security requirements promulgated by the Chief of Police.

1. ALTERNATIVE C: PC RECOMMENDATION - Eighteen Cannabis Retailers as defined in Section 12.21.020 shall be permitted as of right with a Zoning Certificate in C-prefixed zones if they comply with the parking requirements applicable to the uses they include, and any security requirements promulgated by the Chief of Police.

**Section 23C.25.020 Cannabis Cultivation**

A. Notwithstanding anything to the contrary in this Chapter, cultivation of cannabis as defined in Chapters 12.231 and 12.252 and MAUCRSA, as defined in BMC Section 12.21.010, shall be permitted as a matter of right with a Zoning Certificate in the M District, subject to the following limitations:

1. Such locations shall be limited to licensed Cannabis Businesses.
2. Cannabis may not be dispensed, and client, patient or member services or retail sales are prohibited, at such locations.
3. No single location used for cultivation and associated uses by a licensee may exceed 22,000 square feet of total canopy area, except that separate spaces used by different licensees may be aggregated on the same location.
4. There is no numeric limit for Cannabis Cultivation Facilities under 10,000 sf in total canopy area, up to 48,000 sf.

4.5. Up to six Major Cannabis Cultivation Facilities between the size of 10,000 sf and 22,000 sf in total canopy area are permitted.

5.6. Outdoor commercial cultivation is prohibited.

6.7. The total canopy area used for cannabis cultivation shall not exceed 180,000 square feet.

B. Cannabis nurseries, as defined in Chapter 12.231 are considered Cannabis Cultivation uses and are subject to the same regulations as Cultivators.

C. Such locations shall comply with all regulations in Chapter 12.2522, security regulations promulgated by the Chief of Police, and the requirements of this Chapter, and shall not be located within 300 feet of a private or public elementary, middle or high school. Such locations may include testing, processing, manufacturing and food preparation only to the extent expressly permitted by MAUCRSA.

D. No Cannabis uses may be approved under this Section until the City Council adopts a licensing process and standards for such uses. Such standards shall include a requirement that indoor cultivation uses provide for an energy offset through a program specified by the City to offset the net increased energy that is used by the Facility as compared to a regular industrial facility, and may include, but shall not be limited to, whether proposed Facilities will provide a percentage of all usable product cultivated at no cost to very low income patients and will use organic methods in cultivation and processing to the maximum extent reasonable; and whether their form of organization, ownership and practices ensure equity and accountability, low prices and an adequate supply of high quality cannabis to Customers.

E. Notwithstanding Subsection 23C.25.020.D, Cannabis Cultivators with Cannabis Cultivation Facilities (as defined in Section 12.2321.020) that do not exceed 10,000 square feet in total canopy area are permitted as a matter of right with a Zoning Certificate in the M District, subject to a limitation on total canopy area used for Cannabis Cultivation of 180,000 square feet.

### **Section 23C.25.030 Cannabis Manufacturing, Testing Labs and Distribution**

A. Uses such as, but not limited to, testing, processing, and food preparation, that involve cannabis as defined in Chapter 12.2321 but do not involve dispensing, client, patient or member services, or cultivation (other than for testing), shall be evaluated and regulated under this Title without regard to the fact that they involve cannabis.

B. Manufacturers, Testing Labs, Research and Development and Distribution businesses which are licensed as Cannabis Businesses by the State may not be located within 300 feet of a public or private elementary, middle or high school.

C. For the purposes of this Chapter, the following Cannabis uses shall be evaluated and regulated for Zoning purposes in the same way as the existing non-Cannabis uses, with the exception of distance buffers from schools:

Cannabis Use	Non-Cannabis Use
Manufacturing, processing, food preparation	Light Manufacturing
Testing labs	Testing labs
Research and Development	Research and Development
Distribution	Wholesale Uses

**Section 23C.25.040 Microbusinesses**

A. Microbusinesses are defined in Section 12.21.020

B. Microbusinesses are subject to the development standards set forth in this Chapter for each activity conducted on the premises, with the following exceptions:

1. In cases where the development standards for two activities are different, the more restrictive standards shall apply.

2. Retail Nursery Microbusinesses

a. Two existing nurseries are permitted to convert to a Retail Nursery Microbusiness, regardless of the number of Retailers and Cultivators in the City.

b. ALTERNATIVE A: STAFF RECOMMENDATION - These businesses are permitted by right with a Zoning Certificate in C- and M- prefixed zones, if they comply with the development standards set forth in this Chapter for each activity conducted on the premises.

b. ALTERNATIVE B: PC and CHC RECOMMENDATION - These businesses are permitted with a Use Permit in all zoning districts, if they comply with the development standards set forth in this Chapter for each activity conducted on the premises.

c. If the existing nursery is located entirely or partially in an R-prefixed district, conversion to a Retail Nursery Microbusiness will be subject to requirements for non-conforming uses (Section 23C.04.060).

d. The 600-foot retail buffer shall not apply between Storefront Retailers and Retail Nursery Microbusinesses.



Section 2. 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 Berkeley City Hall, 2134 Martin Luther King Jr. Way. Within 15 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. -N.S.

ZONING ORDINANCE AMENDMENT TO SUB-TITLE 23 OF THE BERKELEY MUNICIPAL CODE TO MODIFY DEVELOPMENT STANDARDS AND AMEND USE TABLES RELATED TO CANNABIS USES

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

Section 1. That Berkeley Municipal Code Section 23E.16.070 is repealed.

Section 2. That the “Retail Sales” section of Table 23E.36.030 in Berkeley Municipal Code Section 23E.36.030 is amended to read as follows:

**Table 23E.36.030 C-1 General Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including Liquor Stores and Wine Shops	UP(PH)	Includes sale for off-site consumption at restaurants Prohibited within the University Avenue Strategic Plan Overlay (unless in conjunction with a restaurant or general food product store)
Department Stores	ZC*	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u>  <u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 3. That the “Retail Sales” section of Table 23E.40.030 in Berkeley Municipal Code Section 23E.40.030 is amended to read as follows:

Table 23E.40.030 C-N Neighborhood Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed. (Does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	AUP Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u>

Use	Classification	Special Requirements (if any)
		<u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 4. That the “Retail Sales” section of Table 23E.44.030 in Berkeley Municipal Code Section 23E.44.030 is amended to read as follows:

**Table 23E.44.030 C-E Elmwood Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals	UP(PH)	Does not include boarding of animals
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u>

Use	Classification	Special Requirements (if any)
		<u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 5. That the "Retail Sales" section of Table 23E.48.030 in Berkeley Municipal Code Section 23E.48.030 is amended to read as follows:

**Table 23E.48.030 C-NS North Shattuck Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u>

Use	Classification	Special Requirements (if any)
		<u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 6. That the “Retail Sales” section of Table 23E.52.030 in Berkeley Municipal Code Section 23E.52.030 is amended to read as follows:

**Table 23E.52.030 C-SA South Area Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants No sales of distilled alcoholic beverages are allowed along Adeline Street south of Ashby Avenue
Department Stores Over 3,000 s.f.	ZC* UP(PH)	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u>  <u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 7. That the “Retail Sales” section of Table 23E.56.030 in Berkeley Municipal Code Section 23E.56.030 is amended to read as follows:

**Table 23E.56.030 C-T Telegraph Avenue Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	Prohibited	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC UP(PH)	
Drug Paraphernalia (any use involving the sale or distribution thereof)	Prohibited	As defined in California Health and Safety Code Section 11364.5(d)
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u>  <u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 8. That the “Retail Sales” section of Table 23E.60.030 in Berkeley Municipal Code Section 23E.60.030 is amended to read as follows:

**Table 23E.60.030 C-SO Solano Avenue Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores	ZC*	

Use	Classification	Special Requirements (if any)
Over 3,000 s.f.	Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	
Pet Stores including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u>  <u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 9. That the "Retail Sales" section of Table 23E.64.030 in Berkeley Municipal Code Section 23E.64.030 is amended to read as follows:

**Table 23E.64.030 C-W West Berkeley Commercial District Provisions: Uses Permitted**

Use	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
<b>Retail Sales</b>				
Retail uses as defined in Sub-title 23F, except otherwise listed.				
	Under 3,500	3,500-7,500	7,500 or more	
All Retail Sales Uses, except those specified below	ZC	AUP	UP(PH) **	**Except when part of a combination commercial/residential use; see Mixed Use Development heading



Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u>  <u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 10. That the “Retail Sales” section of Table 23E.68.030 in Berkeley Municipal Code Section 23E.68.030 is amended to read as follows:

**Table 23E.68.030 C-DMU Downtown Mixed Use Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F, except otherwise listed
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Under 10,000 s.f.	AUP ZC	
Firearm/Munitions Businesses	Prohibited	
Pawn Shops, including Auction Houses	UP(PH)	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	Prohibited	

Use	Classification	Special Requirements
<u>Cannabis Retailer</u>	<u>ZC</u>	<u>ZC shall only be issued after business is approved through the selection process</u>  <u>Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22</u>

Section 11. That the “Other Industrial Uses” section of Table 23E.72.030 in Berkeley Municipal Code Section 23E.72.030 is amended to read as follows:

**Table 23E.72.030 M Manufacturing District Provisions: Uses Permitted**

Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
<b>Other Industrial Uses</b>				
Art/Craft Studio	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	Workspaces only, no Live/Work permitted.
Bus, cab, truck and public utility depots	AUP	UP		
Commercial Excavation	UP(PH)			Including earth, gravel, minerals, or other building materials, including drilling for, or removal of, oil or natural gas
Contractors	AUP		UP	
Dry Cleaning and Laundry Plants	ZC	AUP	UP(PH)	No retail service permitted
Laboratories, Testing and Commercial Biological Research	Prohibited			
Media Production	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	
Recycled Materials Processing	ZC*	AUP	UP	* If all processing done indoors; if any outdoors, AUP

Repair Service (other than auto repair)	ZC	AUP	UP	No retail sales permitted
Services to Buildings and Dwellings	AUP			
Cannabis Cultivation	ZC			<p><u>For Large Cultivators (over 10,000 square feet of canopy) a ZC shall only be issued after business is approved through the selection process</u></p> <p>Subject to the requirements of <a href="#">Section-Chapter 23C.25</a> and BMC Chapters <a href="#">12.231</a> and <a href="#">12.252</a></p>

Section 12. 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 Berkeley City Hall, 2134 Martin Luther King Jr. Way. Within 15 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. -N.S.

ZONING ORDINANCE AMENDMENT TO CHAPTER 23F.04 OF THE BERKELEY MUNICIPAL CODE TO ADD AND MODIFY DEFINITIONS RELATED TO CANNABIS USES

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

Section 1. That Berkeley Municipal Code Chapter 23F.04 is amended to revise the definition of “Cannabis Uses”, add the definition of “Microbusiness” in alphabetical order, and amend the definition of Retail Products Store” as follows:

**Cannabis Uses:** Cannabis uses include retail sales, cultivation, manufacturing, testing, and distributing. See BMC Chapters 12.21, and 12.22, ~~12.23, 12.25, and 12.27~~ for cannabis regulations and Section 23C.25 for land use regulations.

**Microbusiness:** Cannabis use involving more than one State license. See BMC Chapter 12.21 for definition.

**Retail Nursery Microbusiness:** A microbusiness that is restricted to growing and selling cannabis plants and seeds. See BMC Chapter 12.21 for definition.

**Retail Products Store:** An establishment engaged in the sales of personal, consumer or household items to the customers who will use such items, including, but not limited to:

<b>Retail Products Stores</b>	<b>Comments</b>
Antique Stores	Includes Collectibles
Art/Craft Shops	
Art Galleries	
Art and Craft Supply Stores	
Audio/Video Records, Tapes, Disks Sales Shops	Excludes video rental stores
Automobile Parts Stores	Excludes service of auto parts
Bicycle Shops	Includes sales, parts and repair/service
Bookstores, Periodical Stands	
Clothing Stores	Includes apparel, hats, shoes and accessories
Computer Stores	Hardware and software

Retail Products Stores	Comments
Drugstores	Includes pharmaceutical, sundries, cosmetic/personal care items
Fabric, Textile and Sewing Supply Shops	
Flower and Plant Stores	Includes live, fresh-cut and/or dried flowers; excludes nurseries
Food Products Stores, Specialized	Includes Bakeries
Food Products Stores, General	Includes groceries, markets and supermarkets
Furniture Stores, Household or Office	Includes carpets and rugs
Garden Supply Stores, Nurseries	Does not include Cannabis Nurseries, see Cannabis Cultivation definition in 12.213.020
Gift/Novelty Shops	
Glass Pane and Mirror Stores	
Hobby Shops	
Household Hardware and Housewares Stores	
Household Electronics/Electrical Stores (Audio, Telephone and Video/TV)	Excludes video rental stores
Jewelry/Watch Shops	
Linen Shops	Includes bedding
Musical Instruments and Materials Stores	
Office Supply Stores	
Paint/Wallpaper Stores	
Photography Equipment Supply Stores	Includes cameras and film developing
Secondhand Stores	Includes used/vintage clothing and household goods
Small Appliance Stores	
Sporting Goods Stores	Includes equipment, clothing and supplies, excluding Firearm/Munitions Businesses

Retail Products Stores	Comments
Stationery, Cards and Paper Goods Stores	
Toy Stores	
Variety Stores	

Section 2. 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 Berkeley City Hall, 2134 Martin Luther King Jr. Way. Within 15 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.

## MINUTES FROM THE CANNABIS, COMMUNITY HEALTH AND PLANNING COMMISSIONS RELATED TO PROPOSED CANNABIS ORDINANCES

### CANNABIS COMMISSION

#### APPROVED MINUTES OF THE CANNABIS COMMISSION MEETING FEBRUARY 1, 2018 (Partial)

**A. Review staff proposed changes to cannabis ordinance language and vote on Commission recommendation to Council.**

Chair Jones recommended to begin the discussion by going through the matrix attached in the packet.

Public Comment: Eight public comments. The comments stated that there should be 600' buffer from liquor stores as well and that there should be no delivery of cannabis outside of California. Deliveries should be allowed at businesses and hotels, not only residences. The comments also were concerned about limiting cultivation to only the M District, there are good locations outside of the M District, and there will not be enough incentive for businesses to come into Berkeley if we only allow cultivation in the M District. There are large enough sites in the MM District of cannabis cultivation. Another comment expressed concern about only allowing retailers to buy from licensed cultivators. Other comments were concerned that there are not proposed regulations about change of ownership, only regulations for change of location. Another comment encouraged to add language to grandfather existing dispensaries with temporary adult use licenses as adult use retailers in Section 23C.25.010.G. Other comments mentioned that there are a lot of redundancies in Chapters 21 and 22 with the State regulations.

Commissioner Rice responded to the public comments about location of cultivation. She asked for the public to submit written testimonies encouraging the expansion of cultivation outside of the M District. Commissioner Pappas voiced his concern that there needs to be selection process first for cultivators in the M District so that Council can see there is a need for expansion outside of the M District.

***Retail: Medicinal Use***

The Commission first discussed the topics within the *Retail: Medicinal Use* section of the attached matrix. Commissioner Cable stated that the 600' buffer between retailers should be reduced. Ferguson-Riffe stated that the 600' buffer should stay and is important. Commission Cooper mentioned that they should leave as is and deal with it when it becomes an issue later.

Motion/second for Commissioner Brewster to different buffers for Retail
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business that sell non-smokeable products. (Jones/Cable). The motion carried 9-0-0-0. (Ayes: Brewster, Ferguson-Riffe, Jones, Carlisle, Pappas, Cable, Lampach, Rice, Cooper. Noes: None. Abstain: None. Absent: None)

The Commission discussed the issue of quotas for retailers. The Commission raised the question where there needs to be a definition of non-psychoactive/psychotropic products and if there should be a different quota limit for non-psychoactive use.

Motion/second to recommend no quotas for A and M retailers (Ferguson-Riffe/Carlisle). The motion carried 8-1-0-0. (Ayes: Brewster, Ferguson-Riffe, Jones, Carlisle, Pappas, Cable, Lampach, Rice. Noes: Cooper. Abstain: None. Absent: None)

Motion/second to recommend no quotas for Delivery-only retailers (Pappas/Brewster). The motion carried 8-1-0-0. (Ayes: Brewster, Ferguson-Riffe, Jones, Carlisle, Pappas, Cable, Lampach, Rice. Noes: Cooper. Abstain: None. Absent: None)

Motion/second to recommend approving the recommended security regulations for medicinal retailers (Jones/Carlisle). The motion carried 9-0-0-0. (Ayes: Brewster, Ferguson-Riffe, Jones, Carlisle, Pappas, Cable, Lampach, Rice, Cooper. Noes: None. Abstain: None. Absent: None)

The Commission agreed on the recommended on-site consumption language, and agreed with the recommended with the delivery regulations for medicinal use.

***Retail: Adult Use***

The Commission agreed with all staff recommendations for Adult-Use regulations' topics from the matrix except for the quota, see motion above.

***Retail: Delivery-only***

The Commission agreed with the location for delivery-only retailers, see motion above for quota recommendation.

Motion/second to recommend changing the buffer for delivery-only retailers to 300' from schools and no buffer from other retailers (Lampach/Cable). The motion carried 9-0-0-0. (Ayes: Brewster, Ferguson-Riffe, Jones, Carlisle, Pappas, Cable, Lampach, Rice, Cooper. Noes: None. Abstain: None. Absent: None)

Commissioner Jones recommended pushing the matrix topics of Cultivation, Manufacturing, and Other to the subcommittee discussion.



FEBRUARY 22, 2018  
(Partial)

**VII.A: Continuation from 2-1-18 meeting: Review staff proposed changes to cannabis ordinance language and vote on Commission recommendation to Council.**

Staff briefly presented the staff report, including the corrections in the matrix and proposed language. Staff also reported on the motions made by the Planning Commission on February 21.

Commissioner Ferguson-Riffe expressed concern about existing residential growers not being able to obtain licenses and be able to sell to other licensed cannabis businesses. The Commission also expressed concern about not being represented at other Commission meetings and requested to include a standing item in their agendas to discuss how they want to address other Commission that discuss cannabis regulations.

Public Comment: One comment. The public speaker was concerned that the residual solvents limits for testing for manufacturers (12.22.140) do not align with the State's limits.

***Commission Brewster's proposed language:***

The Cannabis Commission (CC) decided to review Commissioner's Brewster's proposed language before discussing it. Thus, they will address Brewster's memo at the next meeting.

***Delivery-specific requirements:***

The Commission discussed whether deliveries should be allowed at locations other than residences, including places of work, hotels, etc. The Commission requested that staff check whether the State law includes language on where deliveries are allowed. The Commission will discuss this topic at the next meeting when they have more information.

Motion/second to recommend to Council staff's proposed language on delivery-specific regulations and expand language to include deliveries to place of work, hotels, motels, extended places of stay (Jones/Lampach). Motion was withdrawn.

***Cultivation:***

The Commission reviewed the subcommittee's recommendations on cultivation. The CC discussed the allowed location of cultivation and expressed interest in expanding cultivation outside of the M District. The Commission made the following motions regarding cultivation regulations.

Motion/second to recommend to Council expanding cannabis cultivation into all M prefixed districts. (Cable/Jones). The motion carried 6-0-1-2. (Ayes:

Ferguson-Riffe, Jones, Carlisle, Lampach, Pappas, Cable. Noes: None. Abstain: Rice. Absent: Brewster, Cooper.)

Motion/second to allow cultivation location outside M prefixed districts on a case-by-case for equity or pre-existing businesses (may not be legally established) (Pappas/Jones). The motion carried 5-1-1-2. (Ayes: Ferguson-Riffe, Rice, Lampach, Pappas, Cable. Noes: Carlisle. Abstain: Jones. Absent: Brewster, Cooper.)

Motion/second to recommend to Council staff's proposed language for size, quota, limit, buffer, security, and on-site consumption of cultivation (Jones/Pappas). The motion carried 7-0-0-2. (Ayes: Ferguson-Riffe, Jones, Carlisle, Lampach, Rice, Pappas, Cable. Noes: None. Abstain: None. Absent: Brewster, Cooper.)

The Commission decided to continue the discussion on the rest of the matrix at the next meeting.

**APPROVED MINUTES OF THE CANNABIS COMMISSION MEETING  
MARCH 15, 2018  
(Partial)**

**VII.B: Continuation from 2-22-18 meeting: Review staff proposed changes to cannabis ordinance language and vote on Commission recommendation to Council. Attachments calls out Cannabis Commission actions since 1-18-18 and Planning Commission action on 2-21-18.**

Public Comment: Six comments. Security requirements for distribution should be less strict (no security guards), and distribution licenses should be allowed in manufacturing. Delivery-only businesses do not need security guards. The language about reconfiguration of product is redlined in the proposed language per State regulations, allow dispensaries to apply for a microbusiness license. Other cities recognize cannabis businesses even when they do not have regulations in place with temporary licenses. Concerned that 32 retailers is too many for Berkeley and buffers should be more than 600 feet. Berkeley should consider having a prevention policy and best practices for cannabis businesses. Also, Washington allows 1 retailers to 22,000 residents, 32 in Berkeley is too many. Recommend to Council that residential cultivation is an important issue and that nurseries should be allowed to be a storefront and not just wholesale.

The Commission discussed what topics that had not been discussed at previous meetings and made the following motions.

Motion/second to approve all language proposed by staff or discussed and approved by the Commission, except for the following: nurseries, manufacturing, testing, distributing, and security to discuss now and at the April 5th meeting (Jones/Cable). The motion carried 7-0-0-2. (Ayes: Jones, Carlisle, Cable, Brewster, Cooper, Rice, Pappas. Noes: None. Abstain: None. Absent: Lampach, Ferguson-Riffe.)

The Commission discussed security and recommended removing the security guard requirement for distribution, cultivation and delivery-only businesses.

Motion/second to remove the security guard requirement (12.21.040.G.2 and 4) for distribution, cultivation and delivery-only businesses (Carlisle/Cable). The motion carried 7-0-0-2. (Ayes: Jones, Carlisle, Cable, Brewster, Cooper, Rice, Pappas. Noes: None. Abstain: None. Absent: Lampach, Ferguson-Riffe.)

The Planning Commission discussed temporary licenses and distribution licenses and made the following motions. The Commission articulated the importance of allowing distribution businesses to begin operating as soon as possible.

Motion/second to allow temporary licenses to cannabis businesses (except storefront retailers) that already have a location as of December 31, 2017 but no business license, and conforms with state law, with a caveat that they must conform with any changes to state or local law or lose their business license. (Jones/Cable). The motion was withdrawn.

Motion/second to allow temporary distribution licenses to existing manufacturing businesses that cannot obtain a state distribution license because the requirement of separate premises, with a caveat that they must conform to any changes to state or local law or lose their business license. (Cable/Jones). The motion did not pass 4-1-2-2. (Ayes: Jones, Cable, Rice, Pappas. Noes: Cooper. Abstain: Brewster, Carlisle. Absent: Lampach, Ferguson-Riffe.)

## **APPROVED MINUTES OF THE CANNABIS COMMISSION MEETING**

**APRIL 5, 2018  
(Partial)**

**VII.B: Continuation from 3-15-18 meeting: Review staff proposed changes to cannabis ordinance language and vote on Commission recommendation to Council related to nurseries, distribution, testing, manufacturing, and**

**temporary licenses.**

Staff reviewed that proposed manufacturing and testing regulations are very similar to how existing regulations, with the addition of 300' buffers, and required conformance with all State regulations. The City will allow for a temporary license to allow existing businesses to have a distribution license, but waiting to see if the state will allow same site location. Distribution is recommended to be treated as a wholesale trade use in Berkeley. The proposed language says that nurseries would be subject to cultivation regulations.

Public Comment: Two comments. Asked if temporary distribution licenses can be issued to existing manufacturers at the same location, and what is cultivation in greenhouses considered?

The Commission discussed recommendations for manufacturing, testing and distribution and made the following motions. The Commission made no changes to their previous decision regarding cultivation and acknowledged that nurseries are included in cultivation. The Commission did not discuss temporary licenses.

Motion/second to approve staff's recommendation for manufacturing (Jones/Cable). The motion carried 6-0-0-3. (Ayes: Jones, Cable, Brewster, Ferguson-Riffe, Cooper, Rice. Noes: None. Abstain: None. Absent: Lampach, Carlisle, Pappas (not present during this vote).)

Motion/second to approve staff's recommendation for testing (Jones/Brewster). The motion carried 6-0-0-3. (Ayes: Jones, Cable, Brewster, Ferguson-Riffe, Cooper, Rice. Noes: None. Abstain: None. Absent: Lampach, Carlisle, Pappas (not present during this vote).)

Motion/second to approve staff's recommendation for distribution (Jones/Cable). The motion carried 7-0-0-2. (Ayes: Jones, Cable, Brewster, Ferguson-Riffe, Cooper, Rice, Pappas. Noes: None. Abstain: None. Absent: Lampach, Carlisle.)

**DRAFT MINUTES OF THE CANNABIS COMMISSION MEETING  
NOVEMBER 8, 2018  
(Partial)**

**VII.A: Review upcoming cannabis items at Council and other commissions and vote on any commission actions in response to these items. Also appoint a representative for possible January Council meeting.**

Staff Overview of Retail Nursery Microbusinesses (A.1):

Staff reviewed the staff report and explained that it is on the agenda based on Council direction from the October work session. The Cannabis Commission, Planning Commission and Community Health Commission will review this ordinance language at their November and December meetings. Recommendations from the commission will be incorporated into the ordinance language going to council in early 2019.

The commission asked for clarification on quota limit (2), buffers between microbusinesses and retailers and proximity to existing nurseries.

Public Comment (A.1): One comment. Speaker thinks a complete cannabis nursery (per Section 5408) will be better than cannabis sales in an existing non-cannabis nursery.

Motion/second to adopt and approve the draft ordinance by staff (staff language)

(Cooper/Jones). The motion carried 6-0-0-1. (Ayes: Jones, Rice, Brewster, Cooper, Cable, Pappas. Noes: None. Abstain: None. Absent: Carlisle.)

CHC recommendations and report (A.2 and 3)

Public Comment: One comment. Speaker asked if the Community Health Commission had read the new State regulations.

May Simpson spoke on behalf of the Community Health Commission (CHC): Community Health Commission has been studying scientific-based research and has spoken to doctors. The information so far has been inclusive but there is concern about use of cannabis having long term effect. There is particular concern about youth because their brain does not fully develop until age 25. We should be open minded and look at evidence from credible sources on both sides of issue.

The Cannabis Commission discussed issues included in the CHC report. There were questions about the validity of some of the concerns and the need for statistics about cannabis-related crime, youth use and hospitalizations since legalization of cannabis. There was some question about whether a prohibition of “characterizing flavors” would result in a prohibition of edibles. There was support for signs to discourage use by teens, pregnant women, and immigrants, and also support for working with the CHC to protect youth.

The Chair asked the CHC representative to inform the Cannabis Commission of any targeted concerns.

## COMMUNITY HEALTH COMMISSION

### FINAL MINUTES OF THE COMMUNITY HEALTH COMMISSION MEETING MARCH 22, 2018 (Partial)

3. M/S/C (Rojas-Cheathman/Futoran) Support Cannabis Ordinance Recommendation to Council with proposed edit (Attachment 8)

**Ayes:** Commissioners Rojas-Cheathman, Engelman, Kesarwani, Futoran, Carter, Smart, Lingas, Khalfay, and Wang

**Noes:** None

**Abstain:** Commissioner Brosgart and Spigner

**Absent:** Commissioner Speich and Katz

**Excused:** Commissioners Chen and Morales

**Motion Passed.**

4. M/S/C (Kesarwani/Rojas-Cheathman) Send Feedback to Cannabis Commission (Attachment 9)

**Ayes:** Commissioners Kesarwani, Rojas-Cheathman, Engelman, Futoran, Carter, Smart, Lingas, Khalfay, Spigner and Wang

**Noes:** Commissioner Brosgart

**Abstain:** Commissioner Engelman

**Absent:** Commissioner Speich and Katz

**Excused:** Commissioners Chen and Morales

**Motion Passed.**

### DRAFT MINUTES OF THE COMMUNITY HEALTH COMMISSION SPECIAL MEETING DECEMBER 6, 2018 (Partial)

3. M/S/C (Speich/Futoran): Motion to approve Retail Nursery Microbusiness language that was passed by the Planning Commission including Use Permit in all districts.

**Ayes:** Commissioner Speich, Futoran, Carter, Smart, Spigner, Rojas-Cheatham, Khalfay

**Noes:** None

**Abstain:** None

**Absent from vote:** None

**Excused:** Commissioner Engelman, Goldmacher, Gupta, Simpson, Rosales, Katz

**Motion Passed.**

4. M/S/C (Spigner/Futoran): Motion to approve staff recommendations with recommended edits for CHC reasoning (clarifying no adult use consumption in any business; no changes to H; agreement with staff recommendations for medicinal cannabis for low-income persons; adding children, youth and young adults language to 10B).

**Ayes:** Commissioner Speich, Futoran, Carter, Smart, Spigner, Rojas-Cheatham, Khalfay

**Noes:** None

**Abstain:** None

**Absent from Vote:** None

**Excused:** Commissioner Engelman, Goldmacher, Gupta, Simpson, Rosales, Katz

**Motion Passed.**

**PLANNING COMMISSION**

**FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING  
FEBRUARY 21, 2018  
(Partial)**

**9. Action: Public Hearing: Zoning Ordinance Cannabis Regulations**

Staff briefly presented the staff report on the proposed cannabis regulations including the use types, location of cannabis businesses, quotas, buffers, and levels of discretion.

Public Comments: 11 speakers.

Motion/Second/Carried (RK/RW) to close public hearing. Ayes: Lacey, Beach, Martinot, Schildt, Kapla, Wrenn. Noes: Vincent, Pinto, O'Farrell. Abstain: None. Absent: None. (6-3-0-0)

The Planning Commission (PC) addressed each Zoning Ordinance topic laid out in the staff report. The Commission agreed on staff's recommendation for locations of cannabis businesses within the Zoning districts. The PC agreed with staff's recommendation for cannabis use types, but discussed the possible options to allow existing non-cannabis nurseries to sell cannabis plants, for example, incidental sales of clones and seeds. The PC also agreed on staff's recommendations for quotas, buffers, and levels of discretion. However, the Commission discussed different options for equitable and geographical distribution and concentration of adult-use and medicinal retailers. And they requested that the Council refer back to the Planning Commission to discuss this issue. The Commission passed the following motions.

Motion/Second/Carried (RW/MKL) to recommend staff's proposal for cannabis businesses locations to Council. Ayes: Lacey, Beach, Martinot, Schildt, Kapla, Wrenn, Vincent, Pinto, O'Farrell. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (RW/BB) to recommend staff's recommendation for use types, and suggest to Council to refer back to the Planning Commission to allow incidental cannabis sales of clones and seeds at existing ornamental nurseries. Ayes: Lacey, Beach, Martinot, Schildt, Kapla, Wrenn, Vincent, Pinto, O'Farrell. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (CS/RW) to recommend staff's proposals on quotas (with at total of 18 storefront retailers and up to 12 adult use retailers), buffers, and levels of discretion. Request Council to refer back to Planning Commission consideration of



alternate methods of concentration and/or distribution of adult use and medical retailers including consideration of buffer between cannabis retailers, levels of discretion, and quotas. Ayes: Lacey, Beach, Schildt, Kapla, Wrenn, Vincent, Pinto, O'Farrell. Noes: Martinot. Abstain: None. Absent: None. (8-1-0-0)

**DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING  
DECEMBER 5, 2018  
(Partial)**

**9. Action: Public Hearing: Retail Nursery Microbusiness**

Staff reported that the Council voted at the September 2018 meeting to allow small Distributors and Cultivators to operate in Berkeley and to allow all cannabis businesses to operate as for-profit business. At the October 9, 2018 work session, the Council gave directions to maintain existing Retailer quotas, expand buffers for Retailers and supported the conversion of existing non-cannabis nurseries to cannabis retail nurseries. Staff described the draft ordinance, which would allow two existing nurseries to convert to Retail Nursery Microbusinesses (RNM) regardless of the number of Retailers and Cultivators in the City. RNM would be subject to the performance and development standards in place for the cannabis uses included as part of the RNM. The Commission held a public hearing, asked clarifying questions and discussed the proposed amendment.

Motion/Second/Carried (Schildt /Beach) to close the public hearing for item 9. Ayes: Martinot, Kapla, Schildt, Fong, Beach, Lacey, Wrenn, Hauser. Noes: None. Abstain: None. Absent: Pinto. (8-0-0-1)

Motion/Second/Carried (Kapla/Wrenn) to adopt proposed language and require a Use Permit for the conversion of an existing nursery to a Retail Nursery Microbusinesses. Ayes: Martinot, Kapla, Schildt, Fong, Beach, Lacey, Wrenn, Hauser. Noes: None. Abstain: None. Absent: Pinto. (8-0-0-1)

Public Comments: 4 Comments



Community Health Commission

## ATTACHMENT 7

### ACTION CALENDAR

September 13, 2018

To: Honorable Mayor and Members of the City Council  
From: Community Health Commission  
Submitted by: Nuha Afzal Khalfay, Chairperson, Community Health Commission  
Subject: A Public Health Approach to the Proposed Cannabis Ordinance(s)

### RECOMMENDATION

We recommend that the City Council delay the development timeline, approval, and implementation of the proposed cannabis ordinances for the City of Berkeley until the health protection and promotion measures outlined in this document have been fully integrated into the proposed ordinances, and take appropriate measures such as a moratorium to assure that the state does not issue licenses to businesses in Berkeley until such time as local policy is defined.

### SUMMARY

California Proposition 64, the Adult Use Marijuana Act, permits local governments to establish regulations for the production, sale, marketing, and cultivation of marijuana for recreational use. On July 25, 2017, Mayor Arreguin and the City Council referred the development of local ordinances of non-medicinal cannabis to the City Manager and the Cannabis Commission, in order to protect public health, safety, and welfare.

Recent study findings indicate that legalization of recreational cannabis should be carried out cautiously, to prevent undue exposure of youth, pregnant women, and the expansion of problem use; that unfettered expansion and diversification of products and of marketing are not prudent; and that, like tobacco and alcohol, cannabis use may pose significant risks to public health, especially when initiated early.

In this document we take the lessons learned from the public health responses to tobacco and alcohol use and recommend limits on cannabis access, cultivation, sales and marketing in the City of Berkeley, as well as methods for investment in addressing problem cannabis usage and promoting the public's health.

## FISCAL IMPACTS OF RECOMMENDATION

Limited loss in local tax revenue from the delay in implementing the relevant cannabis ordinances. Long-term savings to the Police, Fire, and Health, Housing & Community Services Departments, as well as the Berkeley Unified School District, from decreases in problem use among youth and pregnant women.

## CURRENT SITUATION AND ITS EFFECTS

Based on the most reliable and up-to-date scientific evidence, while legalization can help mitigate the negative social effects of the war on drugs, excessively rapid introduction of newly legalized recreational cannabis (“cannabis”), presents a significant potential threat to the public health, safety, and welfare of the residents of Berkeley, and particularly to youth and pregnant women.

Even before legalization of adult use of cannabis, the perception of risk from cannabis consumption has dropped from 58.3% to 31.1% among youth nationally between 2000 and 2016;<sup>1</sup> and use during pregnancy has risen substantially between 2000 and 2014, increasing the risk of low birth weight.<sup>2</sup> Between 2009 and 2016 use in Northern California pregnant women increased from 4.2% to 7.1, in teen mothers the increase was from 12.5% to 21.8%, and in young mothers ages 18 to 24 years use rose from 9.8% to 19%.<sup>3</sup>

In 2013-2015, the prevalence of lifetime marijuana use (7 or more times) among 11<sup>th</sup> graders in the Berkeley Unified School District (BUSD) was 38%, almost double that of the state as a whole (19.2%) and substantively more than for Alameda county (22.0%),<sup>4</sup> indicating that Berkeley youth have not had difficulty obtaining marijuana for recreational use. For BUSD 11<sup>th</sup> graders, 11.4% of boys and 4.4% of girls used marijuana on more than 10 days in the previous month, vs. 8.6% and 4.7% respectively, in Alameda County.<sup>5</sup>

In 2017, the National Academies of Sciences, Engineering and Medicine (NASEM) reviewed the available scientific evidence on the health effects of cannabis and cannabis-derived products, and while noting substantial evidence of therapeutic effectiveness of medicinal cannabis for a limited number of indications, noted evidence

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<sup>1</sup> Johnston LD, O'Malley PM, Miech RA, Bachman JG, Schulenberg JE. *Monitoring the Future National Survey Results on Drug Use, 1975-2016: Overview, Key Findings on Adolescent Drug Use*. Ann Arbor: Institute for Social Research, The University of Michigan; 2017.

<sup>2</sup> Brown QL, Sarvet AL, Shmulewitz D, Martins SS, Wall MM, Hasin DS. Trends in Marijuana Use Among Pregnant and Nonpregnant Reproductive-Aged Women, 2002-2014. *JAMA*. 2017;317(2):207-209. doi:10.1001/jama.2016.17383.

<sup>3</sup> Young-Wolff KC, Tucker L, Alexeeff S, et al. Trends in self-reported and biochemically tested marijuana use among pregnant females in California from 2009-2016. *JAMA*, 318(24): 2490-2491.

<sup>4</sup> Kidsdata.org. *Marijuana use in lifetime, by grade level*. Accessed 12 March 18.

<sup>5</sup> *Ibid*.

of association of cannabis use with harm in a wide range of areas.<sup>6</sup> The NASEM study found “substantial evidence”<sup>7</sup> to support the following conclusions:

- a) Initiation of use at an earlier age or more frequent use is a risk factor for the development of problem cannabis use;
- b) Maternal cannabis smoking during pregnancy is associated with low birth weight in offspring;
- c) Cannabis use is associated with increased risk of motor vehicle crashes;
- d) Cannabis use increases the risk of development of schizophrenia and other psychoses, with the highest risk among the most frequent users;
- e) Long-term cannabis smoking is associated with worse respiratory symptoms and more frequent chronic bronchitis episodes; and
- f) Increases in cannabis use frequency are associated with developing problem cannabis use.

The NASEM study found that less conclusive, but still worrisome, emerging evidence exists for a wide range of other harms, including impaired academic achievement and educational outcomes, development of substance use disorders, suicide completion, high blood pressure and increased unemployment, among others.

An additional concern is that even in states that have legalized adult use of marijuana, Federal immigration authorities are deporting immigrants (documented or undocumented) for cannabis possession, use, or working in the industry. At a time of heightened risk to the immigrant community, alerting immigrants to this additional legal hazard is important.

In light of these issues and other health effects, the Community Health Commission recommends setting a prudent and thoughtful approach to the complex issues surrounding legalization that should include strengthening the protection of youth and informing pregnant women and others on the foreseeable impacts of the legalization of adult use of recreational marijuana.

## BACKGROUND

California Proposition 64, the Adult Use Marijuana Act, permits local governments to establish regulations for the production, sale, marketing and cultivation of marijuana for recreational use. On July 25, 2017, Mayor Arreguín and the City Council referred the

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<sup>6</sup> The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research | The National Academies Press. <https://www.nap.edu/catalog/24625/the-health-effects-of-cannabis-and-cannabinoids-the-current-state>. Accessed July 12, 2017.

<sup>7</sup> ***The Academies defined Substantial Evidence as follows:*** *There is strong evidence to support or refute a statistical association between cannabis or cannabinoid use and the health endpoint of interest.*

development of local ordinances of non-medicinal cannabis to the City Manager and the Cannabis Commission, in order to protect public health, safety, and welfare.

The Community Health Commission wants to assure that the local ordinances put in place to regulate cannabis in Berkeley reflect a public health approach. We propose that the City of Berkeley's cannabis ordinances address the following issues to make sure the public's health is being protected:

## RETAIL OUTLETS

- Limit retail outlets to six. Existing regulation for retail sales of medicinal marijuana limit the number of locations to six. As these six have been allowed to sell adult recreational as well as medicinal marijuana, we recommend that the City limit the total number of retail outlets for both medicinal and adult recreational use to six. We also know from tobacco that outlet density is positively correlated with youth cigarette smoking.<sup>8</sup> Thus, for a city the size of Berkeley, with a population of approximately 121,240, six retail outlets are sufficient to provide a ratio of 1 outlet per 20,206 people.<sup>9</sup> Los Angeles County is recommending 1 storefront outlet per 52,000 residents and Washington State started with 1:22,000 residents. If even 1-2 new retailers are allowed, they should be limited to "equity applicants."
- Community input is needed on the decision to open any additional outlets and where these should be situated. We recommend a Conditional Use Permit to assure that the community is heard and so that the burden of retail outlets is not concentrated on one area of the City.
- Delivery-only retail establishments should only be allowed for delivery of medicinal marijuana. To reduce youth access, no additional delivery-only businesses should be allowed for adult recreational use. All sales and dispensing of Cannabis and Cannabis Products shall be conducted in-person on the Premises of the Cannabis Retailer. Off-site Delivery to the Consumer of adult use Cannabis or Cannabis Products is not allowed. Cannabis Retailing by means of Internet ordering or telephone ordering and Delivery to the Consumer service is prohibited in Berkeley.
- Any new retail outlet should have a 1,000 feet buffer from any school providing instruction in kindergarten or grades 1 through 12, Day Care Centers, parks, Youth Centers, libraries, junior colleges, colleges, or universities. The distance shall be measured by a straight line from the nearest point of the property line of the parcel on which the youth-serving facility is located to the nearest point of the property line of the parcel on which the applicant's business is located.

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<sup>8</sup> Finan LJ, Lipperman-Kreda S, Abadi M, et al. Tobacco outlet density and adolescents' cigarette smoking: a meta-analysis. *Tobacco Control*. Published Online First: 08 March 2018. doi: 10.1136/tobaccocontrol-2017-054065

<sup>9</sup> United States Census Bureau. Quickfacts: Berkeley city, California.

[www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216](http://www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216). Accessed 14 March 18.

- Cannabis Retailers should sell only Cannabis and other Cannabis Products, produced and distributed by persons licensed by the State of California, and Cannabis Accessories. They may not sell other goods, including but not limited to food; tobacco products; alcoholic beverages; non-cannabis medicines or supplements, or items of clothing. The Cannabis Retailer shall not hold or maintain a permit as a food service establishment or cottage food establishment from the City of Berkeley. A Cannabis Retailer may not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. A Cannabis Retailer may not hold or maintain a license to sell tobacco products from the City of Berkeley or the State of California. A permit shall not be issued to authorize Cannabis Retailing in a Pharmacy.
- Lounges and other methods of on-site consumption of recreational marijuana should be prohibited. No Cannabis Product shall be smoked, ingested or otherwise consumed on the premises of a permit holder or in the public right-of-way within twenty-five feet of a Cannabis Retailer. Cannabis Retailers shall post a sign near their entrances and exits providing notice of this policy.

#### RESTRICTIONS ON ADVERTISING AND MARKETING

- Mirror the current BMC 20.66.030 Tobacco product advertising: No person shall place or maintain, or cause or allow to be placed or maintained any cannabis product advertising in any publicly visible location within one thousand four hundred feet of the perimeter of any school.
- No claims may be made in Advertising or Marketing materials in Berkeley for Cannabis or Cannabis Products or brands that assert such products are safe because they are regulated by the state or local licensing authority (e.g., “state-approved” or “state-licensed”). This restriction does not apply to the display of license or permit numbers where required.
- Advertising and Marketing materials in Berkeley for adult-use Cannabis or Cannabis Products or brands may not include claims of therapeutic or curative effects.
- Products that may not be sold in Berkeley may not be Advertised in Berkeley.
- Advertising and Marketing materials in Berkeley for Cannabis and Cannabis Products or brands may not be Attractive to Children or Youth.
- Advertising and Marketing materials in Berkeley may not depict activities or conditions considered risky when under the influence of Cannabis, such as operating a motorized vehicle or boat, being pregnant, or breastfeeding.

#### PROHIBITED PRODUCT TYPES

- (a) Cannabis Retailers should not offer for sale, or possess with intent to sell or offer for sale or use:
- i) Any Cannabis or Cannabis Product that is Attractive to Children or Youth.
  - ii) Any Cannabis or Cannabis Product with Packaging or Labeling that is Attractive to Children or Youth.
  - iii) Synthetic cannabinoid containing products.
  - iv) Cannabis flower with potency in excess of 20% THC content.
  - v) Cannabis Products with THC content in excess of 50%.
  - vi) Cannabis flower to which a Characterizing Flavor has been added.
  - vii) Cannabis Products, other than those Edible Cannabis Products noted in (b) below, to which a Characterizing Flavor has been added.
  - viii) Cannabis or Cannabis Products whose Packaging, Labeling, or Marketing materials include claims of health, therapeutic or curative effects, or claims related to “potency” (beyond listing of cannabinoid content), “strength,” “high,” or being “natural.”
  - ix) Cannabis or Cannabis Products that contain any noncannabinoid additive that would increase potency, toxicity or addictive potential, or that would create an unsafe combination with other psychoactive substances. Prohibited additives include, but are not limited to, nicotine, caffeine and alcohol [excepting a minimum of alcohol that is residual from manufacturing or required solvents for the cannabis containing product if the product’s Packaging, Labeling and Marketing make no other reference to alcoholic beverages].
  - x) Any Cannabis Product that would otherwise be classified as a potentially hazardous food (as defined in the Health and Safety Code 113871), including a food that requires time or temperature control to limit pathogenic microorganism growth or toxin formation.
  - xi) Any Cannabis-infused ready-to-drink beverages, powders, gels or other concentrates with instructions for the preparation of Cannabis-infused beverages.
  - xii) Any Cannabis product that the Health, Housing and Community Services Department determines is easily confused with a commercially available food without Cannabis.
- (b) A Cannabis Retailer may sell no more than 10 (ten) product variations (SKUs) of Edible Cannabis Products, with or without Characterizing Flavors, in the form of hard lozenges, or chocolates with no additional flavors, with individually wrapped servings not exceeding 10 mg THC, and packages not exceeding 100 mg per package.

- (c) Tinctures and other non-Edible Cannabis Products may not have Characterizing Flavors, may not exceed 1,000 mg THC per package for adult-use, and must have clear instructions and dispensing mechanism such as a marked dropper or other device for dispensing doses of 10 mg THC or less.
- (d) Cannabis or a Cannabis Product is presumed to have a Characterizing Flavor if a Manufacturer or any of the Manufacturer's agents or employees has:
  - i) Made a public statement or claim that the Cannabis or Cannabis Product has or produces a Characterizing Flavor, including, but not limited to, text and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate information about the flavor, taste, texture or aroma of a Cannabis Product; or
  - ii) Taken actions directed to consumers that would reasonably be expected to result in consumers believing that the Cannabis or Cannabis Product imparts a Characterizing Flavor.

Every Cannabis Retailer shall maintain on the Premises the original Labeling and Packaging provided by the Manufacturer for all Cannabis Products that are sold or offered for sale by the establishment separately from the original Packaging designed for retail sale to the consumer. The original Labeling and Packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale, and may be disposed of upon the sale of the entire contents of such package.

#### WARNING LABELS

- The "exit packaging" for cannabis products, including edibles, should have large warning labels.

Any Opaque Exit Package provided by the retailer for Cannabis or Cannabis Product purchased by a customer must carry one of the following warnings in a black-outlined yellow box covering 20% of the front panel of the exit packaging and using at least 12 point font. Each of the warnings should be provided on an equal proportion of exit packaging provided. The Department of HHCS should review and update warnings as needed based on current scientific evidence at least every three years. Stickers are acceptable.

- a. **Are you pregnant or breastfeeding?** According to the Centers for Disease Control and Prevention (CDC), marijuana use during pregnancy can be harmful to your baby's health, including causing low birth weight and developmental problems. **GOVERNMENT HEALTH WARNING.**
- b. **Driving while high is a DUI.** Marijuana use increases your risk of motor vehicle crashes. **GOVERNMENT HEALTH WARNING.**



- c. **Not for Kids or Teens!** Starting marijuana use young or using frequently may lead to problem use and, according to the Centers for Disease Control and Prevention (CDC), may harm the developing teen brain. **GOVERNMENT HEALTH WARNING.**
- d. Marijuana use may be associated with **greater risk of developing schizophrenia** or other psychoses. Risk is highest for frequent users. **GOVERNMENT HEALTH WARNING.**
- e. Smoking marijuana long term may **make breathing problems worse.** **GOVERNMENT HEALTH WARNING.**

#### PRICING AND DISCOUNTING

- PROHIBITION ON THE SALE OF CANNABIS FOR LESS THAN THE LISTED PRICE. No Cannabis Retailer shall: (1) honor or accept a Price Reduction Instrument in any transaction related to the sale of Cannabis or Cannabis Products to a consumer; (2) sell or offer for sale Cannabis or Cannabis Products through any multi-package discount or otherwise provide to a consumer any Cannabis or Cannabis Products for less than the Listed Price in exchange for the purchase of any other Cannabis or Cannabis Product; (3) sell, offer for sale, or otherwise provide any product other than Cannabis or Cannabis Products in exchange for the purchase of Cannabis or Cannabis Products; or (4) otherwise sell, offer for sale, or provide Cannabis or Cannabis Products for less than the Listed Price. In addition, Cannabis Retailers must sell, offer for sale, or provide Cannabis or Cannabis Products for the same listed price every day of the week in a given week.
- PRICE FLOOR FOR CANNABIS AND CANNABIS PRODUCTS. The Department of HHCS is authorized, but not required, after 5 years from the effective date of this measure, to establish minimum prices for Cannabis and Cannabis Products. If such a Price Floor is established, Cannabis Retailers may not sell Cannabis or Cannabis Products below the minimum price; City of Berkeley Department of HHCS must review the appropriateness of the Price Floor at least every two years and may adjust the Price Floors at that time to account for changes in the consumer price index, or other considerations related to reducing illegal commerce. The Department of HHCS may promulgate such rules as may be necessary for the purpose of carrying out this section.

#### REQUIRED IN-STORE SAFETY INFORMATION

- A Cannabis Retailer must display a warning sign prominently behind the main dispensing counter. The sign must be at least 3 feet by 3 feet and be displayed at eye height (i.e., with mid-point 5 feet above the floor).

#### **WARNING:**

1. **Are you pregnant or breastfeeding?** According to the U.S. Centers for Disease Control and Prevention (CDC), marijuana use during pregnancy can be harmful to your baby's health, including causing low birth weight and developmental problems.
2. **Driving while high is a DUI.** Marijuana use increases your risk of motor vehicle crashes.
3. **Not for Kids or Teens!** Starting marijuana use young or using frequently may lead to problem use and, according to the CDC, may harm the developing teen brain.
4. Marijuana use may be associated with **greater risk of developing schizophrenia** or other psychoses. Risk is highest for frequent users.
5. Smoking marijuana long-term may **make breathing problems worse.**

THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

- A Cannabis Retailer must display each of the following three warning signs, which are (i) at least 2 feet wide by 1 foot tall; (ii) posted at eye height (i.e., with mid-point 5 feet above the floor); and (iii) posted prominently and conspicuously facing consumers in a location where it will be seen by all customers, such as behind a dispensing counter, check-in or check-out counter, stating in English and Spanish:
  - **ARE YOU AN IMMIGRANT? Using or possessing marijuana or working in the marijuana industry is legally risky for any noncitizen, even in California.** This includes lawful permanent residents, undocumented persons, student with visas, and others. Marijuana is illegal under federal law, and federal law controls immigration. If you need to take medical marijuana, see an immigration attorney for advice. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY
  - **ARE YOU ON PROBATION OR PAROLE?** If you are prohibited from using drugs as a condition of your probation or parole, then possession or use of marijuana could violate your probation or parole. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY
  - **ARE YOU A MEDICAL MARIJUANA CUSTOMER 18-20 YEARS OLD?** If you are caught possessing marijuana without medical authorization, you could face legal consequences. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY THE CITY OF BERKELEY

- The Department of HHCS shall review and, if necessary, update the text of the required warnings as needed, but no less than once every three years, based on current scientific evidence and legal information.

#### RESTRICTIONS ON BRANDED MERCHANDISE

- No Cannabis Business or Cannabis or Cannabis Product brand identification, including logos, trademarks or names, may be used or licensed for use on clothing, toys, games, or game equipment, or other items that are typically marketed primarily to or used primarily by persons under the age of 21, or that are Attractive to Children or Youth.

#### TAX PROPOSALS AND USES FOR SAID TAX

- The City of Berkeley recently reduced the tax on adult use cannabis from 10% to 5%. To be most effective at addressing the harms caused by the past criminalization of marijuana possession and to promote the public's health, we recommend in one year that the City Council raise the tax, with a ceiling of 15% of gross receipts, and an additional tax of up to one percent (1%) of the gross receipts from high potency cannabis and each high potency cannabis product cultivated, manufactured or sold by the taxpayer, multiplied by the percent of tetrahydrocannabinol (THC) content of the product above 17%. Experience from other states has shown a rapid fall in price in the first two years post-legalization, which will be likely to increase youth consumption.
- Building on the success of the Sugar Sweetened Beverage Tax and its board, we recommend that the City Council establish a Cannabis Tax Community Advisory Board of nine residents of the City of Berkeley to recommend use of tax proceeds and priorities for funding, make annual recommendations on the spending of tax proceeds, recommend appropriate efforts to evaluate previous expenditures, and to review the annual report. Spending decisions would remain with the City Council, which may choose not to accept any particular recommendation of the Cannabis Tax Community Advisory Board.
  - The Board shall have at least one public health professional, one expert in addiction or substance use prevention and treatment, one physician, a representative of a community based organization, a representative of community clinics, a school nurse or school-based mental health professional, a representative of a community based organization serving low income people, the city health officer or his or her designee. At least

two members shall be residents of communities disproportionately affected by drug-related incarceration.

- The Board shall advise and make recommendations on how to best to spend funds to the City Council, to:
  1. Prevent cannabis consumption by youth, during pregnancy or in excessive or harmful ways;
  2. Prevent other forms of substance abuse or addiction;
  3. Prevent other leading causes of illness, injury and premature death in the community whether or not arising from cannabis use; and/or
  4. Promote wellness and reduce inequity in health conditions;
  5. Reduce negative social impact of substance abuse;
  6. Reduce drug-related incarceration, including, for example:
    - i. Support to reduce new drug-related incarceration;
    - ii. Programs to assist residents in expungement or reclassification of records of marijuana convictions allowable pursuant to MAUCRSA;
    - iii. Re-entry programs for those released from incarceration to avoid recidivism; and
    - iv. Job training programs and other community-based and educational programs, especially those that will minimize drug-related incarceration.
  
- Recommended activities may include promoting or implementing policy, systems or environmental changes to create a healthier community or to reduce drug-related incarceration, providing education, or community-based programs serving residents of the City of Berkeley with a focus on low-income communities

#### RATIONALE FOR RECOMMENDATION

We are making these recommendations as we have learned from the public health experience with tobacco and alcohol that products intended for adults are often marketed and accessible to children and youth. We have also learned from the other states that have recently legalized adult use of marijuana that changes in consumption patterns and pricing may put the public's health at risk. Therefore, the Community Health Commission is making the above recommendations to safeguard the health, safety and welfare of the residents of the City of Berkeley.

#### ALTERNATIVE ACTIONS CONSIDERED

The alternative action is to allow the current discussion to go forward without the input of the Community Health Commission; this is not a viable option.

#### ENVIRONMENTAL SUSTAINABILITY

These measures are likely to reduce second hand smoke exposures from marijuana, exposure of cannabis business employees to second-hand smoke, and to delay or decrease water and electricity consumption related to cannabis production or sale.

CONTACT PERSON

Robert Terrones, Secretary, Community Health Commission, (510) 981-5324

Attachments:

1: *Monitoring the Future National Survey Results on Drug Use, 1975-2016: Overview, Key Findings on Adolescent Drug Use*. Ann Arbor: Institute for Social Research, The University of Michigan; 2017.

2. Trends in Marijuana Use Among Pregnant and Nonpregnant Reproductive-Aged Women, 2002-2014. *JAMA*. 2017;317(2):207-209. doi:10.1001/jama.2016.17383.

3. Trends in self-reported and biochemically tested marijuana use among pregnant females in California from 2009-2016. *JAMA*, 318(24): 2490-2491.

4. Kidsdata.org. *Marijuana use in lifetime, by grade level*.










5. The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research | The National Academies Press.  
<https://www.nap.edu/catalog/24625/the-health-effects-of-cannabis-and-cannabinoids-the-current-state>. Accessed July 12, 2017.

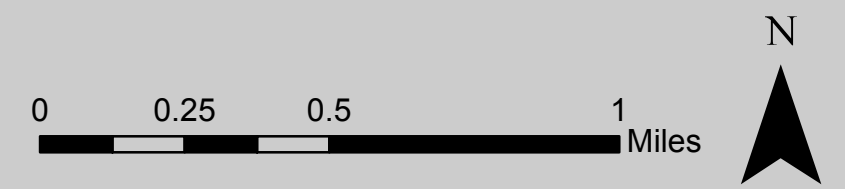
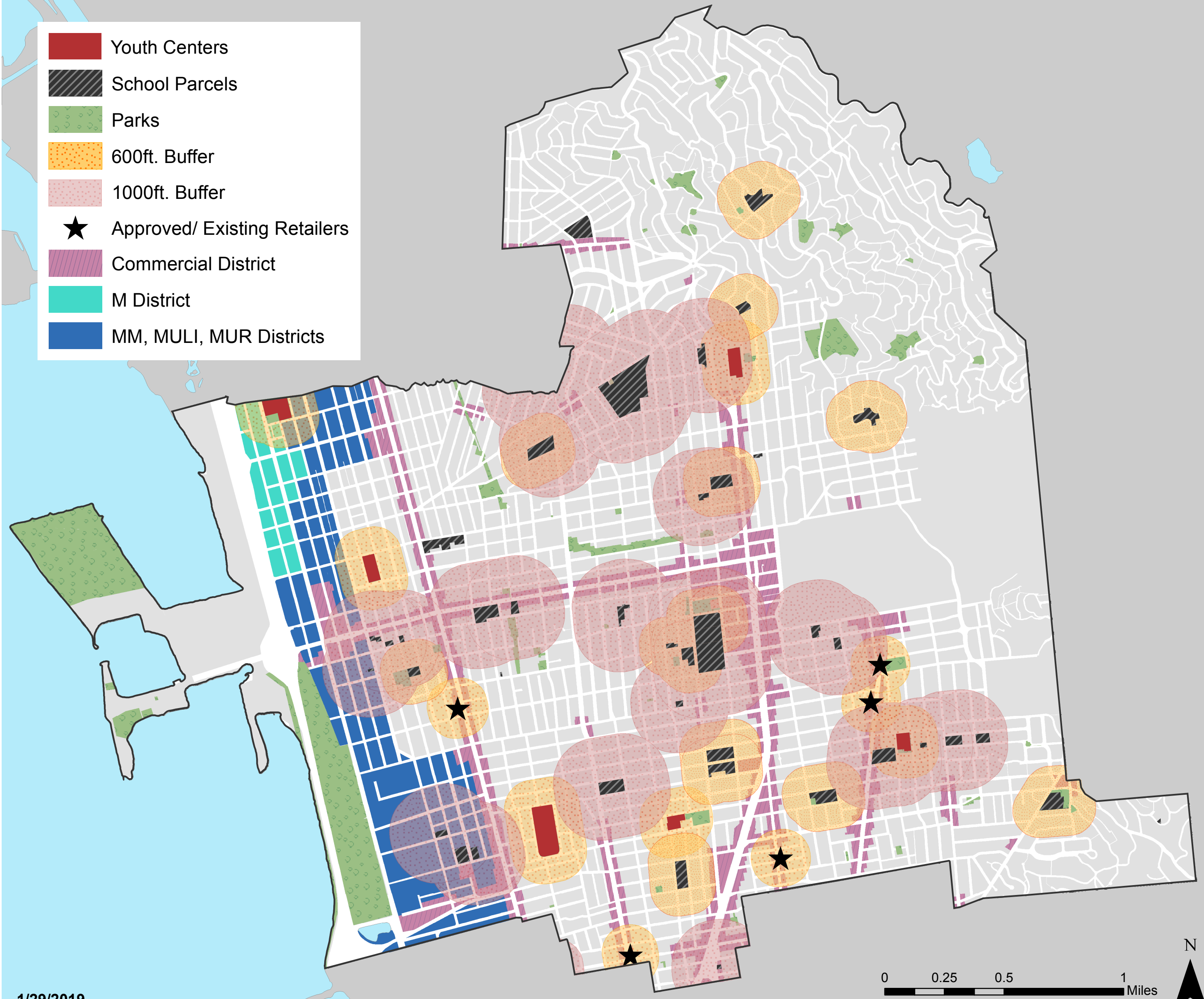
6. The Academies defined Substantial Evidence as follows: There is strong evidence to support or refute a statistical association between cannabis or cannabinoid use and the health endpoint of interest. Safeway (3), Berkeley Bowl (2), Whole Foods (2), Traders Joes, Berkeley Natural Grocery, Monterey Market, Star Grocery.

7. Tobacco outlet density and adolescents' cigarette smoking: a meta-analysis. *Tobacco Control*. Published Online First: 08 March 2018. doi: 10.1136/tobaccocontrol-2017-054065

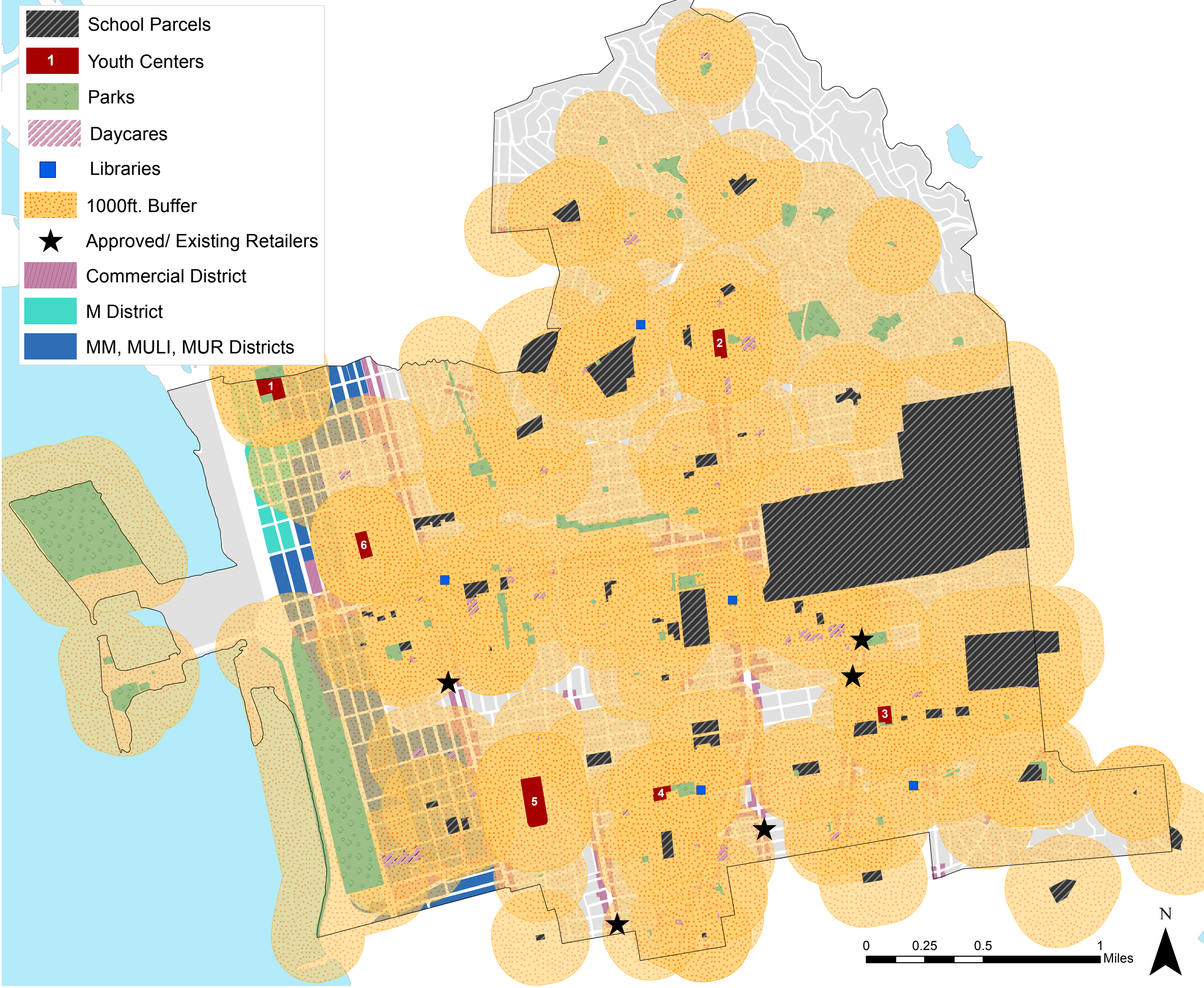
8. United States Census Bureau. Quickfacts: Berkeley city, California.  
[www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216](http://www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/PST045216). Accessed 14 March 18.

# Alt A: 1,000 ft from Middle and High Schools






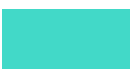

-  Youth Centers
-  School Parcels
-  Parks
-  600ft. Buffer
-  1000ft. Buffer
-  Approved/ Existing Retailers
-  Commercial District
-  M District
-  MM, MULI, MUR Districts

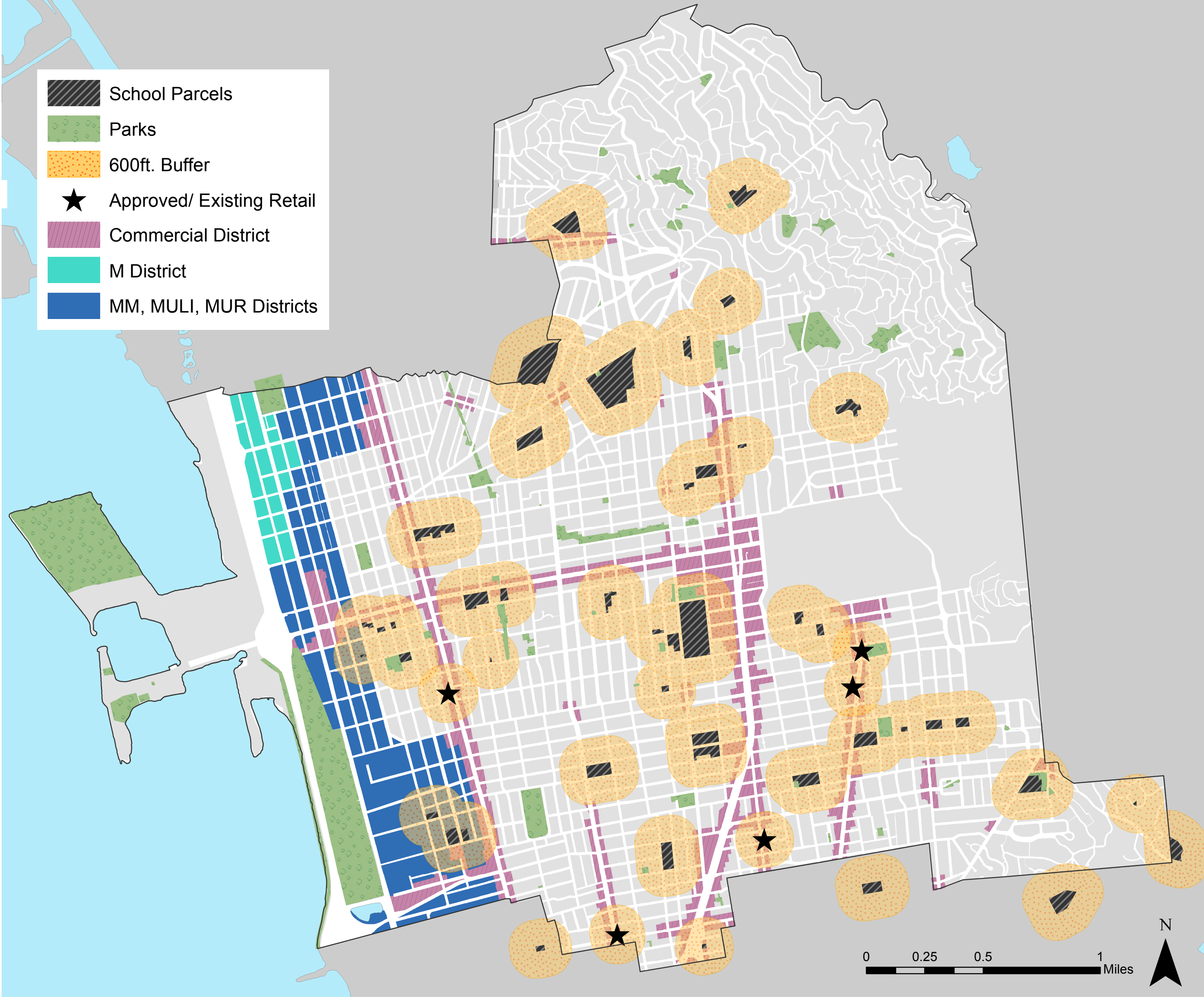


# ALT B: Schools, Youth Centers, Parks, Libraries and Daycares with 1000ft Buffer



# Alt C: 600ft Buffer from all Schools

-  School Parcels
-  Parks
-  600ft. Buffer
-  Approved/ Existing Retail
-  Commercial District
-  M District
-  MM, MULI, MUR Districts





**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**CONSIDERATION OF CANNABIS ORDINANCE REVISIONS**

Notice is hereby given by the City Council of the City of Berkeley will conduct a public hearing to consider new ordinances to regulate cannabis businesses in the city. Changes to be considered are summarized below:

- Clarify cannabis business operational standards and development standards, such as quotas and buffers, for all businesses types;
- Revise ordinance language to reflect State regulations;
- Allow a new business type (Retail Nursery Microbusiness);
- Restrict cannabis advertising within the city; and
- Allow temporary cannabis events at Cesar Chavez Park.

The hearing will be held on, TUESDAY, MARCH 12, 2019 at 6:00 p.m. in the BUSD Board Room, 1231 Addison Street, Berkeley.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **February 28, 2019**.

For further information, please contact Elizabeth Greene, Land Use Planning at 510-981-7410.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** Berkeley Voice, March 1, 2019 **per California Code Sections 65856(a) and 65090.**

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Old Berkeley City Hall, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 28, 2019.

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Mark Numainville, City Clerk