

Model Ordinance Regulating Local Cannabis Retail Sales and Marketing in California



Getting it Right
· from the Start ·

Local Regulation of Recreational Marijuana

Authors

- Lynn Silver, MD, MPH, Public Health Institute
- Alisa Padon, PhD, Public Health Institute

Contributors

- Ted Mermin, JD
- Leslie Zellers, JD
- Immigrant Legal Resources Center
- James Mosher, JD

Getting it Right from the Start

A project of the Public Health Institute

555 12th Street, Oakland, CA 94607 www.gettingitrightfromthestart.org

Telephone: 510.285.5648 Fax: 510.285.5501 Email: apadon@phi.org

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Note

The legal information provided in this model ordinance does not constitute legal advice or legal representation. For legal advice, readers should consult an attorney in their state.

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Introduction

This public health-focused Model Cannabis Retail Sales and Marketing Ordinance was prepared to help local California jurisdictions respond to the legalization of recreational cannabis approved by voters in 2016. Local jurisdictions must decide whether (1) to do nothing, in which case retailers may apply for a state license to sell cannabis starting January 1, 2018; (2) to ban the sale of cannabis locally; or (3) to develop their own rules and regulations to govern the cultivation, production, sale and marketing of this product in their community. Alternatively, communities may decide to take more time to craft local policy through a temporary ban on recreational cannabis sales. While the Model Ordinance is written primarily for recreational cannabis, many provisions are equally applicable to the regulation of medical cannabis.

The Ordinance was developed by the Public Health Institute's *Getting it Right from the Start: Local Regulation of Recreational Cannabis* project, to help cities and counties reduce negative health impacts of legalization. Legalization is based on the idea that regulation of cannabis should not primarily be a criminal justice issue. However, an unfettered commercial framework should not be the substitute. Rather, cannabis regulation should be grounded in public health protection. Shifting from a criminal justice to a public health paradigm requires careful consideration of how cannabis will be regulated in the marketplace. Cannabis possesses special health risks, and regulatory measures can help reduce these harms. Of particular concern is the impact of legalization on youth below age 25, because research suggests that use among youth carries special risks to the developing brain that are not present for older adults. Legalization should have as a primary goal establishing a legal market while at the same time instituting regulatory structures to prevent or mitigate harm, particularly to youth. Cannabis, like alcohol and tobacco, is an addictive substance that should not be treated as an ordinary commodity in the marketplace.¹

Current state law, based on Proposition 64, provides only weak public health protections. In the absence of stronger regulation at the local level, state law will permit a vast expansion of the exponentially growing legal cannabis industry. Fortunately, Proposition 64 allows local governments to adopt more protective regulations than state law in a number of areas. This model addresses the areas of retail sales and of marketing, which will have the most immediate and largest public health effects. We will follow shortly with a model local taxation ballot initiative. While issues such as manufacturing quality control and pesticide residues are important, we are focusing on the large public health effects that will arise from the extent of use post-legalization, which will in turn be guided by the intensity of marketing and product diversification.

The model was produced after in-depth interviews with dozens of stakeholders from local jurisdictions, community members, academic and research experts, regulators from other states, legal experts, community coalitions, dispensary owners, laboratory experts, manufacturers, clinicians working with addiction, and others. The model uses best available evidence from the fields of alcohol and tobacco control, the experience of states which legalized earlier than California, the massive scientific review recently completed by the National Academy of Sciences to identify key evidence-based risks of cannabis consumption, and the advice received on best practices or needed best practices from experts interviewed. Key challenges identified include the declining popular perception of harm, growing evidence of the existence of clear and significant harms from use to several population groups, the extraordinary incentives present in California to expand consumption given the enormity of our state's crop and the fact that less than one-fifth is currently consumed in-state, and the challenge of keeping marijuana-related income in low-income communities. We have sought to address these challenges.

The basic philosophy underlying the model is that cannabis sales should be *cautiously legalized* to reduce the social harm of illegality, but that cannabis sale and consumption should not be *normalized*. In light of lessons from the decades-long efforts to “denormalize” consumption of tobacco, consumption of cannabis should be not be encouraged or normalized. It should not be viewed as the next great economic opportunity for our state. For example, daily use of cannabis by high school students halves the high school graduation rate;² it is not socially or economically beneficial to our communities in the long run. Proliferation of a multitude of new forms of cannabis that are potentially more harmful, and new cannabis products that are attractive to youth, should not be permitted. Whatever economic benefit this new legal industry brings should be shared by the communities that have been most affected by the war on drugs.

This model is a broad “menu.” It contains guidance for putting in place a basic regulatory structure. It also provides models for specific policies in a number of areas such as density, pricing, allowable and prohibited products, and marketing. In some cases the model ordinance presents “options” in red. Jurisdictions may choose to adopt all, none, or some of its provisions. Some measures that might be useful from a public health perspective, such as limitations on advertising on electronic media (TV, radio, Internet, etc.), may be difficult or impossible to impose at the local level and are therefore not suggested here or are presented as options. Because this is a new and evolving area of law, many of the advertising restrictions or warnings discussed may be questioned, and, in part as a result of the unique legal situation of cannabis, the outcome of potential challenges is as yet unclear. We have omitted certain regulatory possibilities in this area due to legal complexity for local government, and ask that you contact us directly if you wish to learn more about options.

We are happy to speak with you to discuss the reasoning behind model ordinance provisions, and we welcome your input. This is a living and evolving document that will grow with your local experience and emerging evidence in addressing this new challenge, so regular updating is expected.

As occurred in tobacco regulation, we believe that innovation and leadership for best practices will bubble up from our cities and counties across the nation. We look to you to provide that leadership and share your experience.

Note to Readers

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Model Ordinance

AN ORDINANCE OF THE [CITY/COUNTY] REQUIRING A CONDITIONAL USE PERMIT FOR RECREATIONAL CANNABIS RETAILERS, ADDRESSING MARKETING OF CANNABIS AND CANNABIS PRODUCTS, AND AMENDING THE [City/County] CODE

The [City Council/Board of Supervisors] of [City/County] does ordain as follows:

SECTION I. FINDINGS

[City/County] hereby finds and declares as follows:

WHEREAS, based on the most reliable and up-to-date scientific evidence, the [City Council/Board of Supervisors] finds that the rapid introduction of newly legalized recreational cannabis (“cannabis”), presents a significant potential threat to the public health, safety, and welfare of the residents of [City/County], and particularly to youth; and

WHEREAS, this threat is greater if the exposure of young people to these products, or to the marketing of these products, or if the failure of cannabis retailers to comply with laws prohibiting the sale or marketing of cannabis products to minors, leads to more frequent use by youth, or to use during pregnancy by young women; and

WHEREAS, the [City Council/Board of Supervisors] finds that a local regulatory system for cannabis retailers is appropriate to ensure that retailers comply with the cannabis laws and business standards of [City/County] to protect the health, safety, and welfare of our youth and most vulnerable residents; and

WHEREAS, the National Academies of Science, Engineering and Medicine note that the growing acceptance, accessibility, and use of cannabis and its derivatives have raised important public health concerns, while the lack of aggregated knowledge of cannabis-related health effects has led to uncertainty about the impact of its use;³ and

WHEREAS, 22.2 million Americans ages 12 and older reported using cannabis in the past 30 days, and 90 percent of adult cannabis users in the United States said their primary use was recreational; and between 2002 and 2015, the percentage of past-month cannabis users in the U.S. population ages 12 and older increased steadily from 6.2 percent to 8.3 percent;³ and

WHEREAS the perception of risk from cannabis consumption has been falling steadily, dropping from 58.3% to 31.1% among youth nationally between 2000 and 2016;⁴ and

WHEREAS use during pregnancy has risen substantially between 2000 and 2014, increasing the risk of low birth weight;⁵ and

WHEREAS, in 2011-2012 surveys, over 40 percent of 11th grade students in California stated they had ever used cannabis, a number far exceeding that for tobacco use;⁶ and

WHEREAS, despite the state’s and [City’s/County’s] efforts to limit youth access to cannabis, minors are still able to access cannabis, as evidenced by the fact that:

[Insert local use data, which can be found at kidsdata.org, select topic emotional and behavioral health, select jurisdiction]

COMMENT: We recommend inserting further City/County-specific findings regarding the number of local high school students who use cannabis or cannabis products, youth perception of ease of

accessibility of cannabis, and/or young adults who use cannabis or cannabis products. Data for individual counties can be found at kidsdata.org under the topic “Emotional & Behavioral Health,” and the subtopic “Youth, Alcohol, Tobacco & Other Drug Use.”

WHEREAS, in 2017, the National Academies of Sciences, Engineering and Medicine (NASEM) reviewed the available scientific evidence on the health effects of cannabis and cannabis-derived products, and while noting substantial evidence of therapeutic effectiveness of medicinal cannabis for a limited number of indications, noted evidence of association of cannabis use with harm in a wide range of areas.ⁱ The NASEM study found “substantial evidence”³ to support the following conclusions:

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

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

WHEREAS, the findings of the NASEM study lead us to conclude that legalization of recreational cannabis should be carried out cautiously, in such a way as to prevent undue exposure of youth and expansion of problem use; that unfettered expansion and diversification of products and of marketing are not prudent; and that, like tobacco and alcohol, cannabis use may pose significant risks to public health, especially when initiated early; and

WHEREAS, California voters have recognized the danger of cannabis use among youth by making the sale of cannabis to those under age 21 illegal (Cal. Bus. & Prof. Code § 26140(a)(1)-(3)) and by prohibiting the possession of cannabis or cannabis products by minors (Cal. Health & Safety Code § 11357); and

WHEREAS, state law requires that cannabis retailers check the identification of purchasers to verify that they are at least 21 years of age (Cal. Bus. & Prof. Code § 26140(a)(4)) and provides that minors may be used to conduct on-site compliance checks of cannabis retailers (Cal. Bus. & Prof. Code § 26140(b)); and

WHEREAS, state law requires all cannabis retailers to be licensed by the Department of Consumer Affairs in part to curb the illegal sale and distribution of cannabis (Cal. Bus. & Prof. Code § 26038(a)); and

WHEREAS state law establishes the authority of a local jurisdiction to adopt and enforce local ordinances to regulate cannabis businesses including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to

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

secondhand smoke, or to completely prohibit the establishment or operation of one or more types of cannabis businesses (Cal. Bus. & Prof. Code § 26200(a)(1)); and

WHEREAS, experience from many years of alcohol and tobacco retailing, which is likely to have parallels in cannabis retailing, has demonstrated that California retailers continue to sell alcohol and tobacco to underage consumers, as evidenced by the following:

- More than 10 percent of all tobacco retailers were witnessed unlawfully selling to minors in 2016;⁷ and 15.9% of California alcohol retailers were caught unlawfully selling to minors in 2007;⁸
- Among minors nationwide who smoked cigarettes in 2011, 14% percent had obtained their own cigarettes by buying them in a store or gas station⁹; and 19.5% of minors nationwide who used alcohol in the past 30 days in 2012 had obtained the alcohol themselves in an alcohol retail outlet;¹⁰ and

WHEREAS, research has demonstrated that local tobacco retail ordinances dramatically reduce youth access to cigarettes, and therefore provide a useful model for preventing sales to youth of cannabis products. For example:

- A review of 33 California communities with strong tobacco retailer licensing ordinances showed that the youth sales rate declined in 31 of these communities after the ordinances were enacted, with an average decrease of 26 percent in the youth sales rate; and¹¹

WHEREAS, a requirement for a cannabis retailer permit will not unduly burden legitimate business activities of retailers who sell or distribute cannabis or cannabis products to adults, but will allow [City/County] to regulate the operation of lawful businesses to discourage violations of state and local cannabis-related laws; and

WHEREAS, [City/County] has a substantial interest in promoting compliance with state and local laws intended to regulate cannabis sales and use; in discouraging the illegal purchase of cannabis products by minors; in promoting compliance with laws prohibiting sales of cannabis and cannabis products to minors; and finally, and most importantly, in protecting children and youth from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates;¹² a California study found that the density of tobacco retailers near schools was positively associated with the prevalence of students reporting experimental smoking;¹³ and

WHEREAS, a recent study found that higher dispensary density in states with legal cannabis laws was associated with higher likelihood of youth ages 14-18 experimenting with cannabis vaping and edibles;¹⁴ and

WHEREAS, home delivery of alcohol products has been associated with increased rates of purchase by minors;^{15,16} and

WHEREAS, children and young people are particularly influenced by cues suggesting tobacco smoking is acceptable, which holds relevance for cannabis smoking;¹⁷ and

WHEREAS, young people are much more likely to use candy- and fruit-flavored tobacco and alcohol products;^{18,19} in California, youth were estimated to consume 47% of the alcopops (sweetened, fruit-flavored alcoholic beverages) sold in the state in 2007,²⁰ and nationwide, minors are twice as likely to consume alcopops as adults;²¹ the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;^{22,23} and similar findings are expected for

cannabis; and

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,²⁴ largely because these flavored products were marketed to youth and young adults,^{19,25-27} and younger smokers were more likely to have tried these products than older smokers;¹⁹ and similar findings are expected for flavored cannabis; and

WHEREAS, tobacco companies have used flavorings such as mint and wintergreen in tobacco products as part of a “graduation strategy” to encourage new users to start with products with lower levels of nicotine and progress to products with higher levels of nicotine;¹⁹ and similar practices are expected for cannabis; and

WHEREAS, edible cannabis products have become increasingly common and are available in a variety of flavors and forms that appeal to children and young adults,^{28,29} including cotton candy, lollipops, gummy bears, brownies, chocolate chip cookies, “pot” tarts, gummy bears, rice krispies bars, and bubble gum, apple, cherry, chocolate, grape, peach, strawberry, and vanilla flavors; and

WHEREAS, unlike the situation of traditional cannabis flower for smoking, there is currently only a limited illegal market for edible cannabis, and encouraging excessive growth and diversification of the legal edibles market, especially of products attractive to youth, may outweigh the useful social purpose of reducing incarceration; and

WHEREAS the potency of cannabis and cannabis products has increased dramatically over the past decades from 4% tetrahydrocannabinol (THC) to 15-22% THC in flower and up to 90% or more in extracted products^{30,31} and little is known of their safety; and

WHEREAS, the U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students doubled from 2011 to 2012;³² and use of similar devices for consumption of cannabis by youth has been rapidly increasing; and

WHEREAS, the California Attorney General has stated that electronic cigarette companies have targeted minors with fruit-flavored products;³³ and similar products are expanding in the cannabis industry; and

WHEREAS, low prices are known to facilitate use of tobacco by minors,¹⁹ and while prices of cannabis should not be so high as to promote illegal sales, they should also not be artificially lowered through discounting; and

WHEREAS, research demonstrates that youth are particularly price sensitive and responsive to changes in price,³⁴ and in the case of tobacco, when cigarettes cost more, fewer adolescents start smoking,¹⁹ and similar findings are expected for cannabis; and

WHEREAS, while the sale of cannabis for adult recreational use has been legalized in California it continues to be a Schedule I prohibited substance nationally and therefore presents special challenges in multiple Federally regulated spheres including banking, broadcasting and immigration; and

WHEREAS, state law establishes that cannabis and cannabis products may not be advertised or marketed in a manner intended to encourage persons under 21 years of age to consume cannabis or cannabis products; nor may advertising or marketing that is attractive to children be published or disseminated (Cal. Bus. & Prof. Code § 26152(e)-(f)); and

WHEREAS, youth exposure to advertising of products such as alcohol, tobacco and food has been shown to create positive attitudes, brand identification, and an increased likelihood of initiation and use of these products;³⁵⁻³⁷ and

NOW THEREFORE, it is the intent of the [City Council/Board of Supervisors], in enacting this ordinance,

to assure that cannabis retailing is practiced responsibly and to discourage violations of cannabis-related laws, especially those which prohibit or discourage the marketing, sale or distribution of cannabis and cannabis products to youth under 21 years of age.

COMMENT: These findings lay out the policy rationale for the ordinance. It is not necessary to include all of the findings in your ordinance, but policymakers may find it helpful to state the ordinance’s rationale. **Findings should be tailored to the needs of your community and the content of your ordinance.**

SECTION II. RETAIL OPERATIONS

[Article/Chapter] of the [] Code is hereby amended to read as follows:

Section. 1. DEFINITIONS

The following words and phrases, whenever used in this [Article/Chapter] shall have the meanings defined in this section unless the context clearly requires otherwise:

- (a) **"Advertise"** means to publish or disseminate an Advertisement.
- (b) **"Advertisement"** means any written or verbal statement, illustration, or depiction, which is calculated to induce sales of Cannabis or Cannabis Products, including any written, printed, graphic, or other material; billboard, sign, or other outdoor, digital, indoor or point-of-sale display; individual carrying a display; public transit card, other periodical, literature or publication; or in any similar media; except that such term shall not include:
 - i) Any label affixed to any Cannabis or Cannabis Products, or any individual covering, carton, or other wrapper of such container that constitutes a part of the labeling under provisions of this division.
 - ii) Any editorial or other reading material (e.g., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any permit holder, and which is not written by or at the direction of a permit holder.
- (c) **"Advertising Sign"** means any sign, poster, display, billboard, or any other stationary, permanently affixed, or mobile advertisement promoting the sale of Cannabis or Cannabis Products that are not cultivated or manufactured on the same lot.
- (d) **"Arm’s Length Transaction"** means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this [Article/Chapter] is not an Arm’s Length Transaction.
- (e) **"Attractive to Children or Youth"** refers to products, packaging or labeling or advertising that may especially encourage persons under age 21 to initiate cannabis consumption or otherwise to consume (accidentally or purposely) cannabis or cannabis products. The term includes:
 - i) Products that (1) resemble a non-cannabis consumer product of a type that is typically consumed by, or marketed to, children or youth, such as a specific candy or baked treat; or (2) occur in the shape of a Cartoon, human or any other animate creature including an insect, toy, fruit, vehicle or robot.
 - ii) Packaging or labeling that (1) resembles packaging or labeling of a non-cannabis

consumer product of a type that is typically consumed by, or marketed to, children or youth; (2) contains images depicting a Cartoon, human or any other animate creature including an insect, toy, fruit, vehicle, or robot, or images of a candy or a baked good resembling a non-cannabis consumer product of a type that is typically consumed by, or marketed to, children or youth, (3) contains text referring to a Cartoon, or any other animate creature including an insect, toy, fruit, vehicle or robot, (4) contains any images, characters, or phrases that closely resemble images, characters, or phrases popularly used to advertise to children; or (5) describes any characterizing flavor; except that, for edible products only, terms such as “lemon-flavored” describing a characterizing flavor may be used in font sizes that do not exceed that of the largest word in the “Warning” on the packages.

- iii) Advertising that (1) mimics advertising of a non-cannabis consumer product of a type that is typically consumed by, or marketed to children or youth; (2) depicts a Cartoon, or any non-human animate creature including an insect, toy, fruit, vehicle or robot, candy, baked goods, vehicles or robots typically marketed to youth; (3) uses actors or human characters who appear to be under age 21 or are under age 25; or (4) or includes celebrities who specifically appeal to youth.

COMMENT: The advertising, products, packaging and labeling definitions listed here come from a systematic review of the literature on youth perceptions of advertising for alcohol, tobacco and food, which found specific content features to which minors are particularly susceptible due to their unique developmental stage, propensity for high-risk behaviors, and relative inexperience with consumption of alcohol and tobacco.³⁸⁻⁴⁴ A subsequent analysis found a positive association between the use of such features in alcohol brand advertisements and youth consumption of those brands, and no association with adult alcohol consumption of those brands, suggesting they have particular appeal for youth.³⁵ This definition seeks to specify the meaning of “attractive to youth,” which was not clearly defined in California law – although it is, for example, in Oregon law 845-025-7000, which provided part of this language. To view provisions from other state laws on Cannabis advertising, see: “Compilation of advertising regulations in CA, AK, WA, OR and CO” at <https://gettingitrightfromthestart.org/other-states-legislation-regulation>. Oregon officials noted the value of more specifically defining what the term means as well as having a process by which to assess if a product is not compliant. At this time, California law does not propose a product-by-product review for attractiveness to children or youth and state law does not clearly define the term, although proposed state emergency regulations prohibit “any cannabis product in the shape of a human being, either realistic or caricature, animal, insect or fruit,” and any labels including “Cartoons; any likeness to images, characters or phrases that are popularly used to advertise to children; any imitation of candy packaging or labeling; or the terms “candy” or “candies.”

Note that packaging and advertising restrictions based on criteria that match a jurisdiction’s sales restriction criteria will be more robust, since restrictions on advertising of products not allowed for sale in a jurisdiction are less susceptible to First Amendment challenge.

- (f) **“Cannabis”** means all parts of the plant *Cannabis sativa Linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not

include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

- (g) **"Cannabis Accessories"** has the same meaning as in Section 11018.2 of the Health and Safety Code.
- (h) **"Cannabis Concentrate"** means Cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a Cannabis plant is a concentrate for purposes of this division. A Cannabis Concentrate 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.
- (i) **"Cannabis Price Floor"** means the minimum price, including all applicable taxes, for which a retail dealer may sell one ounce of flower cannabis, or price per 10 mg THC in other cannabis products may be sold for amongst the groups of edibles and the group of concentrates and other products.
- (j) **"Cannabis Product"** has the same meaning as in Section 11018.1 of the Health and Safety Code.
- (k) **"Cannabis Retailer"** means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, Cannabis or Cannabis Products to consumers for adult, non-medical use. "Cannabis Retailing" shall mean the doing of any of these things.
- (l) **"Cartoon"** means any animation, drawing or other depiction of an object, person, animal, creature or similar caricature that satisfies any of the following criteria:
 - i) The use of comically exaggerated features;
 - ii) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or
 - iii) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds or transformation.
- (m) **"Characterizing Flavor"** means a distinguishable taste or aroma, other than the taste or aroma of Cannabis, imparted by Cannabis or a Cannabis Product including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, nut or spice; provided, however, that a Cannabis Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.
- (n) **"Children or Youth"** mean individuals under age 21.
- (o) **"Constituent"** means any ingredient, substance, chemical, or compound, other than Cannabis or water, that is added by the Manufacturer to a Cannabis Product during the processing, manufacture, or packing of the Cannabis Product.
- (p) **"Day Care Center"** has the same meaning as in Section 1596.76 of the Health and Safety Code.
- (q) **"Delivery to the Consumer"** means the commercial transfer of Cannabis or Cannabis Products to a to a customer at a non-commercial location. "Delivery to the Consumer" also includes the use by a retailer of any technology platform owned and controlled by the retailer

for the purpose of a commercial transfer.

- (r) **"Department"** means [City/County] Department of _____ and any agency or Person designated by the Department to enforce or administer the provisions of this [Article/Chapter].

COMMENT: This term is used in the ordinance to refer to the city or county agency charged with issuing conditional permits and enforcing the ordinance. While permit applications are likely to be submitted to an entity such as the Board of Zoning Adjustment, Zoning Administrator, or Planning Commission, the county health department may be the most appropriate agency to monitor compliance with the ordinance requirements, given the public health focus of the ordinance. The primary enforcing agency may designate additional agencies to assist in administering and/or enforcing the ordinance.

- (s) **"Distinguishable"** means perceivable by an ordinary consumer by either the sense of smell or taste.
- (t) **"Dried Flower"** means all dead Cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.
- (u) **"Edible Cannabis Product"** 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) **"Equity Applicant"** means an individual who has lived for at least five of the last ten years in specified [census tracts or zip codes] of the [City/County] most affected by high incarceration rates for drug related offenses or in a Target Area Contract Preference Act (TACPA) qualified zone. Equity applicants should individually, or as a group of eligible applicants, control at least 51% of the business.
- i) **Option:** An Equity Applicant is a resident of [City/County] who has an annual income below 200% of the Federal Poverty Level and net worth below \$250,000 AND either has been convicted of a drug related crime (excluding individuals with (A) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code; (B) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code; or (C) A felony conviction involving fraud, deceit, or embezzlement) committed in [City/County] OR has lived for seven of the last twenty years in police beats/census tracts that experienced a disproportionately higher amount of law enforcement with respect to cannabis. Equity applicants should individually, or as a group of eligible applicants, control at least 51% of the business. [NB: Adapted from Oakland system and Sacramento proposal].
- (w) **"Flavored Cannabis or Cannabis Product"** means any Cannabis or Cannabis Product that contains one or more Constituents that impart a Characterizing Flavor.
- (x) **"Health-related Statement"** means any statement related to health, and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of Cannabis or Cannabis Products and health benefits, or effects on health.

- (y) **"Labeling"** means any label or other written, printed, or graphic matter upon Cannabis or a Cannabis Product, upon its container or wrapper, or that accompanies any Cannabis or Cannabis Product.
- (z) **"Listed Price"** means the price listed for a specific weight of flower or for Cannabis Products on their packages or on any related shelving, posting, advertising or display at the place where the products are sold or offered for sale, including all applicable taxes.
- (aa) **"Manufacturer"** is a holder of the manufacture license issued pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act.
- (bb) **"Marijuana"** has the same meaning as the term "Cannabis" for purposes of this ordinance.
- (cc) **"Marketing"** means any act or process of promoting or selling Cannabis or Cannabis Products, including, but not limited to, sponsorship of events, offers such as tickets on events, point-of-sale advertising, branded merchandise, pamphlets or product promotional materials.
- (dd) **"Opaque Exit Package"** means an opaque bag, box or similar container provided by the retailer, as distinct from the original Packaging from the manufacturer, in which purchased Cannabis or Cannabis Products are placed prior to departing the store.
- (ee) **"Owner"** means any of the following: (1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a permit or a permit holder, unless the interest is solely a security, lien, or encumbrance; (2) The chief executive officer of a nonprofit or other entity; (3) A member of the board of directors of a nonprofit; or (4) An individual who will be participating in the direction, control, or management of the person applying for a permit.
- (ff) **"Package"** or **"Packaging"** means any container or wrapper that may be used for enclosing or containing any cannabis products. The term "package" does not include any shipping container or outer wrapping used solely for the transportation of Cannabis or Cannabis Products in bulk quantity to another licensee or licensed premises.
- (gg) **"Person"** includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
- (hh) **"Pharmacy"** means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.
- (ii) **"Premises"** means the designated structure(s) and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or permit holder where the commercial Cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one permit holder.
- (jj) **"Price Reduction Instrument"** means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.
- (kk) **"Purchaser"** means the customer who is engaged in a transaction with a permit holder for purposes of obtaining Cannabis or Cannabis Products.

- (ll) **“Self-Service Display”** means the open display or storage of Cannabis or Cannabis Products or Accessories in a manner that is physically accessible in any way to the general public without the assistance of the Cannabis Retailer or employee of the Cannabis Retailer involving a direct person-to-person transfer between the purchaser and the Cannabis Retailer or employee of the Cannabis Retailer. A vending machine is a form of Self-Service Display.
- (mm) **“Sale”** refers to any transaction in which, for any consideration, title to Cannabis or Cannabis Products is transferred from one Person to another, and includes the Delivery of Cannabis or Cannabis Products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of Cannabis or Cannabis Products by a permit holder to the permit holder from whom the Cannabis or Cannabis Product was purchased.
- (nn) **“Youth Center”** has the same meaning as in Section 11353.1 of the Health and Safety Code.

Section. 2. REQUIREMENTS AND OPERATIONAL STANDARDS FOR CANNABIS RETAILERS

- (a) **CONDITIONAL USE PERMIT REQUIRED.** A conditional use permit is required for Cannabis Retailing of recreational Cannabis or Cannabis Products in [City/County] pursuant to this [Article/Chapter] for each location at which that activity is to occur. Cannabis Retailing without a conditional use permit is a nuisance as a matter of law.

COMMENT: This is the primary operative section of the ordinance. It requires a conditional use permit (CUP) for each retail location. The CUP application involves a review process, which may include public hearings. These hearings provide the applicant, public officials, and neighbors the opportunity to present evidence regarding whether the CUP application should be granted and, if so, with what conditions. However, because a CUP is granted to the property, the local government may have limited power to prohibit the transfer of businesses on the same parcel of land. Alternatively, a city or county could choose to issue a business license or permit for Cannabis Retailing. However, the licensing and permitting process generally does not allow for community input in determining whether to grant the license or permit. As such, a community may choose a regulatory approach that combines elements of a business license and/or a CUP in order to determine the best way to regulate a new type of business activity while providing maximum flexibility to the local government.

Note that whatever approaches the city or county takes to regulate recreational cannabis businesses could also be applied to medical cannabis retailers in order to create a uniform approach. However, in order to bring a pre-existing medical Cannabis Retailer under the purview of the CUP process, a local government may need to use a “deemed approved” process for businesses that are legal non-conforming uses. For more information on “deemed approved” ordinances in the context of alcohol retailers, see Best Practices in Municipal Regulation to Reduce Alcohol-Related Harms from Licensed Alcohol Outlets, prepared for the Ventura County Behavioral Health Department, available at:

http://www.venturacountylimits.org/resource_documents/VC_BestPractAlcSales_Jan2014fnl.pdf.

The remaining provisions in this section specify operational standards that Cannabis Retailers must meet.

- (b) **LAWFUL BUSINESS OPERATION.** In the course of Cannabis Retailing or in the operation of the business or maintenance of the location for which a conditional use permit is issued, it shall be

a violation of this [Article/Chapter] for a permit holder, or any of the permit holder's agents or employees, to violate any local or state law applicable to Cannabis, Cannabis Products, Cannabis Marketing or Advertising, or Cannabis Retailing.

COMMENT: This provision makes regulating the business an effective tool for comprehensively enforcing cannabis laws. A city or county can use the CUP suspension provisions to encourage compliance with all Cannabis-related laws. This provision also gives a city or county additional enforcement options: either enforcing the underlying Cannabis law and/or discouraging illegal behavior by suspending or revoking the CUP. Losing the right to sell cannabis for a period of time will likely be a bigger financial deterrent than an occasional fine imposed under other laws.

- (c) DISPLAY OF PERMIT. Each Cannabis Retailer permit shall be prominently displayed in a publicly visible location at the permitted location.
- (d) POSITIVE IDENTIFICATION REQUIRED. No Person engaged in Cannabis Retailing shall allow entry into the premises, or sell or transfer Cannabis or a Cannabis Product to another Person, without first examining the identification of the recipient to confirm that the recipient is 21 years of age or older.
- (e) ACKNOWLEDGMENT OF LEGAL AGE. All first-time visitors must sign an affidavit acknowledging that they are aware that providing cannabis to persons under age 21 is illegal and pledging not to provide purchased products to persons under age 21 (unless that person is the holder of the medical cannabis prescription being filled).
- (f) MINIMUM AGE FOR PERSONS SELLING CANNABIS. A Person may not engage in Cannabis Retailing if they are less than 21 years of age.
- (g) RESPONSIBLE CANNABIS RETAILING EDUCATION REQUIRED. All employees involved in face-to-face sales of Cannabis or Cannabis Products or management of stores or inventory must undergo at least 8 hours of training on legal requirements and best practices for Cannabis Retailing practices using a curriculum and program approved by the Department. The training shall include hazards associated with Cannabis use, including but not limited to hazards of use during pregnancy and lactation, motor vehicle use, cognitive effects and mental illness; safe and appropriate dosages, especially for initial use; delayed effects of Edible Cannabis Products; hazards of early initiation and of intensive use by youth; storage to protect children; and smoke-free air provisions. Separate trainings should be developed to reflect management and sales clerk roles.

COMMENT: If Deliveries to the Consumer are allowed in the jurisdiction (not recommended), then subsections "(f)" and "(g)" should also apply to employees involved in Delivery. In regard to training, it will take time and evaluation to assure the quality of these programs. The Oregon Liquor Control Commission has an online training that may be useful: <http://www.oregon.gov/olcc/marijuana/Pages/mjworkerpermit.aspx>.

- (h) HOURS. It is unlawful for any Person or association operating a Cannabis Retailing location under the provisions of this [Article/Chapter] to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or otherwise, or to permit such retailing operations to remain open, or patrons to remain upon the premises, between the hours of 8 p.m. and 8 a.m.

- (i) NO ON-SITE CONSUMPTION. No Cannabis Product shall be smoked, ingested or otherwise consumed on the premises of a permit holder or in the public right-of-way within twenty-five feet of a Cannabis Retailer. Cannabis Retailers shall post a sign near their entrances and exits providing notice of this policy.
- (j) NO ON-SITE ENTERTAINMENT. No live music, shows, dancing or other entertainment other than recorded background music should occur at a Cannabis Retailer.

COMMENT: Prohibiting on-site consumption helps to a) respect the occupational safety and health rights of employees not to be exposed to second hand smoke and b) helps to prevent the “normalization” or acceptability of Cannabis consumption. Making consumption of tobacco less socially acceptable has been a major lesson from tobacco control over past decades; our recommendation is to prohibit on-site consumption.

However, given the restrictions in state law, there are few places available for adults to legally consume Cannabis Products. Local governments should be careful not to create new waves of incarceration for consuming in appropriate places. Local governments can allow on-site consumption (whether smoking and/or ingestion) in certain Cannabis Retailers. If so, such on-site consumption must meet minimum state requirements, including: (1) access to the area where Cannabis consumption is allowed must be restricted to persons 21 years of age and older; (2) Cannabis consumption must not visible from any public place or any nonage-restricted area; and (3) sale or consumption of alcohol or tobacco is not allowed on the premises (California Business & Professions Code section 26200).

The provision disallowing entertainment would disallow marijuana clubs and again seek to reduce social “normalization” of Cannabis consumption while permitting its sale.

- (k) NO ON-SITE CONSUMPTION OF ALCOHOL. Alcoholic beverages may not be consumed on the premises. Cannabis Retailers must prohibit patrons from entering or remaining on the premises if they are visibly in possession of or are consuming alcoholic beverages or are under the influence of alcohol.
- (l) ON-SITE SALES. All sales and dispensing of Cannabis and Cannabis Products shall be conducted in-person on the Premises of the Cannabis Retailer. Off-site Delivery to the Consumer of adult use Cannabis or Cannabis Products is not allowed. Cannabis Retailing by means of Internet ordering or telephone ordering and Delivery to the Consumer service is prohibited. This section does not prohibit transportation of Cannabis or Cannabis Products on public roads by a state-licensee transporting Cannabis or Cannabis products in compliance with California Business & Professions Code, Division 10.

COMMENT: Prohibiting Delivery to the Consumer aids in enforcement by ensuring that communities can conduct regular inspections at the Retailer’s permanent place of business. Home Delivery has been associated with higher rates of access for youth in the case of alcohol.¹⁵ Section 843 of the Federal Controlled Substances Act considers Internet based sale of Schedule I substances illegal. As written, this would allow delivery of medical cannabis only.

Although local jurisdictions may prohibit Deliveries within their borders, they may not prevent a delivery service from using public roads to simply pass through the jurisdiction from a licensed dispensary to a delivery location outside of its boundaries (California Business and Professions Code section 26080). If Delivery to the Consumer is allowed, we recommend,

in addition to state requirements in the proposed emergency regulations, that verification of identity and age be required using up-to-date ID scanning technology for each Delivery.

- (m) NO SELF-SERVICE DISPLAYS. Cannabis Retailing by means of a Self-Service Display is prohibited.
- (n) NO MISLEADING NAMES. A non-medical Cannabis Retailer may not use in its name any words or phrases implying health or therapeutic benefits, including but not limited to “health,” “wellness” or “clinic”.

COMMENT: This requirement against names that suggest healthfulness is based on the well-documented health risks of non-medical use. Local government has a substantial interest in assuring that consumers are not misled in relation to the healthfulness of the products that they are purchasing.

- (o) CONTACT INFORMATION. The Cannabis Retailer shall provide [City/County] the name and phone number of an on-site staff person to whom one can direct notices of complaints or violations.
- (p) NO OPERATION OR ADVERTISING WITHOUT A VALID PERMIT. A Cannabis Retailer without a valid Cannabis Retailer permit or an Owner without a valid Cannabis Retailer permit, including, for example, a Person whose permit has been suspended or revoked, shall:
 - i) Close the premises to the public until such time as the permit is (re)issued.
 - ii) Not display any Advertisement relating to Cannabis, Cannabis Products or Cannabis Accessories that promotes the sale or distribution of such products from the Cannabis Retailer’s location or that could mislead a reasonable consumer into believing that such products can be obtained at that location. Permanent signage need not be removed if an application is pending.

COMMENT: This subsection provides that a retailer who cannot legally sell Cannabis or Cannabis Products may not display or Advertise such products. To do so would be misleading to consumers (Business & Professions Code section 17500) and could invite illegal sales. The First Amendment does not protect false or actually misleading commercial speech (Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1980)).

Section 3. RESTRICTIONS ON ELIGIBILITY FOR A CANNABIS RETAILER CONDITIONAL USE PERMIT

- (a) FIXED LOCATIONS. Cannabis Retailers must operate in a permanently constructed, fixed structure. Cannabis Retailing is not permitted from a vehicle or non-permanent structure. For example, Cannabis Retailing by persons on foot or from vehicles or at festivals or fairs is not allowed.
 - i) **Option (if ban is not feasible): FESTIVALS AND FAIRS. The Department may permit the issuance of a temporary permit, not exceeding 2 days in a calendar year, for Cannabis Retailing at festivals or fairs that check identification of all entrants and do not allow the entry of individuals under age 21.**

COMMENT: Note that proposed state regulations would permit on-site Cannabis sales as well as on-site Cannabis consumption at temporary events, subject to certain conditions. This

ordinance provides, but recommends against, an option to allow on-site sales at events but not on-site consumption. As previously mentioned, local governments should consider where adults may safely and legally consume Cannabis (California Code of Regulations, Title 16, Division 42, sections 5602-5603).

- (b) **DISTANCE FROM YOUTH SERVING FACILITIES.** Cannabis Retailers are not permitted within 1,000 feet from any school providing instruction in kindergarten or grades 1 through 12, Day Care Centers, parks, Youth Centers, libraries, junior colleges, colleges, or universities. The distance shall be measured by a straight line from the nearest point of the property line of the parcel on which the youth-serving facility is located to the nearest point of the property line of the parcel on which the applicant's business is located.

COMMENT: State law prohibits licensed premises from being located within a 600-foot radius of any school providing instruction in kindergarten or grades 1 through 12, a Day Care Center, or a Youth Center that is in existence at the time the license is issued (Section 26054 of the Business & Professions Code). However, the law allows a licensing authority or a local jurisdiction to specify a different radius and to expand the list of youth serving facilities. We recommend expanding the buffer to 1,000 feet, and adding colleges, as they service 18-20 year olds, a group particularly vulnerable to the harms of Cannabis use. We also recognize that some cities/counties may have other locations, such as teen centers, which may not be readily identifiable, in which youth congregate and which should be free of Cannabis Retailers and Advertising, and which you may wish to add. Some jurisdictions include libraries and substance abuse centers in this list. However, if the distance is too great or too many locations are stipulated, this can result in a de facto ban. Additionally, distance limits may lead to a concentration of Cannabis Retailers in certain parts of the jurisdiction. Care should be taken that these retailers are not overly concentrated in low-income areas and/or areas populated by people of color. A study using GIS mapping of the City/County could be a useful tool to assure youth are protected while allowing the reasonable availability of Cannabis and to assess the optimal buffer for your jurisdiction.

- (c) **EXCESSIVE DENSITY.** A permit shall not be issued to authorize Cannabis Retailing if the number of Retailers in the [City/County] holding a permit exceeds one (1) Retailer per 15,000 inhabitants. In rural areas, the Department may grant exemptions to this cap if the distance to the nearest Retailer exceeds 25 miles. A permit shall not be issued for a Cannabis Retailer located within 1,000 feet from an existing Cannabis Retailer. Cannabis establishments shall not be disproportionately concentrated in or adjacent to low-income communities.

COMMENT: The optimal approach to density will most likely need to be tailored to the community. A simple numeric cap, which could be an absolute cap or a cap based on population size (as proposed above), may be a useful starting measure to assure that only the number of outlets that are needed to serve the market are allowed to open, without creating a need for extensive Advertising and Marketing for survival. If appropriate, jurisdictions can raise the cap over time. This provision serves to minimize the visual presence of Cannabis sales in the community. The state of Washington began with a cap of one outlet per 22,000 residents based on its past experience with the number of outlets needed for alcohol sales when there was a liquor monopoly. If a cap is used and priority is given to Equity Applicants, they will need time to apply.

- (d) INDEPENDENT ACCESS. A permit shall not be issued for a Cannabis Retailer that shares an entryway with a holder of a license to sell tobacco or alcohol; a purveyor of food products; or a pharmacy. Nor shall a permit be issued for a Cannabis Retailer located in an enclosed mall.
- (e) SPECIALIZED BUSINESS. Cannabis Retailers shall sell only Cannabis and other Cannabis Products, produced and distributed by persons licensed by the State of California, and Cannabis Accessories. They may not sell other goods, including but not limited to food; tobacco products; alcoholic beverages; non-cannabis medicines or supplements, or items of clothing. The Cannabis Retailer shall not hold or maintain a permit as a food service establishment or cottage food establishment from [City/County]. A Cannabis Retailer may not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. A Cannabis Retailer may not hold or maintain a license to sell tobacco products from [City/County] or State of California. A permit shall not be issued to authorize Cannabis Retailing in a Pharmacy.

COMMENT: Prohibiting sales of Cannabis with tobacco, alcohol, food and pharmaceuticals aims to reduce incorporation of Cannabis into social norms of acceptable behavior (e.g. eating out) or routine shopping. Sale by tobacco and alcohol licensees is already prohibited under state law. This language adds the prohibition on food sales or co-location in a pharmacy; the latter is similar to the effort to approve local laws to get tobacco out of pharmacies.

- (f) PERMITTING PRIORITY. Permits to authorize Cannabis Retailing will be issued solely to nonprofit entities. Among applicants, priority will be given in each group to applications from Owners who are Equity Applicants. The greater the percentage of Ownership from Equity Applicants, the higher the priority of the application within each group. If an Equity Applicant is a military veteran they would have higher priority in licensing within each group of Equity or non-equity applicants (for example breaking ties if permits are limited). A minimum of 50% of available permits in the jurisdiction, issued on a 1:1 basis, should be issued to Equity Applicants. *[List or delegate to a Department to determine the eligible long-term residency zip codes or census tracts for Equity Applicants in the jurisdiction].*
 - i) *Alternate approach:* Priority will be given in issuing Cannabis Retailing permits for applications submitted in the following order: 1) governmental organizations, should any apply; 2) nonprofit organizations; and 3) for-profit organizations. Among applicants from nonprofit and for-profit organizations, priority will be given in each group to applications from owners who are Equity Applicants. The greater the percentage of ownership from Equity Applicants, the higher the priority of the application within each group. If an Equity Applicant is a veteran that should also create priority in licensing within each group. A minimum of 50% of available permits in the jurisdiction, issued on a 1:1 basis, should be issued to Equity Applicants. *[List or delegate to a Department to determine the eligible long-term residency zip codes or census tracts for Equity Applicants in the jurisdiction].*
- (g) EQUITABLE TIME TO APPLY. To assure equitable access to Cannabis Retailing opportunities in order of defined priorities, no conditional use permits will be issued until at least 6 (six) months after the opening of the initial application period.
- (h) TEMPORARY PERMITTING FOR EQUITY APPLICANTS. To reduce the burden on and risk for Equity Applicants, the [City/County] should allow Equity Applicants to apply for a Cannabis Retailing permit without having secured a physical location. The [City/County] should provide applicants that are majority-owned or managed by Equity Applicants with six (6) months to secure compliant premises upon issuance of the temporary permit, and no operations may

occur until the full permit is issued. If a location is not secured within the six (6) months, the temporary permit expires.

- (i) A history of a drug-related conviction other than a violent felony or convictions involving fraud or deceit may not be considered as a barrier to issuing a permit.

COMMENT: The purpose of subsections (f)-(i) is to allow legal Cannabis sales while moderating the drive to increase profits by constantly expanding consumption, by allowing only nonprofit entities. The alternative option would be to also allow for-profit businesses, but with lowest priority, especially in regard to publicly held companies with a legal obligation to shareholders to maximize profits. Medical marijuana retailing has operated successfully in California by nonprofits for many years. This approach also prioritizes maintaining revenue from Cannabis legalization in the low-income communities that have suffered the greatest harm from incarceration for minor possession offenses and other effects of the war on drugs. It assures that past marijuana convictions, which have affected the lives of so many men and women from black and Latino communities not be a barrier to moving into the legal market. Additionally, this approach aims to provide applicants from these communities with the time and ability to gather the investments and creditworthiness needed to compete with investors from outside the community. Applicants from low-income communities may not have the resources to secure a physical location, for example, before they know they will have a permit, whereas external investors may otherwise sweep up eligible properties. Equity criteria are modified from City of Oakland medical marijuana law and from the “Template for the City of Sacramento” of the Racial and Health Equity for Marijuana project R+HEMP.

Section 4. PROHIBITED PRODUCT TYPES

- (a) PROHIBITED PRODUCTS. It shall be a violation of this [\[Article/Chapter\]](#) for any Cannabis Retailer or any of the Cannabis Retailer’s agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale or use:
 - i) Any Cannabis or Cannabis Product that is Attractive to Children or Youth.
 - ii) Any Cannabis or Cannabis Product whose Packaging or Labeling is Attractive to Children or Youth.

COMMENT: State law (Business and Professions Code 26120) establishes that packaging and labeling shall not be made attractive to children; however, California law does not provide a detailed definition of what constitutes attractiveness to children. Packaging and labeling and their regulation is a rapidly developing area. While a plain-packaging ordinance would be the most effective for limiting youth appeal and is increasingly used for tobacco internationally, the current interpretation of the First Amendment has generally stood in the way of such a tobacco-focused measure in the U.S. This section provides a list of possible options based on the evidence we have to date. Communities should decide which options they want to include.

State law currently requires packaging to be child-resistant, which means designed or constructed to be significantly difficult for children under five years of age to open, and not difficult for normal adults to use properly (Section 26120 of the Business & Professions Code). Further, state law requires that Cannabis or Cannabis Products purchased by a

customer not leave a licensed Retail Premises unless they are placed in an opaque exit package (Section 26070.1 of the Business & Professions Code.)

1. Option: Any Opaque Exit Package provided by the retailer for Cannabis or Cannabis Product purchased by a customer must carry one of the following warnings in a black-outlined yellow box covering 20% of the front panel of the exit packaging and using at least 12 point font. Each of the warnings should be provided on an equal proportion of exit packaging provided. The Department should review and update warnings as needed based on current scientific evidence at least every three years. Stickers are acceptable.
 - a. **Are you pregnant or breastfeeding?** According to the Centers for Disease Control, marijuana use during pregnancy can be harmful to your baby's health, including causing low birth weight and developmental problems. **GOVERNMENT HEALTH WARNING.**
 - b. **Driving while high is a DUI.** Marijuana use increases your risk of motor vehicle crashes. **GOVERNMENT HEALTH WARNING.**
 - c. **Not for Kids or Teens!** Starting marijuana use young or using frequently may lead to problem use and, according to the Centers for Disease Control, may harm the developing teen brain. **GOVERNMENT HEALTH WARNING.**
 - d. Marijuana use may be associated with **greater risk of developing schizophrenia** or other psychoses. Risk is highest for frequent users. **GOVERNMENT HEALTH WARNING.**
 - e. Smoking marijuana long term may **make breathing problems worse.** **GOVERNMENT HEALTH WARNING.**

COMMENT: In relation to the "option" above, State law requires that all Cannabis and Cannabis Products bear the warnings in the paragraphs below, in accordance with emergency regulations issued by the State Department of Public Health (Section 26120 of the Business & Professions Code). The warning language was specified by Proposition 64. However, these warnings are weak and proposed state emergency regulations would require only a 6-point font size, which is nearly illegible as you can see here. For this reason, we offer this option of requiring stronger and more visible warnings on the required Opaque Exit Packaging, which would not require manufacturers to modify their Packages for your jurisdiction.

We recommend using the more widely known word "marijuana" for purposes of warnings and public communication. The State-required pregnancy warning noting that use while pregnant "may be harmful" is inadequate and weaker than (1) warnings required in other states, which clearly recommend not using marijuana during pregnancy, and (2) the State's own "Let's talk cannabis" campaign. Changes in Label warnings would ideally occur at the state level. However **local jurisdictions could require products sold in their jurisdictions to display supplemental warnings in order to be permitted for sale (in addition to, not in place of, state-required language, and not obscuring state mandated text). But this may be difficult in practice, especially for small jurisdictions. This option should only be used, if at all, by a large jurisdiction prepared to defend a lawsuit challenging this requirement.**

Current State required warning for Cannabis packaging: "GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

For Cannabis products: "GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS PRODUCTS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE

- iii) Synthetic cannabinoid containing products.
 - iv) Cannabis flower with potency in excess of 20% THC content.
 - v) Cannabis Products with THC content in excess of 50%.
 - vi) Cannabis flower to which a Characterizing Flavor has been added.
 - vii) Cannabis Products, other than those Edible Cannabis Products noted in section 4(b) below, to which a Characterizing Flavor has been added.
 - viii) Cannabis or Cannabis Products whose Packaging, Labeling, or Marketing materials include claims of health, therapeutic or curative effects, or claims related to "potency" (beyond listing of cannabinoid content), "strength," "high," or being "natural."
 - ix) Cannabis or Cannabis Products that contain any noncannabinoid additive that would increase potency, toxicity or addictive potential, or that would create an unsafe combination with other psychoactive substances. Prohibited additives include, but are not limited to, nicotine, caffeine and alcohol [excepting a minimum of alcohol that is residual from manufacturing or required solvents for the cannabis containing product if the product's Packaging, Labeling and Marketing make no other reference to alcoholic beverages].
 - x) Any Cannabis Product that would otherwise be classified as a potentially hazardous food (as defined in the Health and Safety Code 113871), including a food that requires time or temperature control to limit pathogenic microorganism growth or toxin formation.
 - xi) Any Cannabis-infused beverages, powders, gels or other concentrates with instructions for the preparation of Cannabis-infused beverages.
 - xii) Any Cannabis product that **the Department** determines is easily confused with a commercially available food without Cannabis.
- (b) A Cannabis Retailer may sell no more than 10 (ten) product variations (SKUs) of Edible Cannabis Products, with or without Characterizing Flavors, in the form of hard lozenges, or chocolates with no additional flavors, with individually wrapped servings not exceeding 10 mg THC, and packages not exceeding 100 mg per package.

- (c) Tinctures and other non-Edible Cannabis Products may not have Characterizing Flavors, may not exceed 1,000 mg THC per package, and must have clear instructions and dispensing mechanism such as a marked dropper or other device for dispensing doses of 10 mg THC or less.
- (d) Cannabis or a Cannabis Product is presumed to have a Characterizing Flavor if a Manufacturer or any of the Manufacturer’s agents or employees has:
 - i) Made a public statement or claim that the Cannabis or Cannabis Product has or produces a Characterizing Flavor, including, but not limited to, text and/or images on the product’s Labeling or Packaging that are used to explicitly or implicitly communicate information about the flavor, taste, texture or aroma of a Cannabis Product; or
 - ii) Taken actions directed to consumers that would reasonably be expected to result in consumers believing that the Cannabis or Cannabis Product imparts a Characterizing Flavor.
- (e) Every Cannabis Retailer shall maintain on the Premises the original Labeling and Packaging provided by the Manufacturer for all Cannabis Products that are sold or offered for sale by the establishment separately from the original Packaging designed for retail sale to the consumer. The original Labeling and Packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale, and may be disposed of upon the sale of the entire contents of such package.

COMMENT: This provision seeks to reduce the proliferation of a wide and new range of products that are more likely to attract youth or harm consumers, such as a large variety of Edibles including beverages. It recognizes that there is a not currently a problem with an illegal Edible Cannabis market that requires correction. It is intended to assist localities in limiting (a) the use of high-potency products whose safety is poorly understood in contrast to traditional cannabis, and (b) to reduce the proliferation of Cannabis and Edible products with Characterizing Flavors that are well known to attract youth, while still permitting a reasonable but limited selection of products for adult Edible and vaping alternatives to smoking. It also will help identify products with Characterizing Flavors or with other violations when a retailer has removed a Cannabis Product from its original packaging, such as a retailer who breaks open a pack of flower or of Edible Cannabis Products. This provision applies only to Retail Packaging used when a product is offered for sale to a consumer. It does not include packaging used solely for the purpose of distributing products to retailers.

The selection of potency thresholds in sections (a)(iv) and (a)(v) was based on research on the historical evolution of potency from about 4% for flower to strains often of 15-22%. The 50% cut-off for other products will allow for tinctures and other extracts for vaping or oral use. However, it would not allow for products such as “butter” or “shatter” with extremely high THC content that is likely to cause severe high events. There are important pro and cons to prohibiting the highest potency products in stores. Key advantages include reducing access to products that are likely to produce a higher rate of adverse highs and ill effects. A key disadvantage is that these products might remain in the illegal market and be produced more unsafely. New Mexico uses a 70% THC as a limit. Uruguay uses a 15% limit for flower.

Section 5. PRICING AND DISCOUNTING

- (a) PROHIBITION ON THE SALE OF CANNABIS FOR LESS THAN THE LISTED PRICE. No Cannabis Retailer shall: (1) honor or accept a Price Reduction Instrument in any transaction related to

the sale of Cannabis or Cannabis Products to a consumer; (2) sell or offer for sale Cannabis or Cannabis Products through any multi-package discount or otherwise provide to a consumer any Cannabis or Cannabis Products for less than the Listed Price in exchange for the purchase of any other Cannabis or Cannabis Product; (3) sell, sell at a discount, offer for sale, or otherwise provide any product other than Cannabis or Cannabis Products in exchange for the purchase of Cannabis or Cannabis Products; or (4) otherwise sell, offer for sale, or provide Cannabis or Cannabis Products for less than the Listed Price. In addition, Cannabis Retailers must sell, offer for sale, or provide Cannabis or Cannabis Products for the same listed price every day of the week in a given week.

COMMENT: This measure allows Cannabis Retailers to set prices as they see fit and to modify them, including setting them low enough to help capture the illegal market. It prohibits, however, measures that encourage consumers to purchase more Products than they might otherwise choose, such as two-for-the-price-of-one offers, time-limited coupons, or Discount Mondays.

- (b) **PRICE FLOOR FOR CANNABIS AND CANNABIS PRODUCTS.** The Department is authorized, but not required, after 5 years from the effective date of this measure, to establish minimum prices for Cannabis and Cannabis Products. If such a Price Floor is established, Cannabis Retailers may not sell Cannabis or Cannabis Products below the minimum price; [City/County Department] must review the appropriateness of the Price Floor at least every two years and may adjust the Price Floors at that time to account for changes in the consumer price index, or other considerations related to reducing illegal commerce. The Department may promulgate such rules as may be necessary for the purpose of carrying out this section.

COMMENT: This measure authorizes, but does not require, a local government to set Price Floors after 5 years of legalization. Minimum price measures have been used to discourage tobacco consumption by assuring higher prices, but in the case of Cannabis should only be used once the illegal market has been well captured, to avoid driving consumers back to the illegal market. Prices are expected to fall after legalization. See, for example, the Sonoma County Tobacco Retail Licensing ordinance for an example of use of minimum price laws for tobacco in California.

Section 6. REQUIRED IN-STORE SAFETY INFORMATION

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

WARNING:

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

other psychoses. Risk is highest for frequent users.

5. Smoking marijuana long-term may **make breathing problems worse**.

THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY [CITY/COUNTY] OF XXXXX

- (b) A Cannabis Retailer must display each of the following three warning signs, which are (i) at least 2 feet wide by 1 foot tall; (ii) posted at eye height (i.e., with mid-point 5 feet above the floor); and (iii) posted prominently and conspicuously facing consumers in a location where it will be seen by all customers, such as behind a dispensing counter, check-in or check-out counter, stating in English and Spanish:

- **ARE YOU AN IMMIGRANT? Using or possessing marijuana or working in the marijuana industry is legally risky for any noncitizen, even in California.** This includes lawful permanent residents, undocumented persons, student with visas, and others. Marijuana is illegal under federal law, and federal law controls immigration. If you need to take medical marijuana, see an immigration attorney for advice. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY [CITY/COUNTY] OF XXXXX
- **ARE YOU ON PROBATION OR PAROLE?** If you are prohibited from using drugs as a condition of your probation or parole, then possession or use of marijuana could violate your probation or parole. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY [CITY/COUNTY] OF XXXXX
- **ARE YOU A MEDICAL MARIJUANA CUSTOMER 18-20 YEARS OLD?** If you are caught possessing marijuana without medical authorization, you could face legal consequences. THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY [CITY/COUNTY] OF XXXXX

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

COMMENT: A [CITY/COUNTY] may wish to provide the signs or a graphic file with compliant design.

Section 7. APPLICATION PROCEDURE

- (a) Application for a conditional use permit for Cannabis Retailing shall be submitted in the name of each Owner proposing to conduct Retail Cannabis sales and shall be signed by each Owner or an authorized agent thereof.
- (b) It is the responsibility of each Owner to be informed regarding all laws applicable to Cannabis Retailing, including those laws affecting the issuance of a Cannabis Retailer's permit. No Owner may rely on the issuance of a permit as a determination made by the [City/County] that the Owner has complied with all laws applicable to the role of a Cannabis Retailer. A permit issued contrary to this [Article/Chapter], contrary to any other law, or on the basis of false or misleading information supplied by an Owner shall be revoked pursuant to Section 13(c) of this [Article/Chapter]. Nothing in this [Article/Chapter] shall be construed to vest in any Person obtaining and maintaining a Cannabis Retailer's permit any status or right to act as a Cannabis Retailer in contravention of any provision of law.
- (c) All applications shall be submitted on a form supplied by **the Department** and shall contain the following information:

- i) The name, address, and telephone number of each Owner of the business seeking a permit.
- ii) The business name, address, and telephone number of the single fixed location for which a permit is sought.
- iii) A single name and mailing address authorized by each Owner to receive all communications and notices required by, authorized by, or convenient to the enforcement of this [Article/Chapter]. If an authorized address is not supplied, the Owner shall be understood to consent to the provision of notice at the business address specified in subsection (b) above.
- iv) Whether or not any Owner or any agent of the Owner has ever admitted violating, or has been found to have violated, this [Article/Chapter] and, if so, the dates and locations of all such violations within the previous five years, or violation of state or other local Cannabis Retailing laws.

COMMENT: This provision requires a Cannabis Retailer to disclose past violations. As businesses are permitted, this information will make it easier for staff to determine if the application requires closer scrutiny. If the Retailer does not disclose past violations and a permit is issued, the permit can be revoked as soon as the past violations are discovered pursuant to Section 13(c) below.

- v) The proposed business name and a description of all operating aspects of the proposed business.
 - vi) Such other information as the Department deems necessary for the administration or enforcement of this [Article/Chapter] as specified on the application form required by this section.
- (d) REFERRAL TO OTHER DEPARTMENTS OR AGENCIES. The Department may refer the application to other departments or agencies to determine whether the premises where the Cannabis Retailer will be located complies with the [City/County] building, health, zoning, and fire ordinances or other applicable ordinances or laws and potential impact on health equity.
- (e) ACTION ON APPLICATION. Notice and public hearing requirements shall be as set forth in Section _____ of the [City/County] Zoning Ordinance pertaining to conditional use permits.

COMMENT: This requirement authorizes administrative and enforcement staff to establish application forms that require various types of information to aid effective operation and enforcement of the ordinance. All information specified in an application pursuant to this section will be subject to disclosure under the California Public Records Act (California Government Code section 6250 *et seq.*) or any other applicable law, subject to the laws' exemptions.

Section 8. ACTION ON PERMIT APPLICATION

The Department shall approve issuance of the permit to allow Cannabis Retailing at a particular location upon making the following findings [in addition to] [in lieu of] the findings required by the municipality's conditional use permit ordinance [Article/Chapter]:

- (a) The application seeks authorization for Cannabis Retailing at a location for which this [Article/Chapter] does not prohibit issuance of a conditional use permit;

- (b) The application would not exceed the allowable density limits for Cannabis Retailers, respecting the order of priority;
- (c) The application seeks authorization for Cannabis Retailing that is not prohibited pursuant to this [Article/Chapter] (e.g., mobile vending, selling goods other than cannabis), that is not unlawful pursuant to this Code, including without limitation the [e.g., zoning ordinance, building code, and business license tax ordinance], or that is not unlawful pursuant to any other law;
- (d) The application does not seek authorization for Cannabis Retailing for an Owner to whom this [Article/Chapter], prohibits a permit to be issued;
- (e) A finding that the Cannabis Retailing will not create or aggravate existing problems in the neighborhood related to the sale of Cannabis, such as loitering, criminal activity, health equity, the sale of Cannabis to minors, noise, and littering;
- (f) The proposed establishment will not detrimentally affect nearby neighborhoods considering the distance of the Cannabis Retailer to residential buildings, youth-centered activities, or other Cannabis Retailers; and
- (g) The proposed establishment will otherwise be compatible with existing and potential uses within the general area.

COMMENT: This section requires the government to make a number of findings prior to approval of a conditional use permit. This list should be tailored to local conditions and citizen concerns.

Although a permit technically should not be issued if prohibited elsewhere in the city or county code, it is valuable to make note of the other ordinances staff should consider under Section 8(c).

Section 9. PERMIT RENEWAL AND EXPIRATION

- (a) RENEWAL OF PERMIT. A conditional use permit for Cannabis Retailing is invalid if the appropriate fee has not been timely paid in full or if the term of the permit has expired. The term of a Cannabis Retailer permit is one year. Each permit holder shall apply for the renewal of the conditional use permit for Cannabis Retailing and submit the permit fee no later than thirty (30) days prior to expiration of the term. The application shall include information regarding changes in the operations of the premises and any other information as determined by the Department.

COMMENT: The payment term of permits is a matter for local policy. If this ordinance is adopted as an amendment to a CUP ordinance, many administrative details, such as the term of the permit, may be covered by the existing ordinance. In order to renew the CUP, a jurisdiction may require additional information prior to approval, including a review of any citations issued against the business and an opportunity for the community to provide input.

- (b) EXPIRATION OF PERMIT. A Cannabis Retailer’s permit that is not timely renewed shall expire at the end of its term. To renew a permit not timely renewed pursuant to subparagraph (a), the proprietor must:
 - i) Submit the permit fee and application renewal form; and

- ii) Submit a signed affidavit affirming that the proprietor has ceased to open to the public, has not sold and will not sell any Cannabis or Cannabis Product after the permit expiration date and before the permit is renewed.

Section 10. PERMITS NONTRANSFERABLE

- (a) PERMIT NON-TRANSFERABLE. A Cannabis Retailer’s permit may not be transferred from one Person to another. A new Cannabis Retailer’s permit is required whenever a Cannabis Retailing location has a change in Owner(s).

COMMENT: This provision requires a new permit for any change in Ownership. For example, if an Owner to whom a permit has been issued wishes to sell their business, the new Owner or prospective owner must apply for a new permit prior to acting as a Cannabis Retailer at the permitted location. In this form, if at any future time the City/County should wish to reduce the number of permit holders, a natural attrition process can be used. This also avoids gaming of the equity applicant system. This is particularly important if no density cap is adopted.

- (b) PRIOR VIOLATIONS. Notwithstanding any other provision of this [Article/Chapter], prior violations at a location shall continue to be counted against a location and permit ineligibility periods shall continue to apply to a location unless:
 - i) The location has been transferred to new Owner(s) in an Arm’s Length Transaction; and
 - ii) The new Owner(s) provide the [City/County] with clear and convincing evidence that the new Owner(s) have acquired or are acquiring the location in an Arm’s Length Transaction.
 - iii) The new Owner(s) apply for a new Cannabis Retailing permit.

COMMENT: This provision prevents sham transfers of Ownership from defeating the effect of past violations. For example, if a Retailer who is found in violation of the licensing law subsequently transfers Ownership to his brother, and if the brother also then violates the ordinance, it would be counted as the second violation, not the first.

Section 11. FEE FOR PERMIT

- (a) The fee to issue or to renew a Cannabis Retailer’s permit shall be established from time to time by resolution of the [City/County]. The fee shall be calculated so as to fully recover the cost of administration and enforcement of this [Article/Chapter] including, for example, issuing a permit, administering the permit program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this [Article/Chapter]. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law. Equity applicants shall receive a one-year deferral of the initial fee.

COMMENT: It is lawful to impose a fee on applicants in an amount sufficient to offset the cost of the entire Cannabis Retailer enforcement program of the locality (*Sinclair Paint Co. v. Board of Equalization*, 15 Cal. 4th 866 (1997); *Griffith v. City of Santa Cruz*, 207 Cal. App. 4th 982 (2012)). The permit fee can incorporate the cost of enforcing *all* Cannabis laws related to Cannabis Retailing because a violation of any Cannabis-related law is a basis for suspension of a permit. For example, if the enforcing agency is environmental health, a new inspector

could be hired for Cannabis Retailer enforcement activities and a percentage of the cost of the hire could be included in the fee so long as the same percentage of the inspector's efforts are used to monitor and enforce permit-related Cannabis laws.

One approach to setting the fee is to estimate the cost of administration and enforcement of the permit program. For example, estimate the number of stores in the city or county and how much time it will take a government employee to review applications and issue permits. The fraction of that employee's time can then be used to calculate the annual cost of permit administration, based on the cost of that employee's salary, benefits, and his or her share of administrative overhead such as rent, insurance, legal advice, etc. As for enforcement costs, calculate, for example, how many yearly inspections are necessary (ideally two to four per retailer) and how much staff time each inspection demands. Research suggests 4 times a year is needed for underage compliance checks (while these can be random and do not need to occur in all establishments each year, they do need to be publicized so retailers are aware that they might be checked on a quarterly basis). Fee language should also include an automatic adjustment for inflation.

Costs of provision of mandatory education can also be included. We recommend that fees can be scaled to size as measured by number of employees or annual revenue, or increased if there is a history of violations.

It is important to document these calculations for two reasons: to provide support for the fee amount and to refute a legal challenge claiming the fee exceeds the cost of administration and enforcement. More guidance on calculating a fee appears in the *Griffith* case cited above.

Note that the city or county can avoid having to calculate staff time by mandating that a set amount of time, e.g., 15 hours a week, shall be spent on permit enforcement activity (including enforcing the cannabis laws that give rise to a permit violation). New staff could be hired to meet this mandate and the cost can be incorporated into the permit fee.

Section 12. COMPLIANCE MONITORING

- (a) Compliance with this [Article/Chapter] shall be monitored by the Department. In addition, any peace officer may enforce the provisions of this [Article/Chapter]. The [City/County] may designate any number of additional Persons to monitor compliance with this [Article/Chapter].

COMMENT: It is important to designate who will monitor Cannabis Retailers' compliance with the ordinance. Explicitly naming the department responsible for inspections helps ensure that the ordinance will be enforced.

Routine cannabis enforcement of retailers should be handled as a regulatory matter, like restaurant inspections, rather than as a law enforcement matter.

If reducing the sale of Cannabis Products to minors is a key focus of a Cannabis Retailer's permit law, communities may wish to assure that compliance with youth access laws is a consistent element of inspection, as has occurred with the sale of alcohol and tobacco products. Communities should also conduct inspections to determine compliance with the local and state laws relating to the point of sale, product types, warnings, or advertising.

- (b) The Department shall inspect each Cannabis Retailer at least two (2) times per twelve (12) month period. Nothing in this paragraph shall create a right of action in any permit holder or

other Person against the [City/County] or its agents.

COMMENT: Providing a minimum number of inspections helps ensure some level of enforcement. Two to four inspections per year may be appropriate depending on the number of Cannabis Retailers in a community and the level of funding established through the permit fee. Communities with a large number of Retailers may wish to inspect a subset of Retailers that are selected either randomly or based on past violations and complaints.

*Note that counties cannot directly mandate that the county sheriff conduct inspections. However, a county can provide dedicated funding to the sheriff that can be used only to conduct inspections. If this is desired, replace the first sentence in subsection (b) with:

*The County Sheriff's Department shall be funded to inspect each Cannabis Retailer at least **[two (2)]** times per twelve (12) month period.*

Alternatively, the county could contract for enforcement and inspections. Cities, on the other hand, can directly mandate that a certain city law enforcement agency conduct inspections. Or, a city may wish to contract with the county health department for inspections.

- (c) The [City/County] shall not enforce any law establishing a minimum age for Cannabis purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "Youth Decoy") if the potential violation occurs when:
- i) The Youth Decoy is participating in an inspection supervised by a peace officer, code enforcement official, or the Person designated by the [City/County] to monitor compliance with this [Article/Chapter];
 - ii) The Youth Decoy is acting as an agent of a Person designated by the [City/County] to monitor compliance with this [Article/Chapter]; or
 - iii) The Youth Decoy is participating in an inspection funded in part, either directly or indirectly, through subcontracting, by the [City/County], Department or the California Department of Consumer Affairs.

COMMENT: This provision is intended to permit youth and young adults to participate in inspections without first obtaining a letter of immunity from the city or county. However, this provision does not provide protection from prosecution by agencies other than the city or county adopting this ordinance. A letter of immunity from the local district attorney is still recommended.

Section 13. SUSPENSION OR REVOCATION OF PERMIT

- (a) SUSPENSION OR REVOCATION OF PERMIT FOR VIOLATION. In addition to any other penalty authorized by law, a conditional use permit for Cannabis Retailing shall be suspended or revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the permit holder is afforded notice and an opportunity to be heard, that the permit holder, or any of the permit holder's agents or employees, has violated any of the requirements, conditions, or prohibitions of this [Article/Chapter], or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section (2) above.

COMMENT: This Model Ordinance does not contain the entire procedure for suspension of a conditional use permit. This procedure may already exist in the conditional use permit

sections of your local code. The administrative procedure, civil proceeding, or combination of both, should be tailored to the needs of your community and must comply with the basic requirements of due process (notice to retailer and an opportunity to be heard).

A plea of “no contest” or “nolo contendere” is usually used by a defendant to prevent having a “guilty” plea used against him in a subsequent civil suit. This provision puts a Cannabis Retailer on notice that even a “no contest” plea can still be used to establish a permit violation and will result in the suspension of the retailer’s Cannabis Retailer permit. Precedent exists in California state law for considering a “no contest” plea in relation to a license. *See, e.g.*, Business and Professions Code section 5063 regarding CPA licenses. Note that a “no contest” plea can be used only to suspend a license, not to impose any other enforcement provisions provided in the ordinance. If imposing additional enforcement provisions is desired (e.g., imposing a civil fine), the County will need to prove that the underlying violation occurred and not rely on the “no contest” plea as conclusive evidence of a violation.

- i) Upon a finding by **the Department** of a first violation of this **[Article/Chapter]**, at a location within any sixty-month (60) period, the permit holder shall be fined \$500 per violation.
- ii) Upon a finding by **the Department** of a second violation of this **[Article/Chapter]**, at a location within any sixty-month (60) period, the permit holder shall be fined \$1,000 per violation and the permit shall be suspended for three (3) business days.
- iii) Upon a finding by **the Department** of a third violation of this **[Article/Chapter]**, at a location within any sixty-month (60) period, the permit shall be suspended for ten (10) business days.
- iv) Upon a finding by **the Department** of four or more violations of this **[Article/Chapter]**, at a location within any sixty-month (60) period, the permit shall be suspended for thirty (30) business days.
- v) Upon a finding by **the Department** of five or more violations of this **[Article/Chapter]**, at a location within any sixty-month (60) period, the permit shall be revoked.

COMMENT: This is the primary provision designating the length of time a Cannabis Retailer is ineligible to sell Cannabis or Cannabis products once the conditional use permit is suspended pursuant to subsection (a). Stronger or more lenient penalties may be provided as a matter of local policy. For example, if a jurisdiction requires that Cannabis Retailers sell only Cannabis Products and Accessories, as recommended, a suspension of the retailer’s permit will have a greater impact on the business than on a business that can continue to sell other products.

By providing mandatory penalties, this model does not provide any discretion to enforcement staff. This lack of discretion makes for a simple ordinance and standardized, even-handed enforcement. If discretion with respect to penalties is desired, the ordinance must state the standard by which that discretion is to be exercised (e.g., financial hardship, history of compliance, etc.). Note, too, that these penalty provisions do not prevent the use of other legal tools, such as criminal prosecution or the several judicial remedies discussed below.

- (b) APPEAL OF SUSPENSION OR REVOCATION. A decision of **the Department** to suspend or

revoke a conditional use permit is appealable to [the name of appellate agency, panel, or person (e.g., Board of Appeals, Planning Commission, City Council, director of the health department)] and any appeal must be filed in writing with [the name of the agency, panel, or person to receive the notice (e.g., City Clerk or Clerk of the Board of Supervisors)] within ten days of mailing of the Department's decision. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to [the name of appellate agency, panel, or person] is not available for a revocation made pursuant to subsection (c) below.

COMMENT: Some appeal right should be provided to ensure due process and to permit the city or county to correct any errors that may occur in the administrative process. How many levels of appeal to permit, which officer or body should hear the appeal, which officer should receive the notice of appeal, the time limits to set, etc. are local policy questions. Local governments would do well to trigger the 90-day statute of limitations for legal challenges by complying with the notice requirements of California Code of Civil Procedure section 1094.6(f) in making and giving notice of determinations under this ordinance.

- (c) REVOCATION OF PERMIT WRONGLY ISSUED. A conditional use permit shall be revoked if the Department finds, after the permit holder is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a permit under Section 8 existed at the time application was made or at any time before the permit was issued. The decision by the Department shall be the final decision of the [City/County]. Such a revocation shall be without prejudice to the filing of a new permit application.

Section 14. CANNABIS RETAILING WITHOUT A VALID PERMIT

- (a) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Department finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any Person who has been issued a conditional use permit as a Cannabis Retailer has engaged in Cannabis Retailing at a location without a valid Cannabis Retailer's permit, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for, or to be issued, a Cannabis Retailer's permit as follows:
- i) After a first violation of this section at a location within any sixty-month (60) period, no new permit may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until ninety (90) days have passed from the date of the violation.
 - ii) After a second violation of this section at a location within any sixty-month (60) period, no new permit may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until one hundred eighty (180) days have passed from the date of the violation.
 - iii) After a third violation of this section at a location within any sixty-month (60) period, no new permit may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction) until one (1) year has passed from the date of the violation.
 - iv) After of a fourth or subsequent violation of this section at a location within any sixty-month (60) period, no new permit may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction).
- (b) Section 14. shall take effect one year after the effective date of this ordinance.

COMMENT: This provision prohibits a Person who sells without a valid permit from obtaining a permit for a set amount of time. This ineligibility period is in addition to any other penalty the city or county might pursue, such as the fines set forth in Section 15.

- (c) Cannabis and Cannabis Products offered for sale or exchange in violation of this section are subject to seizure by **the Department** or any peace officer and shall be forfeited after the permit holder and any other Owner of the Cannabis or Cannabis Products seized is given reasonable notice and an opportunity to demonstrate that the Cannabis and Cannabis Products were not offered for sale or exchange in violation of this **[Article/Chapter]**. The decision by **the Department** may be appealed pursuant to the procedures set forth in Section 14. Forfeited Cannabis and Cannabis Products shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

COMMENT: Seizing and destroying illegally offered products requires additional procedures beyond the normal hearing for permit suspension. In part, this is because of the possibility that the true owner of products seized is not the permit holder. For example, products could be sold on a consignment basis (i.e., the store owner sells products owned by someone else in exchange for a portion of the sales price). Such owners must be provided due process before their property is destroyed. An independent administrative hearing regarding the forfeiture of any seized products is recommended.

- (d) For the purposes of the civil remedies provided in this **[Article/Chapter]**,
- i) Each day on which Cannabis or a Cannabis Product is offered for sale in violation of this **[Article/Chapter]**; or
 - ii) Each individual Cannabis or Cannabis Product that is distributed, sold, or offered for sale in violation of this **[Article/Chapter]**, shall constitute a separate violation of this **[Article/Chapter]**.

Section 15. ADDITIONAL REMEDIES

- (a) The remedies provided by this **[Article/Chapter]**, are cumulative and in addition to any other remedies available at law or in equity.

COMMENT: The following subsections are designed to offer a variety of options to the drafter and to the enforcing agency. Drafters may choose to include some or all of these options. Once the ordinance is enacted, the enforcing agency will have the discretion to choose which enforcement tools to use in all cases or from case to case. As a practical matter, these enforcement options would not be applied simultaneously, although multiple remedies might be used against a particularly egregious violator over time.

- (b) Whenever evidence of a violation of this **[Article/Chapter]** is obtained in any part through the participation of a Person under the age of twenty-one (21) years old, such a Person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this **[Article/Chapter]**, and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

COMMENT: This provision is designed to eliminate any legal right a defendant might otherwise have to compel a youth decoy to testify or be deposed. If criminal remedies are pursued, constitutional rights of criminal defendants to confront witnesses against them may require a youth decoy to testify.

- (c) Violations of this [Article/Chapter] are subject to a civil action brought by the [City Attorney/County Counsel], punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

COMMENT: This provision provides civil fines for violating the licensing ordinance. It requires that the city or county file a traditional civil suit. The fine amounts can be adjusted but cannot exceed \$1,000 per violation (Government Code section 36901).

- (d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this [Article/Chapter] shall also constitute a violation of this [Article/Chapter].

COMMENT: This is standard language that is typically included in a city or county code and may be omitted if duplicative of existing code provisions.

- (e) Violations of this [Article/Chapter] are hereby declared to be public nuisances.

COMMENT: By expressly stating that violations are public nuisances, this provision allows enforcement of the ordinance via the administrative nuisance abatement procedures commonly found in municipal codes. Such a declaration also facilitates injunctive relief (where a court orders that a defendant do certain things or refrain from doing certain things).

- (f) In addition to other remedies provided by this [Article/Chapter], or by other law, any violation of this [Article/Chapter] may be remedied by a civil action brought by the [City Attorney/County Counsel], including, for example, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.

COMMENT: It is common to provide that local government lawyers may go to court to seek injunctions and other penalties in addition to fines. The express provision for injunctive relief lowers the showing required to obtain a preliminary or permanent injunction as described in *IT Corp. v. County of Imperial*, 35 Cal. 3d 63 (1983).

Think carefully about the nuisance abatement procedure you choose. A local government may provide for treble damages for the second or subsequent nuisance abatement judgment within a two-year period, as long as the ordinance is enacted pursuant to Government Code section 38773.5. Treble damages are not available, however, under the alternative nuisance abatement procedures in Government Code section 38773.1 and Health & Safety Code section 17980. Government Code section 38773.7 (authorizing treble damages) establishes a procedure for nuisance abatement where the cost of the abatement can be collected via the property tax roll as a special assessment against the property on which the violation occurs.

SECTION III. MARKETING AND ADVERTISING

[Article/Chapter], of the [] Code is hereby amended to read as follows:

Section 1. DEFINITIONS

Capitalized words and phrases used in this [Article/Chapter] shall have the meanings defined in SECTION II. Section 1. Definitions.

Section 2. RESTRICTIONS ON CLAIMS, ATTRACTIVENESS TO CHILDREN AND YOUTH, AND IMAGES OF SPECIFIC RISKY BEHAVIOR

- (a) No claims may be made in Advertising or Marketing materials in [City/County] for Cannabis or Cannabis Products or brands that assert such products are safe because they are regulated by the state or local licensing authority (e.g., “state-approved” or state-licensed”). This restriction does not apply to the display of license or permit numbers where required.
- (b) Advertising and Marketing materials in [City/County] for adult-use Cannabis or Cannabis Products or brands may not include claims of therapeutic or curative effects.
- (c) Products that may not be sold in [City/County] may not be Advertised in [City/County].
- (d) Advertising and Marketing materials in [City/County] for Cannabis and Cannabis Products or brands may not be Attractive to Children or Youth.
- (e) Advertising and Marketing materials in [City/County] may not depict activities or conditions considered risky when under the influence of Cannabis, such as operating a motorized vehicle or boat, being pregnant, or breastfeeding.

COMMENT: Note that any jurisdiction that does not allow the sale of Cannabis and Cannabis Products may likely ban local Advertising for those items without fear of violating the First Amendment. Note in addition that, if a jurisdiction does not allow the sale of *specific* Cannabis Products (for example, Cannabis beverages or high potency shatter), it may likely prohibit Advertising for those Products. Regarding claims about the health effects of Cannabis use: given that there is no objective scientific system for assessing the validity of curative or therapeutic claims for Cannabis – such as exists, for example, for FDA-approved medications – we recommend not permitting such claims, at least on products sold for non-medical transactions. State Law prohibits advertising or marketing Cannabis or Cannabis Products in a manner intended to encourage persons less than 21 years of age to consume Cannabis or Cannabis Products (Business and Professions Code section 26152). Proposed state regulations also raise important requirements for truthfulness in health claims. To view provisions from other state laws on Cannabis advertising, see: “Compilation of advertising regulations in CA, AK, WA, OR and CO” at <https://gettingitrightfromthestart.org/other-states-legislation-regulation>.

Jurisdictions that already have policies in place restricting what types of Advertising may appear on public property like buses, trains and transit shelters may choose to add Cannabis Advertising to the list of prohibited types of Advertising.

We have not covered television/radio advertising here because local governments generally do not regulate these media. In relation to broadcast issues not addressed here, State law requires no more than 28.4 percent of the audience to reasonably be expected to be under age 21, as determined by reliable, up-to-date audience composition data (section 26151 of

the Business & Professions Code). The 28.4% standard is drawn from the voluntary alcohol industry codes and has been well documented in the alcohol policy literature to be ineffective in protecting youth from overexposure to alcohol advertising. We also know that exposure to alcohol advertising is associated with a decreased risk perception of use. A complete prohibition on broadcast advertising would be ideal, or at a minimum a 15% standard limited to those age 12-20 focuses on those youth most vulnerable and most exposed to this kind of advertising. The 15% standard is recommended as a best practice standard by the National Research Council/Institute of Medicine's report on underage drinking commissioned by the United State Congress. Research has shown that this more restrictive threshold does not have a major effect on the industry's ability to reach adult consumers. Ideally these limits should be based on local audience data, as research has shown that national-level audience data is inconsistent with local markets, resulting in youth being overexposed to Advertising. However, we are not including the recommendation at this time for local governments to regulate broadcast or electronic media and are reviewing options. Section 843 of the Federal Controlled Substances Act makes it unlawful for any person to place in any newspaper, magazine, handbill, or other publication, any written advertisement knowing that it has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule I controlled substance (including Cannabis). We are researching the potential impact of these factors on local efforts to regulate Cannabis Advertising.

This is an area of rapidly changing law; before adopting this provision, consult an attorney expert in the area.

- (f) **Option: Advertising and Marketing materials may not:**
 - i) Display consumption of Cannabis or Cannabis Products;
 - ii) Contain material that encourages the use of Cannabis because of its intoxicating effect;
 - iii) Encourage excessive or rapid consumption of Cannabis or Cannabis Products;
 - iv) Include claims related to potency, "high" strength (beyond listing of cannabinoid content), or being "natural."

COMMENT: Measures similar to (f)(ii)-(iii) are in effect for alcohol advertising and marketing through voluntary industry standards. These restrictions, along with (f)(i) and (iv), call for the adoption of familiar and commonsense standards, but may nonetheless be subject to First Amendment challenge.

Section 3. RESTRICTIONS ON BRANDED MERCHANDISE

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

Section 4. WARNING LABEL REQUIREMENTS (Option)

- (a) Any Person who posts or who causes to be posted an Advertisement for a Cannabis Retail business, Cannabis manufacturer, Cannabis, or a Cannabis Product in [City/County] that is any of the following: (a) on paper, poster, or a billboard; (b) in or on a stadium, arena, transit shelter, or any other structure; (c) in or on a bus, car, train, pedicab, or any other vehicle; or (d)

on a wall, or any other surface or material, must place on the advertisement the following warning:

“WARNING:” followed by one of the statements below and then **“THIS IS A GOVERNMENT HEALTH WARNING”**

- i) **Are you pregnant or breastfeeding?** According to the Centers for Disease Control, marijuana use during pregnancy can be harmful to your baby’s health, including causing low birth weight and developmental problems.
 - ii) **Driving while high is a DUI.** Marijuana use increases your risk of motor vehicle crashes.
 - iii) **Not for Kids or Teens!** Starting marijuana use young or using frequently may lead to problem use and, according to the Centers for Disease Control, may harm the developing teen brain.
 - iv) Marijuana use may be associated with **greater risk of developing schizophrenia** or other psychoses. Risk is highest for frequent users.
 - v) Smoking marijuana long term may **make breathing problems worse.**
- (c) Advertisements must include messages “(i)” through “(v)” above in equal and rotating proportion such that each message receives approximately the same audience exposure for any given Advertisement over the course of the use of that Advertisement.
- (d) The warning must be enclosed in a box occupying at least 15% of the surface of the Advertisement.
- (e) The warning box must use black type on a yellow background with a black border, and the text must be printed in a size and manner that is clearly legible to the intended viewers of the Advertisement. The text of the warning must be positioned so that the warning has the same orientation as the other information in the Advertisement (for example, left to right, or bottom to top).

COMMENT: Local government is on surer legal footing addressing exclusively local Advertising. We have not covered television/radio advertising here because local governments generally do not regulate these media.

State law does not require warnings on Advertisements for Cannabis or Cannabis Products. Similar warnings on Advertisements for tobacco and pharmaceuticals have, however, become well accepted both politically and legally. California law requires that all Cannabis and Cannabis Product labels and inserts include a prescribed warning label (Business & Professions Code section 26120); the recommendation here extends the requirement to Advertisements, and improves the warning label language for clarity and scientific accuracy. Rotating the message improves audience recall. These factual statements are based on findings by the National Academy of Sciences, Engineering and Medicine (NASEM) or the Centers for Disease Control and Prevention (CDC), and focus on those findings for which NASEM concluded there was “substantial evidence.”

Section 5. GENERAL PROVISIONS

- (a) **The Department** shall review and, in its discretion, update the language of the required warnings on packages and on in-store signs as often as needed, and in no event less often than once every three years.

- (b) REMOVAL OF NON-CONFORMING ADVERTISING OR MARKETING. A Person must remove any Advertising Sign, display, or Advertisement if the Department finds that it violates these rules. The Department will notify the Person of the violation and specify a reasonable time-period for the person to remove the relevant Advertising sign, display or Advertisement.
- (c) The provisions of this section apply to Advertising or Marketing that contains the business name of any cultivator, manufacturer or Retailer of any Cannabis or Cannabis Product, or the product, denomination of origin or strain name of any Cannabis or Cannabis Product by any Person.

Section 6. ENFORCEMENT AND PENALTIES

- (a) The remedies provided by this [Article/Chapter] are cumulative and in addition to any other remedies available at law or in equity.
- (b) Violations of this [Article/Chapter] may, in the discretion of the [City Prosecutor/District Attorney], be prosecuted as infractions or misdemeanors when the interests of justice so require.
- (c) Violations of this [Article/Chapter] are subject to a civil action brought by the [City Prosecutor/District Attorney] or the [City Attorney/County Counsel], punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.
- (e) For the purposes of the civil remedies provided in this [Article/Chapter],
 - i) Each day on which Cannabis or a Cannabis Product is advertised in violation of this [Article/Chapter]; or
 - ii) Each individual instance of advertising of Cannabis or Cannabis Product that is in violation of this [Article/Chapter] shall constitute a separate violation of this [Article/Chapter].
- (d) Violations of this [Article/Chapter] are hereby declared to be public nuisances. In addition to other remedies provided by this [Article/Chapter] or by other law, any violation of this [Article/Chapter] may be remedied by a civil action brought by the [City Attorney/County Counsel], including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

SECTION IV. SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The [Board of Supervisors/City Council] of the [City/County] hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

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