

ORDINANCE NO. 7,645-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 " Δ^9 -THC" means Δ^9 -tetrahydrocannabinol, (Δ)-(6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a-tetrahydro-6H-benzo[c]chromen-1-ol.
2. "THCA" or " Δ^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. "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.

T. "Distributor" means an individual or entity required to be licensed as a distributor pursuant to MAUCRSA, as amended from time to time.

U. "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.

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

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

X. "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.

Y. "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.

Z. "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.

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

BB. "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.

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

DD. 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.

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

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

GG. "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 Distributors 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. 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. 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.
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 an administrative citation 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 Applicability and Purpose

12.22.020 Selection Process

Article II Cannabis Businesses

12.22.030 Eligibility Requirements

12.22.040 Retailers

12.22.050 Distributors

12.22.060 Manufacturers

12.22.070 Cultivators

12.22.080 Testing Laboratories

12.22.090 Microbusinesses

12.22.100 Temporary Cannabis Events

12.22.110 Collectives Prohibited

Article III Enforcement

12.22.120 Fees

12.22.130 Authority of City Manager

12.22.140 Severability

12.22.150 Reserved

12.22.160 Reserved

12.22.170 Reserved

12.22.180 Reserved

12.22.010 Applicability 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 Selection 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 Eligibility requirements

A. No Principal of any business of a certain license type may be a Principal for any other business of the same 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 Retailers

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. 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.

E. 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 3 feet by 3 feet in size, shall be printed in no smaller than

a 28-point font, displayed prominently behind the main dispensing counter at eye-level (i.e., with mid-point five feet above the floor).

2. All Retailers must prominently display a notice as set forth in subsection 12.22.040.E 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.E.

3. All Retailers must prominently display a notice as set forth in subsection 12.22.040.E 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.E.

4. Any M-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.E 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.E.

5. All M-Retailers must prominently display a notice as set forth in subsection 12.22.040.E 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.E.

6. Any A-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.E 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.E.

F. Consumption of Cannabis

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

G. Delivery Requirements

1. Medicinal and Adult Use 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.

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. 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.

H. 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.

I. 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.H.

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 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.

C. 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.

D. 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 Manufacturers

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 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. 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.

5. 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 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 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

12.22.110 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 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 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 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.

At a regular meeting of the Council of the City of Berkeley held on April 23, 2019, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

ORDINANCE NO. 7,647-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 Retail Uses

23C.25.020 Cannabis Cultivation

23C.25.030 Manufacturing, Testing and Distribution

23C.25.040 Microbusinesses

Section 23C.25.010 Retail Uses

- A. Retailer is defined in Section 12.21.020.
- B. 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. Cannabis Retailers
 - 1. Seven 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. Retailers shall be approved through a selection process as set forth in Section 12.22.020.
2. No additional Retailers shall be considered for a period of three years from the effective date of this ordinance.

Section 23C.25.020 Cannabis Cultivation

A. Notwithstanding anything to the contrary in this Chapter, cultivation of cannabis as defined in Chapters 12.21 and 12.22 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.
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.
6. Outdoor commercial cultivation is prohibited.
7. The total canopy area used for cannabis cultivation shall not exceed 180,000 square feet.

B. Cannabis nurseries, as defined in Chapter 12.21 are considered Cannabis Cultivation uses and are subject to the same regulations as Cultivators.

C. Such locations shall comply with all regulations in Chapter 12.22, 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 12.21.020) 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 12.21 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. For purposes of this Section, “Existing Nursery” means a plant nursery in the City of Berkeley as of the adoption of this ordinance.
 - b. A maximum of two Existing Nurseries are permitted to convert to Retail Nursery Microbusiness, either: 1) by right with a Zoning Certificate in C- and M-prefixed zoning districts, if they comply with the development standards set forth in the Zoning Ordinance and in this Chapter for each activity conducted on the premises; or 2) subject to a Use Permit as set forth in Chapter 23B.32 for substantial expansion or change in character to non-conforming uses in R-prefixed districts (Section 23C.04.060.B). The Zoning Certificates and/or Use Permits shall be approved notwithstanding the number of Retailers and Cultivators in the City.
 - c. Zoning Certificates and/or Use Permits shall be issued to Existing Nurseries on a first-come, first-served basis. The right to retain one of the allocated Zoning Certificates shall be determined based on the date of issuance of a concurrent Business license and establishing and continuously operating the business or, if a Use Permit is required, on the date the application for the Use Permit is deemed complete so long as the Use Permit is implemented with a Businesses License within 30 days of approval and establishing and continuously operating the business.
 - 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.

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Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.