

AN ORDINANCE

**of the City Council of the City of Berkley, Michigan
to Add New Article XV, Marihuana Businesses, to Chapter 30, Businesses,
of the City of Berkley Code of Ordinances to Adopt Local Licensing Regulations and
Operational Standards for Marihuana Businesses as Authorized Under the Michigan
Medical Marihuana Act, MCL 333.26421, et seq., Michigan Medical Marihuana Facilities
Licensing Act, MCL 333.26421, et seq., Marihuana Tracking Act, MCL 333.27901, et seq.,
Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951, et. seq.,
and the Michigan Zoning Enabling Act, MCL 125.3101, et seq., as amended**

THE CITY OF BERKLEY ORDAINS:

SECTION 1: New Article XV shall be added to Chapter 30 of the Berkley City Code, as follows:

ARTICLE XV. – MARIHUANA BUSINESSES

Sec. 30-900. – Purpose.

The purpose of this Article is to exercise the City of Berkley’s police, regulatory, and zoning authority to locally license and regulate Marihuana Businesses, including Marihuana Retail Establishments, Marihuana Microbusinesses, Marihuana Grower Facilities, Marihuana Safety Compliance Facilities, Marihuana Secure Transporters, and Marihuana Processor Facilities to the extent permissible under state and federal laws and regulations, and to protect and promote the public health, safety, and welfare of the City and its residents.

Sec. 30-901. – Definitions.

Except as expressly defined differently, words and phrases in this Article shall have the same meanings ascribed to them as in the Michigan Medical Marihuana Act, Michigan Medical Marihuana Facilities Licensing Act, Marihuana Tracking Act, Michigan Regulation and Taxation of Marihuana Act, Michigan Zoning Enabling Act, and the administrative rules and regulations promulgated by the State of Michigan and the Michigan Department of Licensing and Regulatory Affairs, as amended.

- (1) “Applicant” means an individual, person, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity or other business entity who applies for a license to operate a marihuana business in the City.
- (2) “Cultivate” means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.
- (3) “Co-Locate” or “Co-Location” means all 3 license types or any combination of growers, processors, and/or marihuana retail establishments may operate as separate marihuana businesses at the same physical location.

- (4) “LARA” means the Michigan Department of Licensing and Regulatory Affairs.
- (5) “Industrial hemp” means a plant of the genus cannabis and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed 0.3% on a dry-weight basis, or per volume or weight of marihuana-infused product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus cannabis regardless of moisture content.
- (6) “Marihuana” means all parts of the plant of the genus cannabis, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marihuana concentrate and marihuana-infused products. Marihuana does not include: (i) the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination; (ii) industrial hemp; or (iii) any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.
- (7) “Marihuana accessories” means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.
- (8) “Marihuana concentrate” means the resin extracted from any part of the plant of the genus cannabis.
- (9) “Marihuana Business” means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana establishment or facility licensed by LARA.
- (10) “Marihuana grower” means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.
- (11) “Marihuana-infused Product” means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused Product shall not be considered a food for purpose of the Food Law, MCL 289.1101 to 289.8111.
- (12) “Marihuana Tracking Act” or “MTA” means Public Act 282 of 2016, MCL 333.27901, et seq., as amended and all future amendments.

- (13) “Marihuana Microbusiness” means a person licensed to cultivate not more than 150 marihuana plants, process and package marihuana, and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a Marihuana safety compliance facility, but not to other marihuana establishments.
- (14) “Marihuana processor” means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.
- (15) “Marihuana retailer” means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.
- (16) “Marihuana secure transporter” means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.
- (17) “Marihuana safety compliance facility” means a person licensed to test marihuana, including certification for potency and the presence of contaminants.
- (18) “Michigan Medical Marihuana Act”, or “MMMA” means the initiated law of 2008, MCL 333.26421, et seq., as amended and all future amendments.
- (19) “Michigan Medical Marihuana Facilities Licensing Act”, or “MMFLA” means Public Act 281 of 2016, MCL 333.26421, et seq., as amended and all future amendments.
- (20) “Michigan Regulation and Taxation of Marihuana Act” or “MRTMA” means, the initiated law of 2018, MCL 333.27951, et. seq., as amended and all future amendments.
- (21) “Medical Marihuana Facilities Licensing Act” or “MMFLA” means Public Act 281 of 2016, MCL 333.27101, et seq.
- (22) “Person” means an individual, partnership, corporation, limited liability company, trust, or other legal entity.
- (23) “Primary Caregiver” or “Registered Primary Caregiver” means a person who is at least 21 years old and who has agreed to assist with a registered qualifying patient’s medical use of marihuana and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in Section 9a of Chapter X of the Code of Criminal Procedure, 1927 PA 175, MCL 770.9a.
- (24) “Process” or “Processing” means to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana concentrate or marihuana-infused products.

- (25) “Qualifying Patient” or “Registered Qualifying Patient” means a person who has been diagnosed by a physician as having a debilitating medical condition and who has a valid registry identification card issues by LARA or an equivalent approval lawfully issued under the laws of another State or other entity of the United States which identifies the person as a registered qualifying patient.
- (26) “School” means and includes buildings and grounds used for school purposes to provide instruction to children and youth in grades pre-kindergarten through 12 by a public, private, denominational, or parochial school.
- (27) “Stakeholder” means, with respect to a trust, the trustee and beneficiaries; with respect to a limited liability company, all members and managers; with respect to a corporation, whether profit or non-profit, all stockholders, directors, corporate officers or persons with equivalent titles; and with respect to a partnership or limited liability partnership, all partners and investors.
- (28) “State” means the State of Michigan.
- (29) “State license” means a license issued by LARA that allows a person to operate a marihuana business.
- (30) “City” means the City of Berkley, Michigan.

Sec. 30-902. – Operation without city license prohibited.

- (a) A Marihuana business in the City must be licensed by the State and by the City pursuant to this Article. No person shall operate a Marihuana Business in the City without first obtaining a license to do so from the City. A Marihuana Business operating without a City license under this Article or without a State license is declared to be a public nuisance.
- (b) The term of each City license for a proposed location shall be one (1) year.

Sec. 30-903. – License application.

- (a) Applications for a City license shall be submitted to the City Clerk on an application form to be provided by the City accompanied by a fee in the amount of \$5,000.00 per each license sought. The applicant shall submit one printed and one electronic copy of the completed application and supporting information to the City Clerk. For a co-located facility, an applicant may apply for multiple licenses using one application that explicitly details the operation of the co-located facility. Each license sought will require an additional application fee of \$5,000.00 per license.
- (b) A complete application shall be made under oath and shall contain all of the following:
 - (1) The applicant’s and any stakeholders’ name, date of birth, physical address, email address, one or more phone numbers, including emergency contact information, and a copy of a government-issued photo identification card of the applicant.

- (2) If the applicant is not an individual, the names, dates of birth, mailing addresses, email addresses, and one or more phone numbers of each stakeholder of the applicant, including designation of a stakeholder as an emergency contact person and contact information for the emergency contact person, articles of incorporation or organization, Internal Revenue Service SS-4 EIN confirmation letter, and the operating agreement or bylaws of the applicant, if a limited liability company or corporation.
- (3) The name and address of the proposed Marihuana Business and any additional contact information deemed necessary by the City Clerk.
- (4) For the applicant and for each stakeholder of the applicant, affirmation that each is at least 21 years of age and has not been convicted of or pled guilty or no contest to a disqualifying felony.
- (5) A signed release authorizing the City's Public Safety Department to perform a criminal background check to ascertain whether the applicant and each stakeholder of the applicant meet the criteria set forth in this Article.
- (6) The name, date of birth, address, copy of photo identification, and email address for any operator or employee if other than the applicant.
- (7) An affirmation under oath as to whether the applicant or operator has ever had a business license revoked or suspended, and if revoked or suspended, then the reason for such revocation or suspension.
- (8) For the applicant or for each stakeholder of the applicant, a resume that includes any relevant experience with a Marihuana business or a related industry.
- (9) With respect to Marihuana Retail establishments or a Microbusiness, a description of any drug and alcohol awareness programs that will be provided or arranged for by the applicant and made available for the public.
- (10) A written description of the training and education that the applicant will provide to employees of the Marihuana Business.
- (11) A copy of the proposed business plan for the Marihuana business, including, but not limited to:
 - i. the ownership structure of the business, including percentage ownership of each person or entity; and
 - ii. planned worker training programs; and
 - iii. financial structure and financing of the proposed Marihuana Business; and
 - iv. short term and long-term goals and objectives; and

- v. if any co-location of businesses is proposed, provide an explanation of the integration of such businesses, including a drawing showing the relationship between the businesses being co-located, including square footages and the separation provided between such facilities, including identification of any points of entry, ingress or egress, and controls at each location(s); and
 - vi. any community outreach/education plans and strategies; and
 - vii. any charitable plans and strategies, whether fiscally or through volunteer work.
- (12) One of the following: (a) proof of ownership of the premises wherein the Marihuana Business will be operated; or (b) written consent from the property owner for use of the premises in a manner requiring licensure under this Article together with a copy of any lease for the premises.
 - (13) A description of the security plan for the Marihuana Business, including, but not limited to, any lighting, alarms, barriers, recording/monitoring devices, and/or security guard arrangements proposed for the Facility and premises. The security plan must contain the specification details of each item of security equipment.
 - (14) A scaled floor plan of the Marihuana Business, as well as a scale diagram illustrating the property upon which the Marihuana Business will be operated, including all available parking spaces, and specifying which parking spaces, if any, are handicapped-accessible.
 - (15) Any proposed elevation drawings, photographs or other materials to be shown on the exterior of the proposed Marihuana Business.
 - (16) A scaled location area map of the Marihuana Business and surrounding area identifying the relative locations and distances to surrounding property boundaries and buildings as measured pursuant to the buffering sections of this Ordinance.
 - (17) A sanitation plan designed to protect against any marihuana being ingested on the premises by any person or animal, indicating how the waste and byproduct will be stored and disposed of, and how any marihuana will be rendered unusable upon disposal.
 - (18) A proposed recordkeeping plan that will track quantities sold to individual persons for their daily purchase limits and will monitor inventory.
 - (19) A description of procedures for testing of contaminants, including mold and pesticides.
 - (20) An affidavit that neither the applicant nor any stakeholder of the applicant is in default to the City and that the applicant or stakeholder of the applicant has not

failed to pay any property taxes, special assessments, fines, fee or other financial obligation to the City.

- (21) Verification, via the State application CPA attestation requirements, showing that the applicant's capitalization amounts are satisfied per the MRTMA.
- (22) An estimate of the number and type of jobs that the Marihuana Business is expected to create, the compensation expected to be paid for such jobs, and the projected annual budget and revenue of the Marihuana Business.
- (23) A signed acknowledgment that the applicant is aware and understands that all matters related to marihuana, growing, cultivation, possession, dispensing, testing, safety compliance, transporting, distribution, and use are currently subject to state and federal laws, rules, and regulations, and that the approval or granting of a license hereunder will not exonerate or excuse the applicant from abiding by the provisions and requirements and penalties associated with those laws, rules and regulations or exposure to any penalties associated officials, members, partners, shareholders, employees and agent of those laws, rules, and regulations and hereby waives, and assumes the risk of, any such claims and damages, and lack of recourse against the City, its elected and appointed officials, employees, attorneys, and agents.
- (24) As it relates to a Marihuana Grower, the following additional items shall be required:
 - i. a cultivation plan that includes, at a minimum, a description of the cultivation methods to be used, including plans for the growing mediums, treatments, and/or additives;
 - ii. a production testing plan that includes, at a minimum, a description of how and when samples for laboratory testing by an international organization for standardization accredited testing facility will be selected, what type of testing will be requested, and how the test results will be used;
 - iii. an affidavit that all operations will be conducted in conformance with the MMMA, the MMFLA, MTA, MRTMA and other applicable state law;
 - iv. chemical and pesticide storage plan that states the names of the pesticides to be used in cultivation and where and how pesticides and chemicals will be stored in the facility, along with a plan for the disposal of unused pesticides; and
 - v. All activity related to the facility shall be done indoors. All plants immediately upon harvesting must be relocated indoors and shall not be stored or left outdoors. Cultivation of plants within one hundred feet (100') of any property boundary is prohibited. The applicant shall specifically acknowledge this provision.

- (25) Proof of an insurance policy covering the business and naming the City of Berkley, its elected and appointed officials, employees, and agents, as additional insured parties, primary and non-contributory available for the payment of any damages arising out of an act or omission of the applicant or its stakeholders, agents, employees, or subcontractors, in the amount of:
- i. at least Two Million Dollars (\$2,000,000) for property damage;
 - ii. at least Two Million Dollars (\$2,000,000) for injury to one (1) person; and
 - iii. at least Two Million Dollars (\$2,000,000) for injury to two (2) or more person resulting from the same occurrence. The insurance policy underwriter must have a minimum A.M. Best Company insurance ranking of B+, consistent with state law. The policy shall provide that the City shall be notified by the insurance carrier thirty (30) days in advance of any cancellation.
- (26) Any other information requested by the City considered to be relevant to the processing or consideration of the application.
- (c) Upon receipt of a completed Application and the appropriate application fee, the City Clerk shall refer a copy of the Application to appropriate City departments for their review.
- (1) An Application shall not be eligible to be considered for approval, unless:
- i. The Public Safety, Planning, and Building Departments have inspected the proposed location for compliance with all laws for which they are charged with enforcement and for compliance with the requirements of this Article.
 - ii. The Planning and Zoning Department verifies the proposed location of the marihuana business complies with the zoning code.
 - iii. The Building Department confirms the proposed marihuana business meets the City building code and this Article.
 - iv. The City Treasurer confirms the applicant and each stakeholder of the applicant and the proposed location of the Business are not in default to the City.
 - v. The City Public Safety Department determines the applicant has met the requirements of this Article with respect to the background check and security plan.

Sec. 30-904. – License application evaluation.

- (a) The City will accept applications for a license(s) for a Marihuana Retail establishment, Microbusiness, Marihuana Processor or Marihuana Grower over a thirty (30) day period after the effective date of this Article. At the end of the thirty (30) day period, all properly submitted and complete Applications shall be subject to examination and review by the City. The City may elect to issue or not issue licenses for any of the permitted uses or issue licenses in any combination thereof, but in no instance shall issue more licenses than are permitted pursuant to the terms of this Article.
- (b) There shall not be an application window set for Marihuana Safety Compliance Facilities or Marihuana Secure Transport Facilities. An applicant can apply at any time.
- (c) The City shall assess all applications submitted for completeness. If an Application is found to be incomplete, it will not be further considered until complete. The City Clerk shall send a letter to the designated stakeholder explaining the item(s) missing from the application. The applicant shall have two (2) weeks from the date of the letter to provide the required information to the City. If the supplemental information is not provided within two (2) weeks of the letter, the application will be deemed abandoned and will no longer be considered.
- (d) Application evaluation criteria shall include:
 - (1) The content and sufficiency of the information contained in the application.
 - (2) Whether the proposed plan has received approval from the Public Safety Department, Community Development Department, and all other relevant departments.
 - (3) Whether the proposed facility will revitalize property that has been vacant or unused for an extended period of time.
 - (4) Whether the proposed Business will be consistent with land use for the surrounding neighborhood and not have a detrimental effect on traffic patterns and public safety.
 - (5) Whether the proposed (or existing) building and site improvements are consistent and compatible with the City's Master Plan objectives and the design of neighboring sites and buildings.
 - (6) Planned outreach on behalf of the proposed Business, and whether the applicant or its stakeholders have made, or plan to make, significant physical improvements to the building housing the Marihuana Business, including plans to eliminate or minimize traffic, noise, and odor effects on the surrounding area.
 - (7) Whether the applicant or any of its stakeholders have a record of acts detrimental to the public health, security, safety, morals, good order, or general welfare prior

to the date of the application; whether the applicant or any of its stakeholders have previously operated an illegal business of any kind.

- (8) Whether the applicant has reasonably and tangibly demonstrated it possesses sufficient financial resources to fund, and the requisite business experience to execute, the submitted business plan and other plans.
 - (9) Whether the proposed location in the City in relation to its proximity to other locations for Marihuana Businesses represents a reasonable and harmonious dispersion of Marihuana Businesses.
 - (10) The proximity of the business to a school.
 - (11) Whether adequate off street parking is available.
 - (12) Whether the size and nature of the use in relationship to previously approved and issued permits and Marihuana Businesses is reasonable.
 - (13) Whether the applicant's proposal involves the redevelopment of a site.
 - (14) Whether the business experience of the applicant previously in the City and elsewhere demonstrates that the applicant has sufficient experience and requisite business experience in the operation of the proposed Marihuana Business.
 - (15) Whether or not the proposed plan incorporates sustainable infrastructure and energy efficient elements and fixtures.
- (e) The City may engage professional expert assistance in performing any of the duties and responsibilities under this Article.

Sec. 30-905. – License limit.

- (a) The City Council finds and determines that it is in the public interest and serves a public purpose to limit the maximum number of licenses that the City may issue, as follows: Marihuana Retail establishments shall be limited to<<number or inherent zoning/free market>>; Marihuana Growing Facility <<number or inherent zoning/free market>>; Processing Centers <<number or inherent zoning/free market>>; Safety Compliance Facilities <<number or inherent zoning/free market>>; and Marihuana Secured Transporters <<number or inherent zoning/free market>>.
- (b) Should a license for a Marihuana Retail establishment, Microbusiness, Marihuana Processor or Marihuana Grower become available, the City shall set an application period by a resolution adopted by the City Council and receive Applications for a license(s) for a Marihuana Retail establishment, Microbusiness, Marihuana Processor or Marihuana Grower over a thirty (30) day period. At the end of the thirty (30) day period, all properly submitted and complete Applications shall be subject to examination and review by the City. The City

may elect to issue or not issue licenses for any of the permitted uses or issue licenses in any combination thereof, but in no instance shall issue more licenses than are permitted pursuant to the terms of this Article.

Sec. 30-906. – Adult-use marihuana facility co-location and stacking.

- (a) Consistent with the MTRMA and rules promulgated by LARA, any combination of growers, processors, and retail establishments may operate as separate adult-use marihuana facilities at the same physical location.
- (b) Consistent with the MRTMA and rules promulgated by LARA, applicants for a Class C grower license shall be allowed to receive up to 5 Class C licenses and operate each license in a single building/location.

Sec. 30-907. – License renewal application

- (a) Application for a License Renewal shall be made in writing to the City Clerk at least thirty (30) days prior to the expiration of an existing license.
- (b) An Application for a License Renewal shall be made under oath on forms provided by the City.
- (c) An Application for a license renewal shall be accompanied by a renewal fee in an amount of Five Thousand Dollars (\$5,000) which half will be returned should the license not be renewed. The renewal fee is established to defray the costs of the administration of this Article.
- (d) Upon receipt of a completed Application for a License Renewal meeting the requirements of this Article and the license renewal fee, the City Clerk shall refer a copy of the Renewal Application to appropriate City departments for review,
- (e) An Application for a license renewal shall be not be considered for approval unless:
 - (1) The Fire Department has inspected the proposed location for compliance with all laws for which they are charged with enforcement within the past calendar year; and
 - (2) The Planning & Zoning Department has confirmed that the location complies with the zoning code and this Article, at the time a license is granted; and
 - (3) The Building Department has confirmed that the marihuana business meets the City building code requirements.
 - (4) The City Treasurer has confirmed that the applicant and each stakeholder of the applicant and the location of the Marihuana Business are not currently in default to the City; and

- (5) The Police Department has reviewed the Application and determined that the applicant has satisfied the requirements of this Article with respect to the background check and security plan; and
 - (6) The applicant possesses the necessary state licenses or approvals, including those issued pursuant to the MMFLA; and
 - (7) The applicant has operated the Marihuana Business in accordance with the conditions and requirements of this Article; and
 - (8) The Marihuana Facility has not been determined to be a public nuisance; and
 - (9) The applicant is operating the Marihuana Business in accordance with federal, state, and local laws and regulations.
- (f) If written approval is given by each individual, department, or entity identified in Subsection (e), and the Renewal Application is found to be compliant with the additional required provisions of this Article by the City Clerk, the City Clerk shall issue a license renewal to the applicant. If no renewal license is issued, half of the renewal fee shall be returned. The renewal shall be deemed approved if the City has not issued formal notice of denial within sixty (60) days of the filing date of the application, unless the applicant is advised of non-compliance with this Article or incompleteness of information or any required inspection during such period.

Sec. 30-908. – Transfer of ownership, licenses generally.

- (a) Licensees shall report any change in the required information to the City Clerk within ten (10) business days of the change. Failure to do so may result in suspension or revocation of the license.
- (b) A license approval shall not be effective, and no Marihuana Business may operate, unless the Marihuana Business has obtained a State License and the site of the proposed use and proposed structure for the Marihuana Business is properly zoned for such use under the applicable zoning.
- (c) Licensees may transfer a license issued under this Article to a different location upon receiving written approval from the Clerk and LARA or the board pursuant to the MMFLA and rules promulgated by LARA. In order to request City approval to transfer a permit location, the licensee must make a written request to the Clerk, indicating the current license location and the proposed license location. Upon receiving the written request, the Clerk shall refer a copy of the written request to fire department and the department of building safety & planning or another appropriate department. No permit transfer shall be approved unless each such City department or agency gives written approval that the proposed new location meets the standards identified in this Article, the MRTMA and LARA.
- (d) Licensees may transfer a license issued under this Article to a different individual or entity upon receiving written approval from the City Clerk and LARA. In order to

request City approval to transfer a permit to a different individual or entity, the licensee must make a written request to the City Clerk, indicating the current licensee and the proposed licensee. The Clerk shall grant the request so long as LARA authorizes the transfer pursuant to the MRTMA and rules promulgated by LARA.

Sec. 30-909. – Minimum operational standards of marihuana business.

Except as may conflict with State law or regulation the following minimum standards apply to all Marihuana Businesses:

- (1) The entire parcel where the Marihuana Business will be located must be properly zoned, and the Marihuana Business operations must be entirely contained within the building.
- (2) The Marihuana Business shall be in compliance at all times and in all circumstances with the MMMA, the MMFLA, the MTA, MRTMA, and the state's administrative rules. Any violation of such law or rules shall be deemed a violation of this Article.
- (3) On-premises consumption of marihuana shall be prohibited at any Marihuana Business.
- (4) In addition to security requirements pursuant to State laws and regulations and any other applicable City Ordinances, the Marihuana Business shall continuously monitor the entire premises, interior and exterior, with surveillance systems that include security cameras operating twenty-four (24) hours a day, seven (7) days a week. The video recordings shall be maintained in a secure, off-site location for a period of forty-five (45) days.
- (5) The Marihuana Business shall be contained within a locked Facility, including all interior doors, all windows and points of entry and exits with commercial grade non-residential locks and with an alarm system monitored. Marihuana shall not be permitted to be stored in trailers or sheds or other accessory structures to the principal building. Storage shall further be in accordance with the MRTMA and promulgated rules as amended.
- (6) A locking safe permanently affixed to the permitted premises that shall store any marihuana and all cash remaining in the Facility overnight shall be used. For Marihuana-infused products that must be kept refrigerated or frozen, the Facility may lock the refrigerated container or freezer in a manner authorized by the MRTMA and promulgated rules as amended in place of the use of a safe so long as the container is affixed to the building structure.
- (7) No Marihuana Business shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors detectable to normal senses beyond the boundaries of the property where the Marihuana Business is operated; or any other nuisance that hinders the public health, safety and welfare of the residents of the City.

- (8) All activity related to the production, manufacturing, cultivating, provisioning, testing or transportation of all marihuana shall be done indoors and fully compliant with State law so that it is not visible to the public.
- (9) All Marihuana Businesses shall maintain an inventory and record keeping system and/or database identifying the amount of Marihuana on the premises in accordance with the MRTMA, the MTA and the rules and regulations, as amended from time to time. This log shall be available to law enforcement personnel at anytime
- (10) All Marijuana located on premise shall be inventoried and tagged with unique RFID tag as required by the MRTMA, MTA and promogulated rules as amended from time to time.
- (11) All Marihuana Businesses shall maintain a visitor's logbook. Said logbook shall record the date, name, time of entry and time of exit. Except where protected the MMFLA, the MMMA, the MRTMA or the rules promogulated, said logbook shall be available to law enforcement at any time.
- (12) The State License and the City license required by this Article shall be prominently displayed on the premises of a Marihuana Business.
- (13) All Marihuana Facilities shall apply for and obtain from the City, or other applicable government authority, all necessary building, mechanical, electrical, plumbing, sign, fence, soil erosion and City zoning compliance permits.
- (14) That portion of the structure where the storage of any chemicals, herbicides, pesticides, and fertilizers exist shall be subject to inspection and approval by the Fire Department to insure compliance with federal, State, and local laws and ordinances.
- (15) Floors, walls, and ceilings shall be constructed in such a manner that they may be adequately cleaned and kept clean and in good repair.
- (16) There shall be adequate screening or other protection against the entry of pests. Waste shall be disposed of so as to minimize the development of odor and minimize the potential for waste development and minimize the potential for waste becoming an attractant, harborage or breeding place for pests.
- (17) Venting of marihuana odors into the areas surrounding the Marihuana Business is prohibited and deemed and declared to be a public nuisance. All facility ventilation methods shall comply with the MRTMA and administrative rules promogulated, as amended from time to time.
- (18) Waste shall be properly removed and the operating systems for waste disposal shall be maintained in an adequate manner so that they do not constitute a source of contamination in areas where Marihuana is exposed. Disposal systems for spent water and spent soil shall be approved by the City and byproduct materials,

soils, plant materials, and other materials shall be stored indoors until pickup for disposal and shall not be left outdoors for disposal pickup for longer than six (6) hours. Disposal of marihuana or marihuana waste or byproducts by on-site burning or introduction into the sewer system is prohibited.

- (19) Persons working in direct contact with Marihuana shall conform to hygienic practices while on duty and training programs shall be developed and implemented for all employees on recognized safe health practices.
- (20) The interior and exterior of all buildings, fixtures and other accessories shall be maintained in a presentable and sanitary condition.
- (21) Marihuana Businesses shall provide its occupants with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair.
- (22) Marihuana that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.
- (23) Marihuana Businesses shall be free from infestation by insects, rodents, birds, or vermin or any kind.
- (24) All Marihuana shall be packaged and labeled as provided by MRTMA and promulgated rules as amended.
- (25) The premises shall be open for inspection during the stated hours of operation and as such other times as anyone is present on the premises.
- (26) There shall be no other accessory uses permitted within the same Facility other than those associated with the retailing, processing or cultivating of marihuana.
- (27) Signs shall comply with the City's Code of Ordinances. No sign shall contain the words "marihuana", "marijuana", "weed", "cannabis", "dank", "420", "pot", "grass", "ganga", "mary jane", or any other term referencing marihuana, nor shall any sign contain marihuana leaves, marihuana related imagery, green crosses, or other words or images intended to evoke the presence of marihuana. Additional advertising, including but not limited to, vehicle signs, sandwich boards, portable signs, temporary signs, or banners are prohibited on the premises.
- (28) Advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors is prohibited.

Sec. 30-910. – Additional operational standards for marihuana retail establishments and microbusinesses.

Except as may conflict with state law or regulation, the following minimum standards for Marihuana Retail establishments and Microbusinesses shall apply:

- (1) Marihuana Retail establishments shall only be open from ____ to ____.
- (2) Unless permitted by the MRTMA, public or common areas of the Marihuana Retail establishment must be separated from restricted or non-public areas of the retail establishment by a permanent barrier. Unless permitted by the MMMA, MMFLA, or the MRTMA, no Marihuana may be stored, displayed, or transferred in an area accessible to the general public.
- (3) All Marihuana storage areas within Marihuana Retail establishments must be separated from any customer/patient areas by a permanent barrier. Unless permitted by the MMMA, MMFLA, or MRTMA, no Marihuana is permitted to be stored in an area accessible by the general public or registered customers/patients. Marihuana may be displayed in a sales area only if permitted by the MRTMA.
- (4) Drive-thru windows on the premises of a Marihuana Retail establishment shall not be permitted.

Sec. 30-911. – License revocation, suspension and denial; basis for action; appeal.

- (a) Any City license issued under this Article may be revoked or suspended by the City Clerk after an administrative hearing if the City Clerk finds and determines that grounds for revocation or suspension exist. Any grounds for revocation or suspension must be provided to the licensee at least ten (10) days prior to the date of the hearing by first class mail to the address given on the License Application or any address provided to the City Clerk in writing subsequent to the filing of an application.
- (b) A license applied for or issued may be denied, revoked or suspended on any of the following grounds:
 - (1) A violation of any provision of this Article, including, but not limited to, the failure to provide the information required by this Article;
 - (2) Any conviction of a felony or any misdemeanor involving controlled substances, theft or dishonesty by the licensee, stakeholder, or any person holding an ownership interest in the license;
 - (3) Commission of fraud or misrepresentation or the making of a false statement by the applicant, licensee, or any stakeholder of the applicant or licensee while engaging in any activity for which this Article requires a license;
 - (4) Failure to obtain or maintain a license or renewed license from the City Clerk; pursuant to this Article;
 - (5) Failure of the licensee or the Marihuana Business to obtain or maintain a State license or approval pursuant to the MRTMA;

- (6) The Marihuana Business is determined by the City to have become a public nuisance or otherwise is operating in a manner detrimental to the public health, safety or welfare;
 - (7) Any default in the payment of any charges, taxes, or fees, to the City if not cured upon forty-five (45) days following notice sent by electronic means or mail to the address of the Marihuana Business;
 - (8) Violation of any State law applicable to Marihuana Businesses.
- (c) Appeal of denial of an Application, or revocation or suspension of a license: the City Clerk shall notify an applicant of the reason(s) for denial of an Application for a license or license renewal or for revocation or suspension of a license or any adverse decision under this Article and provide the applicant with the opportunity to be heard. Any applicant aggrieved by the denial or revocation or suspension of a license or adverse decision under this Article may appeal to the City Council, who shall appoint a hearing officer to hear and evaluate the appeal and make a recommendation to the Clerk. Such appeal shall be taken by filing with the City Clerk, within fourteen (14) days after notice of the action complained of has been mailed to the applicant's last known address on the records of the City Clerk, a written statement setting forth fully the grounds for the appeal. The City Council shall review the report and recommendation of the hearing officer and make a decision on the matter.

Sec. 30-912. – Penalties; temporary suspension of a license.

- (a) The City may require an applicant or licensee of a Marihuana Business to produce documents, records, or any other material pertinent to the investigation of an Application or alleged violation of this Article. Failure to provide the required material may be grounds for application, denial, or license revocation.
- (b) Any person in violation of any provision of this Article, including the operation of a Marihuana Business without a license shall be responsible for a civil infraction and shall be subject to a civil fine and costs. Increased civil fines may be imposed for a repeat violation. As used in this Section “repeat violation” shall mean a second or any subsequent infraction of the same requirement or provision committed by a person or Facility within any twenty-four (24) month period. Unless otherwise specifically provided in this Article, the penalty schedule is as follows:
 - (1) Seven Hundred Fifty Dollars (\$750), plus costs, for the first violation;
 - (2) One Thousand Dollars (\$1,000), plus costs, for a repeat violation;
 - (3) Three Thousand Dollars (\$3,000), plus costs, per day, plus costs, for any violation that continues for more than one day.
- (c) The City Clerk may temporarily suspend a Marihuana Business license without a prior hearing if the City finds that public safety or welfare requires emergency action affecting the public health, safety, or welfare. The Clerk shall cause the temporary suspension by

issuing a suspension notice in connection with institution of proceedings for notice and a hearing.

- (d) If the Clerk temporarily suspends a license without a prior hearing, the licensee is entitled to a hearing within thirty (30) days after the suspension notice has been served on the licensee or posted on the licensed premises. In the case of a license issued for a Marihuana Grower Facility, the hearing shall be held within seven (7) days after the notice has been served on the licensee or posted on the premises of the licensed business. The hearing shall be limited to the issues cited in the suspension notice.
- (e) If the Clerk does not hold a hearing within thirty (30) days after the date the suspension was served on the licensee or posted on the licensed premises, or in the case of a Grower Facility seven (7) days, then the suspended license shall be automatically reinstated and the suspension vacated.
- (f) The penalty provisions herein are not intended to foreclose any other remedy or sanction that might be available to, or imposed by the City, including criminal prosecution.

Sec. 30-913. – Disclaimer.

- (a) Nothing in this Article shall be construed to authorize any person to engage in conduct that endangers others or causes a public nuisance, or to allow use, possession or control of marihuana for lawful purposes or allow any other activity relating to cultivation, growing, distribution or consumption of marihuana that is otherwise illegal.
- (b) Except as may be required by law or regulation, it is not the intent of this Article to diminish, abrogate, or restrict the protections for individual use of marihuana found in the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, the Marihuana Tracking Act and the Michigan Regulation and Taxation of Marihuana Act.

SECTION 2: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3: Effective Date

This Ordinance shall become effective 30 days following the date of adoption.

SECTION 4: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Dan Terbrack
Mayor

Attest: _____
Annette Boucher
City Clerk