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**Support**

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**Getting it Right from the Start**

*A project of the Public Health Institute*

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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

Cannabis, like alcohol and tobacco, is an addictive substance that should not be treated as an ordinary commodity in the marketplace.[[1]](#footnote-1) While decriminalization is a useful tool, an unfettered commercial framework should not be the substitute. Rather, where sale is legalized, cannabis regulation should be grounded in public health protection and a primary goal should be to establish a legal market while at the same time mitigating and preventing harm through careful regulation. This means ensuring that emerging commercial interests do not outweigh the need for healthy environments for youth to flourish. While illegality did not keep youth from using cannabis, the rapid heating of the new cannabis market is leading it to “boil over,” exposing young people to increasingly potent and addictive products and intensive marketing. That overheating is happening today – youth marijuana use has reached its highest levels in 35 years, daily use and use during pregnancy are climbing, and a vaping epidemic has swept the nation.

As a community, we have a collective responsibility to protect children and youth from harm to the developing brain. 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. For example, daily use of cannabis by high school students halves the high school graduation rate;[[2]](#footnote-2) and daily consumption of cannabis with over 10% THC – virtually the entire California market today, is associated with a fivefold increase in odds of developing psychosis, a heartrending burden for families and an expensive and complex burden for communities.[[3]](#footnote-3) Vaping of cannabis by youth 18-22 doubled in a single year between 2017 and 2018, young adult marijuana use is at a 35-year high, and daily marijuana use amongst 8th, 10th and 12th graders has also risen precipitously.[[4]](#footnote-4) In a single year, the vaping epidemic, driven by these vast increases in use and dangerously designed products, hospitalized over 2,700 and killed 68.[[5]](#footnote-5)

This public health-focused Model Cannabis Retail Sales and Marketing Ordinance was first published in 2017, along with model local taxation ordinances, to help local California jurisdictions respond more safely to the legalization of adult-use cannabis approved by voters in 2016, while recognizing the revenue concerns of local government. Those initial recommendations were widely shared with all cities and counties, public health authorities and community organizations.

Local jurisdictions made initial decisions 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, some communities decided to take more time to craft local policy through bans on recreational cannabis sales that were viewed as temporary.

Cities and counties have continued to gradually develop their approaches to cannabis commerce over the past three years. During that time 49% of California local jurisdictions, home to 57% of the population, opted to legalize sale of cannabis in some form, 48% allowing medical sales and 38% recreational.[[6]](#footnote-6) Many of the recommendations of this model were adopted over the last two years in some communities. Of those allowing legal cannabis sales, 63% limited the number of dispensaries to an average of 1 per 19,000 residents, 86% did not allow on-site consumption, 27 jurisdictions required additional health warnings, 14% limited advertising or marketing in some way, however, only 5 created social equity programs in licensing and/or hiring. Contra Costa County banned flavored products for combustion or inhalation, and later banned all cannabis and tobacco vaping products. Mono County, Pasadena and Chula Vista prohibited cannabis-infused beverages or “canna-pops.” Half of jurisdictions allowing cannabis commercial activity instituted taxes, one based on potency (Cathedral City). Jurisdictions also came up with important ideas not included in the first edition. The State of California partially over-rode local control through its regulations, allowing licensed delivery businesses to deliver anywhere in the state, regardless of local bans, a decision that was reversed in 2020 as a result of litigation. Similarly, an attempt by the state to weaken the prohibition on billboards on highways was also rejected by the courts in 2020.

This Ordinance was developed by the***Public Health Institute’s Getting it Right from the Start: Advancing Public Health & Equity in Cannabis Policy***, to help cities and counties reduce negative health impacts of legalization, protect youth, and promote equity. We hope that this model can help bring public health insights to those efforts and will encourage cross-sectoral collaboration with local public health and mental health experts, as well as those from education, law enforcement and other relevant fields.

Current state law and regulation, based on Proposition 64, provide only weak public health protections and in the absence of strong regulation at the local level, state law allows an exponential expansion of the legal cannabis industry. Fortunately, Proposition 64 allows local governments the freedom 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. The project has also made available model laws for a local general tax on cannabis, and for a special tax.[[7]](#footnote-7) 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 retailing and marketing and patterns of product diversification.

The original 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. This 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 completed in 2017 by the National Academy of Sciences to identify key evidence-based risks of cannabis consumption,[[8]](#footnote-8) the peer-reviewed scientific literature, the recent advisory from the U.S. Surgeon General on Marijuana and the developing brain,[[9]](#footnote-9) and 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. In the revised ordinance, we have incorporated best practices that have been identified and adopted from our research reviewing the laws of all 539 California cities and counties, and those in use by other states and internationally. We have removed certain recommendations now reflected in state law or regulation.

Cannabis regulation at the local level has often been led by local officials trained in planning and economic development, with limited experience in public health regulation of a harmful product. 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 establishing 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 presented as options here. Because this is a new and evolving area of law, some of the advertising restrictions or required warnings discussed may be questioned, and, in part as a result of the unique legal situation of cannabis (which remains federally illegal), 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.

You may be told that any protections will only fuel the illegal market. We believe this is not true. The illegal market in our state is driven primarily by vast overproduction, several fold what is consumed in-state, and is primarily exported, although part is consumed in state. Until the incentive for overproduction and illegal export is gone, they are unlikely to disappear. What local governments who wish to legalize can realistically accomplish is to create a safer and legal way for residents who wish to produce or to buy cannabis products to do so legally. The illegal market will eventually diminish, but it won’t be because communities refrain from taxing or adopting appropriate public health protections to cater to industry preferences or profitability.

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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## California Best Practices Map

**Here are some examples of what your neighbors are doing to protect youth, public health and social equity**

**Del Norte County:** Protected youth by increasing the required buffer between retailers and schools to 1,000 ft. (along with 36 other jurisdictions)

**Weed:** Protected the public and workers against secondhand smoke by prohibiting on-site consumption (along with 119 other places such as Merced, Los Angeles City, Pasadena, Sacramento and Mammoth Lakes)

**Sacramento:** Promoted social equity through equity in licensing provisions (as well as Oakland, Los Angeles City, Long Beach and San Francisco)

**Davis:** Protected children and youth by allocating 1% of gross receipts to school-based and First 5 programs

**Contra Costa County:** Protected youth by prohibiting flavored products for combustion or inhalation, and banning vaping products

**Stanislaus County:** Increased the number of sites with a required buffer from retailers (as well as 100 other jurisdictions)

**Mono County:** Protected consumers by not allowing health or therapeutic claims on cannabis products or their marketing (as did

Palm Springs)

**Mammoth Lakes:** Protected youth by prohibiting advertising, packaging and products attractive to youth (along with

Mono County)

**Salinas:** Protected youth by capping the number of licensed retailers at 1 for every ~32,000 people (93 other jurisdictions also capped dispensaries)

**Pasadena:** Protected youth by prohibiting promotions and coupons offering

discounted cannabis (along with 4 others)

**West Hollywood:** Protected consumers by requiring cannabis-

related health and safety training of dispensary staff (Long

Beach, Pasadena, Mt. Shasta, Mammoth Lakes and Mono

County did, too)

**Santa Ana:** Informed consumers by requiring cannabis-related health risks information on signs or in handouts in dispensaries (along with 23 others, including San Francisco, San Jose, Culver City & Richmond)

# Model Ordinance

**AN ORDINANCE OF THE [City/County] REQUIRING A CONDITIONAL USE PERMIT AND OPERATING PERMIT FOR 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 adult-use 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, [City/County] has the opportunity to be proactive and make decisions that will mitigate this threat and reduce exposure of young people to the products or to the marketing of these products, and improve compliance among cannabis retailers with laws prohibiting the sale or marketing of cannabis products to minors;

WHEREAS, the United States Surgeon General has issued an advisory to alert the public to the known and potential harms to developing brains, posed by the increasing availability of highly potent marijuana in multiple, concentrated forms;[[10]](#footnote-10) and the reasons for concerns with the increasing use of marijuana by pregnant women,[[11]](#footnote-11) adolescents and youth;[[12]](#footnote-12) 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;[[13]](#footnote-13) and

WHEREAS, 22.2 million Americans ages 12 and older reported using cannabis in the past 30 days, 43.5 million reported use in the past year,[[14]](#footnote-14) and 90 percent of adult cannabis users in the United States said their primary use was recreational; and between 2002 and 2019, the percentage of past-month cannabis users in the U.S. population ages 12 and older increased steadily from 6.2 percent to 10.8 percent;[[15]](#footnote-15) [[16]](#footnote-16) and

WHEREAS, the rates of past year cannabis use by Californian adolescents ages 12-17 increased significantly from 14% to 16% just between 2017-18 and 2018-19.[[17]](#footnote-17)

WHEREAS, research has found cannabis use during adolescence, especially of products high in tetrahydrocannabinol (THC), or heavy use, is associated with suicide attempt,[[18]](#footnote-18) high school drop-out,[[19]](#footnote-19) higher likelihood of use of other illicit drugs and experiencing mental health impairment;[[20]](#footnote-20) 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,[[21]](#footnote-21) and just 21.1% among 12–17-year-olds in California in 2018/19;[[22]](#footnote-22) and

WHEREAS, reported past year vaping of marijuana by youth age 18-22 doubled between 2017 and 2018, with 20.8 percent of 12th graders, and 19.4% of 10th graders, reporting past year marijuana vaping;[[23]](#footnote-23) and

WHEREAS, in 2018 national marijuana use among full-time college students reached a 35-year high;[[24]](#footnote-24) and

WHEREAS, nationally, there have been significant increases in cannabis use among those age 12 and older, but especially among those age 18-22,[[25]](#footnote-25) and cannabis use rates by youth age 18-22 are higher in states with legal adult-use cannabis than in non-legal states;[[26]](#footnote-26) and

WHEREAS use during pregnancy has risen substantially between 2000 and 2014, increasing the risk of low birth weight;[[27]](#footnote-27) and

WHEREAS, in 2015-2017 surveys, over 30 percent of 11th grade students in California stated they had ever used cannabis, a number far exceeding that for tobacco use;[[28]](#footnote-28) and

WHEREAS, as of February 2020, 50 states, the District of Columbia, and two U.S. territories reported 2,700 cases, and 68 deaths, caused by e-cigarette or vaping associated lung injury (EVALI),[[29]](#footnote-29) demonstrating the hazards of extensive product diversification without adequate assessment of safety; 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 these increases in use and the fact that:

[Insert local use data, which can be found at [kidsdata.org](https://www.kidsdata.org/?site=full), 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 and school districts can be found at [kidsdata.org](https://www.kidsdata.org/?site=full) under the topic “Emotional & Behavioral Health,” and the subtopic “Youth, Alcohol, Tobacco & Other Drug Use.” Your local school district may have additional information. |

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.[[30]](#footnote-30) The NASEM study found “substantial evidence”[[31]](#footnote-31) to support the following conclusions:

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

The NASEM study found less conclusive, but still worrisome, emerging evidence 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 and other research lead us to conclude that legalization of adult-use 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 in life; and

WHEREAS, California voters have recognized the danger of cannabis use among youth by prohibiting the sale of cannabis to those under age 21 (Cal. Bus. & Prof. Code § 26140(a)(1)-(3)) and 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 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, many years of alcohol and tobacco retailing, which are likely to have parallels in cannabis retailing, have 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;[[32]](#footnote-32) and 15.9% of California alcohol retailers were caught unlawfully selling to minors in 2007;[[33]](#footnote-33)
* Among minors nationwide who smoked cigarettes in 2011, 14% percent had obtained their own cigarettes by buying them in a store or gas station;[[34]](#footnote-34) and 14.5% of minors nationwide who used alcohol in the past 30 days in 2012 had obtained the alcohol themselves in an alcohol retail outlet;[[35]](#footnote-35) and

WHEREAS, research in San Mateo County found that only 3 of 7 cannabis delivery companies required age verification before online browsing or upload a scan of an ID before purchasing, and only 3 of five companies verified age and identification on delivery;[[36]](#footnote-36) 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;[[37]](#footnote-37) and

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;[[38]](#footnote-38) a California study found that the density of tobacco retailers near schools was positively associated with the prevalence of students reporting experimental smoking;[[39]](#footnote-39) 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;[[40]](#footnote-40) and

WHEREAS, home delivery of alcohol products has been associated with increased rates of purchase by minors;[[41]](#footnote-41) [[42]](#footnote-42) and

WHEREAS, unintentional exposure to marijuana by children under age 10 resulting in seeking care at poison centers in Colorado increased by 34% between 2009 and 2016, including increases from the two years before to the two years after legalization;[[43]](#footnote-43)and

WHEREAS, children and young people are particularly influenced by cues suggesting tobacco smoking is acceptable, which holds relevance for cannabis smoking;[[44]](#footnote-44) and

WHEREAS, young people are much more likely to use candy – and fruit-flavored tobacco[[45]](#footnote-45) [[46]](#footnote-46) and alcohol products;[[47]](#footnote-47) in California, youth were estimated to consume 47% of the alcopops (sweetened, fruit-flavored alcoholic beverages) sold in the state in 2007,[[48]](#footnote-48) and nationwide, minors are twice as likely to consume alcopops as adults;[[49]](#footnote-49) 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;[[50]](#footnote-50) [[51]](#footnote-51) 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,[[52]](#footnote-52) and in 2020 FDA guidance prioritized enforcement against flavored e-cigarettes largely because these flavored products were marketed to youth and young adults,[[53]](#footnote-53) and younger smokers were more likely to have tried these products than older smokers;[[54]](#footnote-54) 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;[[55]](#footnote-55) and similar practices are expected for cannabis; and

WHEREAS, the State of California prohibited flavored tobacco products in August of 2020 because of this clear evidence that most youth initiation was through flavored products.[[56]](#footnote-56)

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,[[57]](#footnote-57) [[58]](#footnote-58) including cotton candy, lollipops, gummy bears, brownies, chocolate chip cookies, “pot” tarts, Rice KrispiesTM bars, and bubble gum, apple, cherry, chocolate, grape, peach, strawberry, and vanilla flavors; and

WHEREAS, encouraging excessive growth and diversification of the legal edibles market, especially of products attractive to youth, may outweigh any benefits; and

WHEREAS the potency of cannabis and cannabis products has increased dramatically over the past decades from 4% tetrahydrocannabinol (THC) to 15-30+% THC in flower and up to 90% or more in extracted products,[[59]](#footnote-59) [[60]](#footnote-60) and growing evidence clearly supports greater risk from these products; and

WHEREAS, research in the state of Washington shows the market share of strains of cannabis flower in excess of 15% THC has grown to cover 92.5 percent of flower sales, and cannabis extracts for inhalation in excess of 60 percent THC are common;[[61]](#footnote-61) and

WHEREAS daily use of cannabis products over 10% THC has been associated with fivefold higher odds of developing psychosis,[[62]](#footnote-62) and such daily use has greatly increased in the past decade amongst youth;[[63]](#footnote-63) and

WHEREAS, the U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students dramatically increased from 2017 to 2018, up 78% among high schoolers and 48% among middle schoolers;[[64]](#footnote-64) 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 and other flavored products;[[65]](#footnote-65) and similar products are expanding in the cannabis industry; and

WHEREAS, low prices are known to facilitate use of tobacco by minors[[66]](#footnote-66) and while prices of cannabis should not be so high as to promote illegal sales, they should also not be artificially lowered through discounting or depressed by overproduction; and

WHEREAS, research demonstrates that youth are particularly price sensitive and responsive to changes in price,[[67]](#footnote-67) and in the case of tobacco, when cigarettes cost more, fewer adolescents start smoking,[[68]](#footnote-68) and similar findings are expected for cannabis; and

WHEREAS, while the sale of cannabis for adult use has been legalized in California, it continues to be a Schedule I prohibited substance federally 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;[[69]](#footnote-69) [[70]](#footnote-70) [[71]](#footnote-71) and

NOW THEREFORE, it is the intent of the [City Council/Board of Supervisors], in enacting this ordinance, to ensure responsible cannabis retailing, allowing legal sale and access, without promoting increases in use, 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 A. 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:

1. **"Advertise"** means to publish or disseminate an Advertisement.
2. **“Advertisement"** means any written or verbal statement, illustration, or depiction, which a reasonable person would understand as intended 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 including, without limitation, an individual carrying a display; public transit card, other periodical, literature or publication; or in any similar media; except that ”advertisement” shall not include:
   1. 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 [Article/Chapter].
   2. 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.
3. **“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, manufactured, or distributed, or sold on the same lot or parcel.
4. **“Arm’s Length Transaction”** means a sale in good faith and for valuable consideration that reflects fair market value. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the requirements of this [Article/Chapter] is not an Arm’s Length Transaction.
5. **“Attractive to Youth”** refers to products, packaging or labeling or advertising that a reasonable person would understand to encourage persons under age 21 to initiate Cannabis consumption or otherwise to consume (accidentally or purposely) cannabis or Cannabis Products. it includes, without limitation:
   1. Products that (1) resemble a non-Cannabis consumer product, including, but without limitation, candy or baked goods that are typically consumed by, or marketed to, children or youth; or (2) occur in the shape of a cartoon, human or any other animate creature including, without limitation, an insect, toy, fruit, vehicle or robot.
   2. 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, without limitation, an insect, toy, fruit, vehicle, or robot, images of a candy or a baked good or other food 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, without limitation, an insect, toy, fruit, vehicle or robot, (4) contains any images, characters, or phrases that closely resemble images, characters, or phrases commonly 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.
   3. 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, without limitation, an insect, toy, fruit, vehicle or robot, (3) depicts or describes candy, baked goods, or other food typically marketed to youth; (4) uses actors or human characters who appear to be, or are, under age 21; or (5) or includes celebrities a reasonable person would understand to who appeal to youth.

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| **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 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.[[72]](#footnote-72) - [[73]](#footnote-73) [[74]](#footnote-74) [[75]](#footnote-75) [[76]](#footnote-76) [[77]](#footnote-77) [[78]](#footnote-78) 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.[[79]](#footnote-79) 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 some of this language. Oregon officials noted the value of specifically defining the term “attractive to youth” as well as having a process to assess products.  California law does not now propose a product-by-product review for attractiveness to youth nor does it clearly define the term, although current state regulations prohibit “any cannabis product in the shape of a human being, either realistic or caricature, animal, insect or fruit,” (CDPH §40300(m)) 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.’” (CDPH §41410(b)(1)-(4)). While state regulation has adopted some of this language they have not, to our knowledge, been consistently enforced. Incorporating such language facilitates the jurisdiction’s ability to protect against products attractive to youth.  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. For examples of California jurisdictions that have enacted ordinances with strong prohibitions on products or advertising “attractive to youth,” *see* Mono County Code Ch. 5.60.030(9) and Pasadena City Code Ch 8.10.020(D). |

1. **“Cannabis”** means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, Cannabis ruderalis, or any other strain or varietal of the genus Cannabis that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, 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.
2. **“Cannabis Accessories”** has the same meaning as in Section 11018.2 of the Health and Safety Code, as it may be amended from time to time. That section presently provides as follows: means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body.
3. **“Cannabis Concentrate”** has the same meaning as in Cal Code Regs. tit 17. §40100(i), as it may be amended from time to time. That sections presently provides as follows: “Cannabis Concentrate is cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. For purposes of this chapter, “cannabis concentrate” includes, but is not limited to, the separated resinous trichomes of cannabis, tinctures, capsules, suppositories, extracts, vape cartridges, inhaled products (e.g., dab, shatter, and wax), and tablets as defined in subsection (rr).”
4. **“Cannabis Price Floor”** means the minimum price, including all applicable taxes, for which a retail dealer may sell one ounce of flower Cannabis, or 5 mg of THC in other Cannabis Products may be sold.
5. **“Cannabis Product”** has the same meaning as in Section 11018.1 of the Health and Safety Code, as it may be amended from time to time. That section presently provides as follows: “cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.”
6. **“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 and/or medical use. “Cannabis Retailing” shall mean the doing of any of these things.
7. **“Cartoon”** means any animation, drawing or other depiction of an object, person, animal, creature or similar caricature that satisfies any of the following criteria:
   1. The use of comically exaggerated features;
   2. The attribution of human characteristics to animals, plants or other objects, or a similar use of anthropomorphic technique; or
   3. The attribution of unnatural or extra-human abilities to a character or person, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds or transformation.
8. **“Characterizing Flavor”** means addition of perceptible taste or aroma post-harvest or use of a brand or product name, language or image suggestive of a particular taste or aroma imparted by Cannabis or a Cannabis Product, other than the taste or aroma of cannabis, including, without limitation, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, nut or spice. Cannabis or a cannabis product is presumed to have a characterizing flavor if a cannabis retailer, manufacturer, manufacturer’s agent or employee has:
   1. made a statement or claim directed to consumers or the public, including, but not limited to, text, color, images, or all, on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the Cannabis, or Cannabis Product or an emission or by product thereof has a characterizing flavor or smells or tastes different from Cannabis; or
   2. taken action that would be reasonably expected to result in consumers receiving the message that the Cannabis or Cannabis Product, or an emission or byproduct thereof, smells or tastes different from Cannabis.

[*For example, while a limonene terpene may be naturally present in cannabis, addition of exogenous limonene or other added ingredient to produce a distinguishable citrus flavor or labeling the product as “lemon” or displaying images suggestive of a lemon would be considered characterizing flavors.*]

1. **“Children or Youth”** mean individuals under age 21.
2. **“Constituent”** means any ingredient, substance, chemical, or compound, other than Cannabis or water, that is added by a Manufacturer to a Cannabis Product during the processing, manufacture, or packing of the Cannabis Product.
3. **“Day Care Center”** has the same meaning as in Section 1596.76 of the Health and Safety Code, as it may be amended from time to time. That section presently provides as follows: “a child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age childcare centers, and includes childcare centers licensed pursuant to Section 1596.951.”
4. **“Delivery to the Consumer”** means the commercial transfer of Cannabis or Cannabis Products to a customer at a location other than that permitted for the operations of a Cannabis Retailer. “Delivery to the Consumer” also includes, without limitation, the use by a retailer of any technology platform, whether belonging to the licensee or managed by a third party, for the purpose of a commercial transfer at a non-commercial location other than that permitted for the operations of a Cannabis Retailer.
5. **“Department”** means [City/County] Department of \_\_\_\_\_\_\_\_\_\_\_\_\_ and any agency or Person designated by the Department to enforce or administer this [Article/Chapter].

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| **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, Planning Commission, or Public Health Department, the city or county health department may be the most appropriate agency to monitor compliance with the ordinance requirements, given their public health focus. The primary enforcing agency may designate additional agencies to assist in administering and/or enforcing the ordinance. |

1. **“Distinguishable”** means perceivable by an ordinary consumer by either the sense of smell or taste.
2. **“Dried Flower”** has the same definition as in CDFA Regulations section 8000(k) as it may be amended from time to time. That section currently defines “dried flower” as “all dead cannabis that has been harvested, dried, cured or otherwise processed, excluding leaves and stems.”
3. **“Edible Cannabis Product”** has the same definition in CDPH Regulations section 40100(q) as it may be amended from time to time. That section currently defines edible cannabis product as “a cannabis product intended to be used orally, in whole or in part, for human consumption. For purposes of this chapter, “edible cannabis product” includes cannabis products that dissolve or disintegrate in the mouth, but does not include any product otherwise defined as “cannabis concentrate.”
4. **“Equity Applicant”** means an individual who has at least 51% ownership and meets three of the four following criteria:
   1. Is a resident of [City/County] who has an annual income below 200% of the Federal Poverty Level;
   2. Who has lived for at least five of the last 10 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;
   3. Has been arrested or convicted of a cannabis or drug related offense that is eligible for expungement;
   4. Has a net worth under $250,000.

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| **COMMENT:** There are a number of indices that can be used to define Equity Applicant including, without limitation, high school graduation rates, homelessness, and access to health care. |

1. **“Equity Hire”** has the same definition as Equity Applicant without the ownership requirements.
2. **“Flavored Cannabis or Cannabis Product”** means any Cannabis or Cannabis Product that contains one or more Constituents or characteristics that impart a Characterizing Flavor.
3. **“Health-Related Statement"** means any statement related to health and includes without limitation 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.
4. **“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.
5. **“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 point of sale, including all applicable taxes.
6. **“Manufacturer”** is a holder of the manufacture license issued pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act.
7. **“Marijuana”** has the same meaning as the term “Cannabis.”
8. **“Marketing”** means any act or process of promoting or selling Cannabis or Cannabis Products, including, without limitation, Advertisements, sponsorship of events, offers such as tickets on events and/or branded merchandise.
9. **“Opaque Exit Package”** means an opaque bag, box or similar container provided by a Cannabis Retailer, as distinct from the original Packaging from a Manufacturer, in which purchased Cannabis or Cannabis Products are placed before a customer departs the point of sale.
10. **“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 holding a permit, unless the interest is solely a security, lien, or encumbrance;
    2. The chief executive officer of a nonprofit or other entity applying for a permit or holding a permit;
    3. A member of the board of directors of such a nonprofit; or
    4. An individual who does or will participate in the direction, control, or management of the person applying for a permit.

No licensed physician or other licensed medical prescriber may be an “Owner.”

1. **“Package” or “Packaging”** means any container or wrapper that may be used for enclosing or containing any Cannabis Products. “Package” does not include any shipping container or outer wrapping used solely for the transportation of Cannabis or Cannabis Products in bulk to another licensee or licensed premises.
2. **“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 collectively, and includes the plural as well as the singular.
3. **“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 also sells other retail goods.
4. **“Premises”** means the designated structure(s) (or separately demised portion of a structure) and land specified in the application that is owned, leased, or otherwise controlled by the applicant or permit holder and in or one which commercial Cannabis activity is or will be conducted. A Premises is be a contiguous area and may be used for commercial Cannabis activity by only one permit holder.
5. **“Prescriber”** shall have the same meaning as in Cal. Bus. & Prof. Code §4170(c), as it may be amended from time to time. That section presently provides as follows: “Prescriber,” as used in this section, means a person, who holds a physician’s and surgeon’s certificate, a license to practice optometry, a license to practice naturopathic medicine, a license to practice dentistry, a license to practice veterinary medicine, or a certificate to practice podiatry, and who is duly registered by the Medical Board of California, the Osteopathic Medical Board of California, the State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Veterinary Medical Board, or the California Board of Podiatric Medicine.”
6. **“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, allowing one to receive an article, product, service, or accommodation (except for the compassionate use exceptions) without charge or at a discounted price.
7. **“Purchaser”** means a customer who engages in a transaction with a permit holder to obtain Cannabis or Cannabis Products.
8. **“Self-Service Display”** means the open display or storage of Cannabis or Cannabis Products or Accessories in a manner that is accessible to customers other than with the assistance of the Cannabis Retailer or an employee of the Cannabis Retailer. A vending machine is a form of Self-Service Display.
9. **“Sale”** refers to any transaction by which, Cannabis is or Cannabis Products are transferred for any consideration, and includes the Delivery to the Consumer of Cannabis or Cannabis Products, but does not include the return of Cannabis or Cannabis Products to the permit holder from whom the Cannabis or Cannabis Product was purchased. “Sell” references offering to, or engaging in, a sale.
10. **“Target Area Contract Preference Act (TACPA)”** refers to the act found at California Government Code, Title I, Division 5, Chapter 10.5, Section 4530 *et seq*.
11. **“Tincture”** means a Cannabis-infused solution derived either directly from the Cannabis plant or from a processed Cannabis extract that is combined with 50 percent or greater food grade ethyl alcohol, glycerin, or vegetable oils that: (i) are distributed in a dropper bottle of 4 ounces or less; and (ii) contain no additional non-Cannabis ingredients except potable water.
12. **“Youth Center”** has the same meaning as in Section 11353.1(e)(2) of the Health and Safety Code, as it may be amended from time to time. That section presently provides as follows: “Youth Center means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.”

### Section B. PERMITTING STANDARDS

1. **Conditional Use Permit Required**. A conditional use permit is required pursuant to this [Article/Chapter] for each location at which Cannabis Retailing of [medical/adult use/both medical and adult use] Cannabis or Cannabis Products is to occur in [City/County]. Cannabis Retailing other than in compliance with a valid conditional use permit under this [Article/Chapter] is hereby declared to be a nuisance subject to abatement in any manner permitted by law.
2. **OPTION: Cannabis Retailer Operating Permit**. In addition to a Conditional Use Permit, a Cannabis Retailer operating permit shall be required for all Cannabis Retailers operating within [City/County]. The form and content of the Cannabis Retailer operating permit shall be specified by the [City/County] and at a minimum must contain the name and address of each Cannabis Retailer owner and explanation of the legal form of Cannabis Retailer ownership.

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| **COMMENT:** This is the primary operative section of the ordinance. It requires a conditional use permit (CUP) and an operating permit for each retail location. The CUP application involves a review process, which should require public hearings. These hearings provide the applicant, public officials, and neighbors the opportunity to present evidence whether the CUP application should be granted and, if so, on what conditions. In this particular case we recommend that CUP not run with the land (see section on transferability). This must be expressly stated in your ordinance, because a CUP is granted as to a property and typically runs with title to or control of the land. Alternatively, a city or county could choose to issue a business license or Operating permit for Cannabis Retailing. As with the CUP, we strongly recommend that a public hearing be a required part of the permitting process, regardless of the type of 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 and opportunity for public input. At least while this industry is new, it makes sense to regulate both the location of commercial cannabis activity and the people who conduct it. Thus, this ordinance proposes both a CUP for each location and a license for each Owner. However, if the public monopoly approach is adopted the retailer operating permit would be replaced by a franchise agreement (see Permitting Priority, Sec II(C).  Note that whatever approaches the city or county takes to regulate adult use cannabis businesses could also be applied to medical cannabis retailers to create a uniform approach. However, 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 more information on “deemed approved” ordinances as to 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 term “permits” as used within the remaining provisions refers to both the CUP and the Operating Permit, though a local jurisdiction could choose to forgo the Cannabis Retailer Operating Permit.

### Section C. SELECTION OF PERMITTEES

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| The purpose of this subsection is to allow legal Cannabis sales while moderating the drive to increase profits by constantly expanding consumption. Our most highly recommended approach is modeled after the alcohol monopoly experience but adapted to use a non-profit rather than a public entity because of constraints due to continuing federal illegality. OPTION ONE would be to allow only not-for-profit businesses. OPTION TWO: If for profit businesses are allowed, our preferred option is to give an exclusive period to equity applicants. OPTION THREE provides priority for equity applicants while allowing non-equity applicants to apply at the same time. Whatever approach is used, it should be required that job opportunities prioritize hiring from census tracts, zip codes, or police beats hardest hit by the war on drugs. OPTION FOUR would allow for a Delivery only model. |

1. **Public Monopoly Via Nonprofit (RECOMMENDED APPROACH)**. [City/County] shall grant up to one franchise for Cannabis Retailing per up to nineteen thousand (19,000) residents of the [City/County] to a single nonprofit cooperative or other not for profit entity. Franchisee shall be subject to rules for retailing, marketing, pricing, revenue distribution, and advertising established pursuant to the franchise agreement or otherwise by [City/County]. [City/County] shall select franchisee following a request for proposals. Franchisee shall pay a [monthly, quarterly, yearly] franchise fee provided by the franchise agreement that is reasonably related to the value of the franchise rights and the [City/County] shall use the proceeds of the franchise fee to fund [City/County] regulation but at least [70%] of the proceeds must fund public health initiatives including, without limitation, programs to support healthy youth development, prevent substance abuse and addiction, reduce inequities in health, and mitigate the negative social impacts of incarceration from the war on drugs. Franchisee is not subject to any business license fee or tax by virtue of their non-profit status.
2. **Alternative Option One: Non-Profit Only Model**. [City/County] will only issue retail Cannabis licenses to non-profit organizations.
3. **Alternative Option Two: Equity Applicants First**. Only Equity Applicants will be eligible for permits for one year from the date on which applications are open for acceptance. Non-equity applicants will be allowed to apply for and receive the remaining permits after the one-year period.
4. **Alternative Option Three. Equity Applicant Priority**. Equity Applicants will be given priority in permitting. The greater the percentage of Ownership from Equity Applicants, the higher the priority of the application. At least one half of all Cannabis Retailer operating permits and conditional use permits shall be issued to Equity Applicants unless no eligible Equity Applicants apply within the first two years.
5. **Alternative Option Four: Delivery Only Model**. [can be combined with any of the above] Cannabis Retailer operating permits shall only be issued to non-storefront retailers (state license type 9).

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| **COMMENT**: Allowing Delivery only creates a higher risk of Delivery to youth; however, it may also reduce the potential negative impacts of having a storefront retailer in the community. One hundred and sixteen (116) California jurisdictions opted for a Delivery only model for Cannabis Retailing as of January 2019. While this may increase the risk of youth access, in exchange it reduces the visible physical presence of Cannabis dispensaries in the community. It is an option for a jurisdiction that wishes to legalize without allowing visible stores in the community. This can also be accomplished by allowing delivery from outside, but then you would have less leverage to address any problems with the business. |

1. **Partial 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 Retailers operating permit not relating to the premises before securing a location. Equity Applicants may secure compliant premises within three months of issuance of a provisional approval, and no sales may occur until the Department issues the Conditional Use Permit after review and approval of the location. If a provisionally permitted Equity Applicant does not timely secure a location compliant with this [Article/Chapter], the provisional approval shall expire.
2. A history of a drug-related conviction other than a violent felony or convictions involving fraud or deceit shall not disqualify an applicant.

### Section D. APPLICATION PROCEDURE

1. [City/County] shall issue an announcement of a competitive opportunity for nonprofits to obtain a Cannabis franchise.
2. **OPTION [for Use with Other Permit Priority Options]**: [City/County] shall issue an announcement of a competitive opportunity to obtain a Cannabis Retailing permit within 6 months of the approval of this ordinance. The number of available permits shall not exceed 1:15,000 inhabitants and they may be offered at one time or over time.

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| **COMMENT**: Many jurisdictions have found it useful to use a Request for Proposal (RFP) or other competitive process to identify the best candidates for retailing permits, whether within an equity licensing process of not. More specific criteria and scoring procedures would need to be developed and some jurisdictions have worked with community members or third parties to evaluate applications. |

1. Application for locally required permits shall be submitted in the name of, and signed by, an Owner or authorized agent of each Owner.
2. Each Owner is responsible to be informed regarding all laws applicable to Cannabis Retailing, including those laws affecting the issuance of Cannabis Retailer’s permits. 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 Cannabis sales. A permit issued in error, in violation of this [Article/Chapter], contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant to SECTION II. Section N 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 law.
3. The application for Conditional Use Permit and for Cannabis Retailer’s operating permit shall be unified in a single document.
4. All applications shall be submitted on a form supplied by the Department and shall state:
   1. The name, address, and telephone number of each Owner.
   2. The business name, address, and telephone number of the single fixed location for which a permit is sought.
   3. A single name and mailing address to receive all communications and notices required by, authorized by, or convenient to the enforcement of this [Article/Chapter]. If no such address is supplied, the Department may provide notice at the business address specified in subsection (b) above.
   4. Whether or not any Owner or any agent of the Owner has, within the previous five years, admitted violating, or been found to have violated, California or local Cannabis Retailing laws of any state or local government or this [Article/Chapter] and, if so, the dates and locations of all such violations and such other information about those violations as the Department may require.

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| **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 when past violations are discovered pursuant to SECTION II. Section N below. |

* 1. A clear description of the proposed approach and commitments to ensure equity in hiring.
  2. Whether any Owner has previously held a Cannabis Retailer operating permit or other Cannabis business license anywhere, and the type, location and period of said permit(s)/license(s).
  3. Such other information as the Department deems necessary for the administration or enforcement of this [Article/Chapter].

1. Referral to Other Departments or Agencies. The Department may refer the application to other departments or agencies to determine whether the proposed location complies with the [City/County] building, health, zoning, and fire ordinances or other applicable ordinances or laws and this [Article/Chapter].
2. Public Hearing. Notice and public hearing requirements shall be as set forth in Section \_\_\_\_\_\_\_\_\_\_ of the [City/County] Zoning Ordinance pertaining to conditional use permits.

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| **COMMENT**: This requirement authorizes administrative and enforcement staff to establish application forms that require information to aid 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.),* subject to the laws’ exemptions. |

1. **Action on Permit Application.** The Department may approve, but is not obligated to 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]:
   1. The Cannabis Retailing location identified in the application complies with this [Article/Chapter];
   2. The permit would not exceed the allowable density limits for Cannabis Retailers, nor the number of licenses covered by the call for proposals;
   3. The Cannabis Retailing identified in the application complies with this [Article/Chapter] and other applicable law;
   4. No Owner identified in the application is one to whom this [Article/Chapter], prohibits the Department to issue a permit;
   5. Neither the applicant, nor any of its officers, directors, Owners, or managers, is a licensed physician or other licensed prescriber making patient recommendations for medical Cannabis use;
   6. The proposed Cannabis Retailing not create or aggravate existing problems on or near the proposed location, such as loitering, criminal activity, health equity, the Cannabis sales to minors, excessive noise, or littering;
   7. The proposed establishment will not detrimentally affect its neighborhood considering its distance from residences, Youth-Centers, or other Cannabis Retailers; and
   8. The proposed establishment will otherwise be compatible with existing and potential uses in its vicinity.

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| **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. These can be instead of, or in addition to, those required for conditional use permits generally under the local government’s zoning ordinance.  Although a permit cannot be issued in violation of another provision of the city or county code, it is helpful to list in Section D other ordinances staff should consider. |

### Section E. STANDARDS OF OPERATING

1. **Lawful Business Operation**. In the course of Cannabis Retailing or in the operation of the business or maintenance of a 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.

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| **COMMENT**: This provision makes regulating the business an effective tool for comprehensively enforcing cannabis laws. A city or county can suspend or revoke a CUP to require 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 suspending or revoking a 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. |

1. **Display of Permit(s)**.Each Cannabis Retailer shall prominently display its permit(s) in a publicly visible location at the permitted location.
2. **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 recipient’s identification to confirm the recipient is 21 years of age or older, using electronic ID scanning methods, or 18 years or older in the case of a medical Cannabis patient.
3. **Acknowledgement of Legal Age**. All first-time visitors must affirm in writing that they are aware that providing adult-use Cannabis to persons under age 21 is illegal and pledging not to provide purchased Cannabis or Cannabis Products to persons under age 21 (unless the person to whom the Cannabis or Cannabis Product is transferred holds a medical Cannabis prescription for the Cannabis or Cannabis Product transferred).
4. **Minimum Age for Persons Selling Cannabis**. No Person less than 21 years of age may engage in Cannabis Retailing.
5. **Equity in Hiring**. Cannabis Businesses with non-Owner employees shall prioritize Equity Hires, including individuals from low-income communities, communities with high rates of drug related incarceration, and individuals with a past non-violent drug related arrests and/or convictions.
6. **No Prescribers**. A Cannabis Retailer shall not permit a physician or other licensed Prescriber to do any of the following:
   1. Evaluate existing or potential medicinal or adult-use Cannabis users on its premises by any means, or permit a licensed Prescriber to provide a prescription or recommendation on its premises, including, without limitation, a Prescriber who provides evaluations or recommendations in-person from the permittee’s site or to that site via the internet, fax, electronic, or by any other means.
   2. Enter into an agreement with, employ, provide, or offer to provide any form of remuneration or incentive to, a licensed Prescriber.
   3. Advertise or market services for a licensed Prescriber of Cannabis or Cannabis Products.

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| **COMMENT**: Pursuant to California Bus. & Prof. Code §500, *et seq*, physicians and other health care practitioners are already prohibited from engaging in certain activities that could pose a conflict of interest. For instance, pursuant to Cal. B&P § 650(a), a health care practitioner may not “accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person.” Additional conflict of interest provisions, including limitations on advertising, are found within California Bus. & Prof. Code §500, *et seq*. This section or the model ordinance extends these prohibitions on conflicts of interest to Cannabis Retailers as well. |

1. **Firearms Not Allowed**. Weapons and firearms are prohibited on the premises of Cannabis Retailer. This provision does not apply to public officials engaged in official duty or uniformed security personnel hired or contracted by the Cannabis Retailer.
2. **Mandatory Responsible Cannabis Retailing Education**. All employees involved in sales of Cannabis or Cannabis Products or management of stores or inventory must undergo at least 8 hours of training, at least four of which must be on health effects and safer use, using a curriculum approved by the Department. The training shall include at least four hours on health effects and safer use, including without limitation hazards associated with Cannabis use, hazards of use during pregnancy and lactation, motor vehicle use, cognitive effects and mental illness; safer and appropriate dosages, especially for initial use and for edibles; delayed effects of Edible Cannabis Products; hazards of early initiation and of intensive use by youth; storage to protect children; age-verification procedures; referring to licensed healthcare providers for any medical advice; and smoke-free air. Separate trainings should be developed for management and salesclerk roles. The Department shall create and/or approve curriculum within twelve (12) months of the date of this ordinance. All managers, and dispensary employees who directly communicate with consumers, should be trained within six (6) months of the availability of an approved curriculum. The Department may create requirements for continuing education and/or ongoing training.

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| **COMMENT**: If the jurisdiction allows Delivery to the Consumer, or the current state regulations allowing Delivery to all jurisdictions is upheld by the courts, then subsections (E)(4), (5), (6) and (9) should also apply to employees involved in Delivery to the Consumer. In regard to training, it may take time and oversight to ensure the quality of these programs. |

1. **Hours of Operation**. It is unlawful for any Person operating a Cannabis Retailing location under this [Article/Chapter] to permit any breach of peace or any disturbance of public order or decorum therein 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 6 a.m.

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| **COMMENT**: State regulations (cite) set the hours from 6am to 10pm. [City/County] may choose to make more narrow hours of operation but may not expand hours beyond the state regulations. |

1. **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 the entrance to or exit from a Cannabis Retailer’s premises. Cannabis Retailers shall post a sign near such entrances and exits providing notice of this policy.

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| **COMMENT**: Prohibiting on-site consumption helps to a) respect the occupational safety and health rights of employees not to be exposed to secondhand smoke and b) helps to prevent the social “normalization” or acceptability of Cannabis consumption, and in particular smoked or vaped products. Making consumption of tobacco less socially acceptable through smoke-free air has been a major public health victory of the 21st century, and a profound lesson from tobacco control. We recommend prohibition of on-site consumption. The absence of “smoke-filled cannabis bars” helps combat youth perception that Cannabis consumption is a community norm, a perception which significantly influences their likelihood of initiating use.[[80]](#footnote-80) Additionally, exposure to Cannabis smoke – which contains many of the same carcinogens and chemicals found in tobacco smoke – may be hazardous to health. This exposure risk includes exposure to emissions from allegedly “safer” products like vapes and dabs.  In a 2018 study,[[81]](#footnote-81) UCSF researchers measured the concentrations of airborne fine particles (PM2.5) and cannabinoids at an indoor Cannabis event where dabbing and vaporizing were the sole cause of Cannabis emissions. Average particulate matter ranged between 200-600 micrograms per m3 and peak concentrations were over 1,600 micrograms per m3 – concentrations this high are seen in extreme air pollution events like wildfires.  However, given the restrictions in state and local law, there may be few places available for some adults to legally consume Cannabis Products. Local governments should be careful not to create new waves of incarceration for consuming cannabis and can work with landlords of multi-unit housing to establish designated outdoor smoking areas. While not our recommendation, under state law local governments can allow on-site consumption (whether smoking and/or ingestion) on the premises of certain Cannabis Retailers. If so, such on-site consumption must meet minimum state requirements, including: (1) access to consumption area must be restricted to persons 21 years of age and older; (2) Cannabis consumption must not be 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(g)(3)). Consumption can also be limited to products which are not smoked or vaped.  The provision disallowing entertainment disallows marijuana clubs and seeks to reduce social “normalization” of Cannabis consumption while permitting its sale. |

1. **No On-Site Consumption of Alcohol**. Alcoholic beverages must not be consumed on the premises of a Cannabis Retailer. Cannabis Retailers may prohibit patrons from entering or remaining on the premises if they are visibly in possession of an open container of alcohol and/or are consuming alcoholic beverages and/or are under the noticeable influence of an intoxicating substance.
2. **No On-Site Entertainment**. No live music, shows, dancing, video gaming or billiards or other entertainment other than recorded background music should occur at a Cannabis Retailer’s premises. No Cannabis Retailer may use outdoor sound systems or speakers to play music or other entertainment outside the premises.
3. **On-Site Sales**. Unless State law requires the [City/County] to allow Delivery to the Consumer, all sales and dispensing of Cannabis and Cannabis Products shall be conducted in-person on the Premises of the Cannabis Retailer. Cannabis Retailing by means of Internet ordering or telephone ordering in conjunction with Delivery to the Consumer is prohibited. Delivery within the [City/County] from retailers licensed outside the [City/County] is not permitted unless State law or regulation requires otherwise. 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.

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| **COMMENT**: Prohibiting Delivery to the Consumer aids in enforcement by ensuring that communities can conduct regular inspections at a Cannabis Retailer’s place of business. Furthermore, home Delivery has been associated with higher rates of youth access to alcohol.[[82]](#footnote-82) Section 843 of the Federal Controlled Substances Act (21 USC § 843(b)) prohibits Internet sale of Schedule I substances.  Although Prop 64 promised to retain local control so as to allow local jurisdictions to ban all forms of Cannabis businesses, including Delivery, the State had determined that a State -licensed Delivery business may deliver anywhere in the state, regardless of local bans. Many local jurisdictions have joined in a lawsuit demanding the State recognize local control of Delivery. In 2020 in the course of the lawsuit, the state changed their opposition to affirm that while they allow their licensees to deliver anywhere, that does not mean that local government cannot prohibit it. Many jurisdictions have banned or restricted Delivery and we encourage jurisdictions to continue including bans on Delivery in their ordinances. Allowing Delivery of only medical products is another alternative.  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 Cannabis Retailer 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. A recent study in San Mateo County found 3 of 7 online delivery sites did not properly confirm IDs and only 3 of 5 checked ID to verify age and recipient on delivery.[[83]](#footnote-83)  Another option to consider if Delivery by businesses licensed outside [City/County] is allowed is to require compliance with the requirements imposed upon local retailers related to operations, product limits, and warnings. |

1. **No Self-Service Displays**. Cannabis Retailing by means of a Self-Service Display is prohibited.
2. **No Robot Deliveries**. No Cannabis or Cannabis Product may be sold or delivered by drones, robots or unmanned vehicle.
3. **No Misleading Business Names**. No Cannabis Retailer with an adult use license may do business under a name or imagery that implies therapeutic or health-related activity including without limitation, “health,” “wellness” or “clinic” or a green cross image.

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| **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 ensuring consumers are not misled as to the healthfulness of Cannabis and Cannabis Products. |

1. **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 and shall update that information as necessary.
2. **Complaint or Adverse Event Reporting**. The Department shall develop and make available a standardized online form(s) for members of the public to make complaints regarding Cannabis businesses or report serious adverse events related to Cannabis or Cannabis Products. This form shall be developed within six months of the date of this ordinance.
3. **No Operation or Advertising Without a Valid Permit**. Any person without a valid Cannabis Retailer permit shall:
   1. Close the premises to the public until such time as a permit is obtained or reissued.
   2. Refrain from displaying any Advertisement relating to Cannabis, Cannabis Products or Cannabis Accessories with respect to an unpermitted 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 to the Department for a new or reissued permit is pending.

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| **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 & Elec. Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980)). |

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

1. **Fixed Locations**. Cannabis Retailers must operate in a permanent structure which complies with [Article/Chapter] of this Code [the City or County Building Code]. Cannabis Retailing from a vehicle or temporary structure is not permitted. For example, Cannabis Retailing by persons on foot or from vehicles or at festivals or fairs from a tent or booth is prohibited.
2. **No Temporary Events**. The Department shall not allow, nor issue permits for fairs, festivals, concerts or other temporary events.
3. **OPTION (NOT RECOMMENDED)**. Temporary Events Permits. The Department may issue a temporary permit, not exceeding 2 days in a calendar year, for Cannabis Retailing at indoor industry events or fairs that check identification of all entrants, do not allow the entry of individuals under age 21, do not allow on-site consumption, and do not allow sale or distribution of food or alcoholic beverages.

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| **COMMENT**: Note that state regulations permit on-site Cannabis sales as well as on-site Cannabis consumption at temporary events, subject to certain conditions, if local government allows. (California Code of Regulations, Title 16, Division 42, sections 5602–5603). This ordinance provides, but recommends against, an option to allow on-site sales at such events, but not on-site consumption. Local governments should consider where adults may safely and legally consume Cannabis. Use of such temporary permits has led to renormalization of smoking at public events such as concerts in public parks. We recommend that local ordinances specifically prohibit temporary events and onsite consumption. This can avoid any later administrative authorizations for these activities. |

1. **One Permit Only**. An Owner may be awarded only one permit for Cannabis retail sales in [City/County]. [N/A if monopoly franchise model]
2. **Distance from Youth Serving Facilities**. Cannabis Retailers are not permitted to operate within 1,000 feet of any school providing instruction in kindergarten or grades 1 through 12, Day Care Centers, parks, playgrounds, 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 Cannabis Retailer’s business is located.
3. **Excessive Density**. A permit(s) 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 19,000 residents. The Department may grant exemptions to this cap if the distance from a proposed site to the nearest Cannabis Retailer exceeds 25 miles. A permit shall not be issued for a Cannabis Retailer located within 1,000 feet of an existing lawful Cannabis Retailer. The Department may deny a conditional use permit for a proposed site if permitting it would disproportionately concentrate Cannabis Retailing in the [City/County] in or adjacent to low-income communities.

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| **COMMENT**: State law prohibits licensed premises 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 existing when the license issues (Bus & Prof Code Section 26054). However, the law allows a licensing authority or a local jurisdiction to impose a different radius and to expand the list of youth-serving facilities. We recommend a 1,000-foot buffer, 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. However, if the distance is too great or too many locations are stipulated, this can result in a de facto ban on Cannabis Retailing. Additionally, distance limits may lead to a concentration of Cannabis Retailers in certain parts of a community. Care should be taken that these retailers are not overly concentrated in low-income areas and/or areas populated by people of color. GIS mapping of permissible retail sites in the City/County is a useful tool to ensure youth are protected while allowing the reasonable availability of Cannabis and to assess the optimal buffer for your community. |

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| **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 ensure that only the number of outlets that are needed to serve the local market are permitted, without creating a need for extensive Advertising and Marketing to attract customers from elsewhere. If appropriate, jurisdictions can adjust 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 equivalent to one outlet per 22,000 residents based on its past alcohol monopoly experience and then raised it slowly. |

1. **Independent Access**. A permit shall not be issued to a Cannabis Retailer who proposes or shares an entryway with a holder of a license to sell tobacco or alcohol; a purveyor of food; or a pharmacy. Nor shall a permit be issued for a Cannabis Retailer who proposes to locate in an enclosed mall.
2. **Specialized Business**. Permittees shall sell only Cannabis and Cannabis Products produced and distributed by persons licensed by the State of California, and Cannabis Accessories. They may not sell or distribute other goods, including without limitation, food, tobacco products, alcoholic beverages, non-Cannabis medicines or supplements, clothing or other merchandise, whether branded or unbranded. The owner(s) of Cannabis Retailer shall not hold or maintain a permit as a food service establishment or cottage food establishment from [City/County] operating within 1,000 feet of the Cannabis establishment. The owner(s) of 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 within 1,000 feet of their Cannabis establishment. A Cannabis Retailer may not hold or maintain a state or local license to sell tobacco products. No permit may issue to authorize Cannabis sales in a Pharmacy.

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| **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 prohibited by state law. This language adds the prohibition on food sales or co-location in a pharmacy; the latter is similar to the effort to get tobacco out of pharmacies. This is already covered to a large extent by BCC §5025 however including this in local law protects against new regulatory shifts at the state level. |

### Section G. PROHIBITED PRODUCT TYPES

1. Prohibited Product Types. 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, offer for sale, or to possess with intent to sell:
2. Any Cannabis or Cannabis Product that is Attractive to Youth;
3. Dried Cannabis that contains:
   1. Potency in excess of 20% THC content.
   2. Any Characterizing Flavor added following harvest of the Cannabis plant; or
   3. Any Cannabis Concentrate added following the harvest of the Cannabis plant.
4. Pre-rolled products containing dried Cannabis that contain:
   1. Any added Characterizing Flavor, including products rolled using flavored wrappers; or
   2. Any added Cannabis Concentrate
5. Cannabis Concentrates that contain:
   1. A Characterizing Flavor
   2. Greater than 50% THC when intended for inhalation and:
      1. Sold in a container that the user can open and directly contact the Cannabis Concentrate;
      2. Sold in a prepackaged vaporizer cartridge that is not solely compatible with a device that ensures metered dosing of 5mg or less delta-9 THC; or
      3. Sold in a prepackaged vaporizer device that does not ensure metered dosing of 5mg or less delta-9 THC.
6. When intended for adult-use oral consumption, that exceed 10 mg per capsule or tablet.
7. **OPTION: Prohibition on Cannabis Concentrates Intended for Inhalation**. No Cannabis Retailer may sell, offer for sale, or exchange or offer to exchange for any form of consideration, to a Consumer, any Cannabis Concentrate intended for inhalation.

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| **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. The science, on balance, of the safety effects of traditionally smoked lower potency flower versus the burgeoning market of high potency concentrates for inhalation, including without limitation dabbing and vaping, is still emerging. The effects on increase of youth initiation must be weighed against potential greater safety for heavy users (which is also still unproven). The previous section sought to mitigate these risks through prohibitions on flavors that attract youth, caps on potency, and requirements for metered dosing. At least one jurisdiction has opted to prohibit all Cannabis Products intended for vaporization but the best approach remains uncertain. This would essentially restrict the market to traditional smoked Cannabis flower, edibles and topicals.  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.   * Overall extensive experience from other industries, most notably tobacco, and emerging cannabis data, show that the addition of flavors to products can increase overall consumption, and is especially appealing to teens and youth at least through age 24, the period when initiating cannabis use holds the greatest hazards for the developing brain, academic achievement and psychosis development. Because of this, the federal Tobacco Control Act includes a ‘‘Special Rule for Cigarettes,’’ which prohibits cigarettes from containing characterizing flavors other than tobacco or menthol (section 907(a)(1)(A)). The statute also authorized the FDA to issue additional product standards, including to address flavors in tobacco products (see section 907(a)(3)). In 2020 During cannabis regulation development in California, health organizations submitted comments to CDPH, based on this extensive evidence, requesting that flavored products not be permitted. The comments were not adopted, despite the CDPH’s strong leadership on ending flavored tobacco, and recognition that vaping, often driven by flavored products, doubled for both cannabis and tobacco between 2017 and 2018 alone. An additional issue with cannabis products is the extensive use of marketing tools and naming that implies flavors in strain names even when not present (e.g.” Girl Scout Cookie”). In August 2020, the California State Legislature passed SB 793, banning flavored tobacco products, with enthusiastic support of Governor Newsom. Studies from tobacco science indicate that youth and young adults who have ever used e-cigs begin their use with sweet flavors rather than tobacco flavors, and 81.5% of current youth e-cig users said they used e-cigs “because they come in flavors I like.”[[84]](#footnote-84) A 2018 FDA advance notice of proposed rulemaking[[85]](#footnote-85) [“Regulation of Flavors in Tobacco Products”](https://www.govinfo.gov/content/pkg/FR-2018-03-21/pdf/2018-05655.pdf) notes that a robust body of literature in food consumer science demonstrates that flavors impact the appeal of consumable products[[86]](#footnote-86),[[87]](#footnote-87) and that flavor preferences drive food selection and vary across age groups.[[88]](#footnote-88),[[89]](#footnote-89) The FDA identifies studies that have shown adding sweet flavors to cigarettes increases the appeal of these products to youth,[[90]](#footnote-90),[[91]](#footnote-91),[[92]](#footnote-92),[[93]](#footnote-93) and tobacco industry documents show that food flavors, such as fruit and candy, were used to attract new users, primarily youth. Flavors in food and tobacco products can trigger reward pathways in the brain and influence decision-making.[[94]](#footnote-94),[[95]](#footnote-95),[[96]](#footnote-96) Laboratory research has confirmed that tobacco products contain flavor chemicals at the same level per serving as defined by the studies, or higher than, popular candy and drink products.[[97]](#footnote-97),[[98]](#footnote-98) Youth who perceive less health risk from using tobacco products are more likely to initiate use, and findings from studies assessing harm perceptions of tobacco product risks show that each age group, including youth, perceived flavored tobacco products as less harmful than unflavored products.[[99]](#footnote-99),[[100]](#footnote-100)   In addition to flavors attractive to youth, rapidly increasing potency is perhaps the most worrisome market trend, associated with a greatly elevated risk of psychosis even above 10% THC, [[101]](#footnote-101),[[102]](#footnote-102) as well as greater risk of addiction. It mimics increased nicotine concentrations cigarette and e-cigarette industries used to hook users. Indeed, Juul and Pax, the THC vaping company, were previously one company. This trend starts in cultivation of higher potency flower and continues in manufacturing. While it would ideally be addressed through regulation of those sectors, local government can reduce harm from these products and influence market trends by regulating what may be sold. The potency thresholds in subsections (b), (d) and (e) reflect research on the historical evolution of potency from about 4% for flower to the 16-30% for most flower in CA; concentrates are frequently 70–90+% THC. Quebec has limited concentrate potency to 30%. Rhode Island recently proposed 50%, and the Florida legislature has considered a 10% THC cap on flower. Uruguay limits flower potency to 8%. A 50% cap would prohibit products such as wax or shatter with very high concentrations and require reduced concentration in vaping products. An alternative approach is to require metered dosing mechanisms that administer 5mg doses. There are important pros and cons to prohibiting the highest potency products. Key advantages include reducing access to products that are likely to produce a higher rate of psychosis, adverse highs and cannabis use disorder (addiction). A key disadvantage is that these products may remain in the illegal market and be produced less safely. While the optimal cap level is unclear, it is clear that current trends cannot be allowed to continue without risk to public health.  Also, under state regulations, Cannabis tinctures and tablets fall within the definition of Cannabis concentrates. This provision does not affect Cannabis edibles which are already limited to 10mg in California. |

1. Edible Cannabis Products that:
   1. Contain more than 10mg THC per individual serving;
   2. Contain more than 100mg THC per individual package;
   3. Do not have completely physically separated individual servings;
   4. In the case of solids, individual servings are not in geometric shapes;
   5. Are Attractive to Youth, including but without limitation:
      1. Brightly colored toppings on baked goods that are distinctly different from the natural color of the Edible Cannabis Product (rainbow sprinkles on a brownie);
      2. Multi-colored candies, lozenges, or tablets; or
      3. Confectionary products with multi-colored coatings.
   6. Are in liquid form, and not considered Cannabis Concentrates.
   7. Are a powder, gel, or other form that is intended to be used to make a Cannabis-infused beverage;

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| **COMMENT**: This section would disallow the sale of Cannabis-infused beverages such as Cannabis orange or grape soda, as flavored beverages are a typical route of initiation for youth use. |

* 1. Constitute a Potentially Hazardous Food (as defined in the Health and Safety Code §113871);
  2. Require time or temperature control to limit pathogenic microorganism growth or toxin formation; or
  3. Require unique packaging, such as canning or reduced oxygen packaging, to limit pathogenic microorganism growth or toxin formation.

1. Cannabis or Cannabis Products that contain synthetic cannabinoids.
2. Cannabis or Cannabis Products that contain any non-Cannabis-derived additive that the Department reasonably determines would increase potency, toxicity, or addictive potential, or that would create an unsafe combination with compounds that naturally exist in Cannabis, including:
   1. Nicotine;
   2. Caffeine, with the exception of caffeine that exists in an added food ingredient including, but without limitation, chocolate or green tea;
   3. Alcohol, except for:
      1. A residual amount of alcohol from an extraction or purification process given the amount is below a threshold determined by the State to be safe for human consumption and confirmed by laboratory analysis; or
      2. Ethanol alcohol used as an ingredient in a Tincture, as long as the product’s Packaging, Labeling, and Marketing materials make no other reference to alcoholic beverages or the use of alcohol as an intoxicant.
   4. Vitamin E acetate in Cannabis Products intended for inhalation; or
   5. Other non-cannabinoid ingredients that the Food and Drug Administration does not consider to be safe for use in inhalation products.
   6. Any Cannabis Product that the Department determines has unique or trademarked characteristics of a commercially available non-Cannabis-containing product that could result in the Cannabis Product being easily confused for a conventional non-Cannabis-containing product.
3. **Types of Prohibited Packaging and Labeling**. 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, offer for sale, or to possess with intent to sell:
   1. Cannabis or Cannabis Products with Packaging or Labeling that is Attractive to Youth.

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| **COMMENT**: State law (Business and Professions Code section 26120(b)) forbids packaging and labeling attractive to children; however, California law does not provide a definition of what constitutes attractiveness to children. CDPH regulations have given some shape to the concept of attractive to youth and provides that a product shall not (Section 40300 (k)(l)(m) Packaging and labeling and their regulation are developing rapidly. While a plain-packaging ordinance would be the most effective for limiting youth appeal and is increasingly used for tobacco internationally, and in Canada for cannabis, the current interpretation of the First Amendment may obstruct such a tobacco-focused measure in the U.S., although it has been proposed in one state. 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(a) 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. Cannabis or Cannabis Products whose Packaging, Labeling or Marketing include:
     1. Claims of health, therapeutic or curative effects, including, without limitati health and medical claims and structure and function claims as defined by the Food and Drug Administration (FDA) and the Federal Trade Commission, not specifically approved by the FDA.
     2. Claims, beyond listing the product’s cannabinoid content, that are related to potency, strength, or the product’s intoxicating effects or “high;” or
     3. Claims or terms that imply that the Cannabis or Cannabis product is safe or healthy, including the terms “natural” or “organic,” aside from instances where the terms are used in an ingredient list to describe an added non-Cannabis ingredient.
  2. Cannabis or Cannabis Product Packaging, Labeling, or Marketing that the Department determines has unique or trademarked characteristics of a commercially available non-Cannabis-containing product that could result in the Cannabis or Cannabis Product Packaging being easily confused for a non-Cannabis-containing product;
  3. Cannabis Products intended for oral consumption, including Edible Cannabis Products, that are not packaged and labeled in a way that ensures simple recognition of individual servings by the consumer to support consumption of accurate doses;
  4. Appropriate Packaging and Labeling measures should include:
     1. Clear instructions as to what constitutes a single serving; and
     2. Individually packaged single servings of the Cannabis Product.
     3. **Cannabis Product Dose Diversity**. It shall be a violation of this [Article/Chapter] for any Cannabis Retailer to offer for sale:

1. More product variations (Stock Keeping Units or SKUs) of orally-consumed Cannabis Products, including Edible Cannabis Products, that contain 10mg THC per serving than the number of product variations that contain 5mg THC or less per serving;
2. More types of Dried Cannabis that contains greater than 15% THC than it does types of Dried Cannabis that contains less than 15% THC.

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| **COMMENT**: The general recommendation for the use of Edible Cannabis Products is to “Start Low and Go Slow.” This provision ensures that retailers are offering lower doses available to the consumer so that this is possible. Even if the Retailer sells more of the higher dose products, they would at the least be required to carry the lower dose products as well. Similarly, for Dried Cannabis, this provision would assure that consumers can access lower dose Dried Cannabis options that have lower risk of adverse reactions while still being able to stock volumes appropriate to demand.  A basic worrisome trend in the Cannabis market is the extensive use of product diversification strategies, also employed by the tobacco and alcohol industries, which are well-known to be associated with youth initiation and use. This includes a large variety of edibles including soda-like beverages or Cannabis Products resembling existing candies or sweets, as well as flavored Cannabis Products intended for inhalation, such as grape-flavored vapes or blunts.  This section seeks to reduce the proliferation of Cannabis or Cannabis Products, that are known to attract youth, while still permitting a reasonable but limited selection of Cannabis Products for adults. These trait of being Attractive to Children or of having Characterizing Flavors can be expressed in any or all of the areas of product design, package design, labeling and/or marketing materials. This model ordinance seeks to address these issues wherever they are manifested. |

### Section H. PRICING AND DISCOUNTING.

1. 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 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 or in consideration of 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.

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| **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 Cannabis or Cannabis Products than they might otherwise, such as two-for-the-price-of-one offers, time-limited coupons, or Discount Mondays or “buy X and get a free T-shirt.” |

1. **Price Floor for Cannabis and Cannabis Products**. The Department is authorized, but not required, after 5 years from the effective date of the ordinance adopting this [Article/Chapter], to establish minimum prices for Cannabis and Cannabis Products. If so, Cannabis Retailers may not sell Cannabis or Cannabis Products below the minimum price; the Department must review the appropriateness of the Price Floor at least every two years after its establishment and may adjust it to account for inflation or as the Department otherwise deems appropriate to discourage illegal commerce. The Department may promulgate such rules as may be necessary to implement this paragraph.

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| **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 ensuring 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 the [Sonoma County Tobacco Retail Licensing Ordinance](https://library.municode.com/ca/sonoma_county/codes/code_of_ordinances?nodeId=CH32ALITORE) (Sonoma County Code of Ordinances 32-A) for an example of use of minimum price laws for tobacco in California. |

### Section I. REQUIRED IN-STORE SAFETY INFORMATION

1. A storefront 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 with mid-point 5 feet above the floor. The sign must be as follows:

**WARNING**:

* 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.
* Marijuana use may be associated with greater risk of developing schizophrenia or other psychoses. Risk is highest for frequent users.
* Smoking marijuana long-term may make breathing problems worse and vaping has been associated with serious lung disease.
* Driving while high is a DUI. Marijuana use increases your risk of motor vehicle crashes.
* Not for Kids or Teens! Starting marijuana use young or using frequently may lead to problem use and, according to the Surgeon General, may harm the developing teen brain.

THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY [City/County].

1. A storefront Cannabis Retailer must display each of the following three warning signs, which are:
   1. at least 2 feet wide by 1 foot tall;
   2. posted with mid-point 5 feet above the floor; and
   3. posted prominently and conspicuously 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:

**WARNING**:

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]

ARE YOU ON PROBATION OR PAROLE? If you are prohibited from using drugs as a condition of your probation or parole, possession or use of marijuana could violate your probation or parole.

THIS MESSAGE IS PROVIDED AS A PUBLIC SERVICE BY [City/County]

ARE YOU 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]

1. Cannabis Retailer permit holders must provide to every consumer purchasing Cannabis or Cannabis Products from a storefront or Delivery facility a brochure or flyer of at least 8 ½ by 11 inches unfolded that includes the following information:

**WARNING**:

* 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.
* Marijuana use may be associated with greater risk of developing schizophrenia or other psychoses. Risk is highest for frequent users.
* Smoking marijuana long-term may make breathing problems worse and vaping has been associated with serious lung disease.
* Driving while high is a DUI. Marijuana use increases your risk of motor vehicle crashes.
* Not for Kids or Teens! Starting marijuana use young or using frequently may lead to problem use and, according to the Surgeon General, may harm the developing teen brain.

THIS IS A GOVERNMENT HEALTH WARNING.

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| **COMMENT**: In relation to the above, State law requires that all Cannabis and Cannabis Products bear the warnings in the paragraphs below, in accordance with regulations issued by the State Department of Public Health (under Section 26120(c) of the Business & Professions Code). The warning language was specified by Proposition 64. However, these warnings are weak and state regulations require only a 6-point font size, which is nearly illegible as you can see here. For this reason, we offer this option to require stronger and more visible warnings posted in the stores and provided to the consumers. Several studies have demonstrated the superiority of prominent, pictorial warnings with rotating messages.[[103]](#footnote-103) [[104]](#footnote-104) [[105]](#footnote-105)  Current State required health warnings, which are only required on Cannabis packaging, state:  “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.”  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 against marijuana use 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 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. Local jurisdictions can better inform consumers by requiring clear health warnings in stores and on advertising and providing information on health effects and safer use to consumers. An example of such mandated information on safer use is available [here.](https://gettingitrightfromthestart.org/wp-content/uploads/2021/02/Important-Health-Warnings-About-Cannabis_Ten-Tips-for-Safer-Cannabis-Use-if-you-Choose-to-Use_2.23.21.pdf) |

1. 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.

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| **COMMENT**: Your agency may wish to provide the signs or a graphic file with compliant design. Although Spanish and English are two of the most common languages spoken in California, this is not necessarily so in all communities. Each city/county may want to include any language which census data shows is used at home in 10% or more of households. |

### Section J. PERMIT RENEWAL AND EXPIRATION

1. **Renewal of Permit**. A conditional use permit for Cannabis Retailing is invalid if the required licensing fee has not been timely paid in full or if its term of the permit has expired. The term of a Cannabis Retailer permit is one year from the issuance date stated on its face. Each permit holder shall apply for the renewal of a conditional use permit and submit the permit fee at least 30 days before the term expires. A renewal application shall include information required by SECTION II. Section D of this [Article/Chapter] and shall also detail any changes in the Cannabis Retailer’s operations and any other information the Department may reasonably require.

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| **COMMENT**: The 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, although most land use permits have not stated term. A jurisdiction may require additional information to renew a CUP, including a review of any citations issued against the business, and it should also allow opportunity for public input. |

1. **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 (1), the proprietor must:
   1. Submit the permit fee and application renewal form; and
   2. Submit a signed affidavit affirming that the proprietor has closed its retail l business, has not sold and will not sell any Cannabis or Cannabis Product after the permit expiration date unless and until the permit is renewed.

### Section K. PERMITS NONTRANSFERABLE

1. No permittee may transfer a permit(s) to another Person or Owner or without authorization by the [City/County].
2. Operating permits may not be transferred to another location without public hearing. Cannabis Retailers which have been the object of verified public nuisance complaints within the preceding two years may not transfer ownership without a public hearing.
3. The proposed transferee shall apply for transfer of the CUP and Cannabis Retailing operator permit, by submitting an application that complies with SECTION II. Section D. There is no inherent or assured right to transfer a Cannabis Retailing operating permit or CUP.

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| **COMMENT**: This provision requires authorization for any change in Ownership or location. For example, if an Owner to whom a permit has been issued wishes to sell the business or a stake in it, the prospective owner must be authorized for a permit before acting as a Cannabis Retailer at the permitted location. If the City/County should wish to reduce the number of permit holders, a natural attrition process can be used by not allowing transfer. This provides an opportunity to impede gaming of the Equity Applicant system (i.e., issuance of a permit to an Equity Applicant who then sells to a non-Equity Applicant). This is particularly important if no density cap is adopted. It is important to expressly state that there is no inherent right to transfer these permits so that if there are problems that arise, or there is a need to reduce the number of licensees, that this was the case from the start. |

1. **Prior Violations**. Notwithstanding any other provision of this [Article/Chapter], prior violations at a location shall weigh against renewal of a permit for a location and ineligibility periods shall apply to a location unless:
   1. The location has been transferred to new Owner(s) in an Arm’s Length Transaction;
   2. The new Owner(s) provide the Department with clear and convincing evidence that the new Owner(s) are acquiring the location in an Arm’s Length Transaction; and
   3. The new Owner(s) obtains a Cannabis Retailing permit the terms of which discharge the previous violations and ineligibility periods.

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| **COMMENT**: This provision prevents sham transfers of Ownership from defeating penalties for violations. For example, if a Cannabis 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 L. FEE FOR PERMIT

1. The fee to issue or to renew a Cannabis Retailer’s permit shall be established from time to time by resolution of the [City Council/Board of Supervisors]. The fee shall be calculated so as to fully recover, but not exceed the projected cost to administer and enforce this [Article/Chapter] including, without limitations, issuing a permit, administering the permit program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators. Fees and interest on their proceeds shall be used exclusively to fund administration and enforcement of this [Article/Chapter]. Fees are nonrefundable. Equity Applicants shall receive a one-year deferral of the permitting fee.

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| **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 (*Sinclair Paint Co. v. Board of Equalization*, 15 Cal. 4th 866 (1997); *Griffith v. City of Santa Cruz*, 207 Cal. App. 4th 982 (2012)). A permit fee can incorporate the cost of enforcing all laws related to Cannabis Retailing because a violation of any such law allows suspension of a permit. For example, a new inspector could be hired for Cannabis Retailer enforcement activities and a percentage of the cost of the position (including indirect and overhead costs) could be included in the fee so long as the same percentage of the inspector’s time is devoted to Cannabis enforcement.  One approach to setting the fee is to estimate the cost of administration and enforcement of the permit program and divide it by the number of expected permits. 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 four inspections a year are needed for underage compliance checks (while these can be random and do not need to occur in all establishments each year, they should be publicized so retailers know they might be checked quarterly). Fee resolutions should also include an automatic adjustment for inflation.  Costs to provide mandatory education can be included. We recommend 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 fee 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 and in *Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982.  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 M. COMPLIANCE MONITORING

1. The Department shall monitor compliance with this [Article/Chapter]. In addition, any peace officer may enforce this [Article/Chapter]. The [City/County] may designate any number of additional Persons to monitor compliance with this [Article/Chapter].

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| **COMMENT**: It is important to designate who will monitor Cannabis Retailers’ compliance with the ordinance. Explicitly naming the department responsible for inspections helps ensure it will be enforced.  Routine enforcement should be handled as a regulatory matter, like restaurant inspections, rather than as a law enforcement matter. Enforcement should seek to minimize cannabis-related incarcerations. Some jurisdictions have developed non-penal approaches such as shutting off water or utilities for illicit or noncompliant dispensaries.  As reducing the sale of Cannabis Products to minors is a key concern, communities may wish to ensure that compliance with youth access laws is a consistent element of inspection, as with the sale of alcohol and tobacco. Communities should also conduct inspections to determine compliance with the local and state laws relating to product types, warnings, and advertising. |

1. The Department shall inspect each Cannabis Retailer at least twice in each 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.

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| **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 the permit fee provides. Communities with a large number of Cannabis Retailers may wish to inspect a subset of Cannabis Retailers selected randomly or based on past violations and complaints.  Counties cannot mandate that the sheriff conduct inspections. However, a county can provide dedicated funding to the sheriff that can be used only to conduct inspections or it can use code enforcement staff to do so. If dedicated funding for Sheriff inspections is desired, replace the first sentence in subsection (1) with: “The County Sheriff’s Department shall be funded to inspect each Cannabis Retailer at least [two] times per 12- month period.”  Alternatively, a county could contract for enforcement and inspections. Cities, on the other hand, can directly mandate that a city department conduct inspections. Or a city may wish to contract with the county health department. |

1. 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:
   1. The Youth Decoy is participating in an inspection supervised by a peace officer, code enforcement official, or another Person designated by the [City/County] to monitor compliance with this [Article/Chapter];
   2. The Youth Decoy is acting as an agent of a Person designated by the [City/County] to monitor compliance with this [Article/Chapter]; or
   3. The Youth Decoy is participating in an inspection funded in part, either directly or indirectly by the [City/County] or the California Department of Consumer Affairs.

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| **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 district attorney is still recommended. |

### Section N. REMEDIES FOR VIOLATIONS

1. **Suspension or Revocation of Permit for Violation**. In addition to any other penalty authorized by law, the Department shall suspend or revoke a Conditional Use Permit for Cannabis Retailing 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 this [Article/Chapter], or has pleaded guilty, “no contest” or its equivalent, or admitted to a violation of any local or state law applicable to Cannabis, Cannabis Products, Cannabis Marketing or Advertising, or Cannabis Retailing.

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| **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 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 defendant’s plea of “no contest” or “nolo contendere” usually is intended to avoid a “guilty” plea that could be used against him or her in a subsequent civil suit. This provision puts a Cannabis Retailer on notice that even a “no contest” plea can still establish a permit violation and result in suspension or revocation of a permit. California law allows consideration of a “no contest” plea in licensing decisions. See,Business and Professions Code section 5063(a) 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 additional enforcement is desired (e.g., imposing a civil fine), the City or County will need to prove the underlying violation without reliance on the “no contest” plea. |

1. Fees for Suspensions.
   1. Upon a first violation of this [Article/Chapter] at a location within any sixty (60) month period, the Department shall fine the permit holder $500.
   2. Upon a second violation of this [Article/Chapter] at a location within any sixty (60) month period, the Department shall fine permit holder $1,000 and suspend the permit for three business days.
   3. Upon a third violation of this [Article/Chapter] at a location within any sixty (60) month period, the Department shall fine the permit holder $1,000 and suspend the permit for ten (10) business days.
   4. Upon four or more violations of this [Article/Chapter] at a location within any sixty (60) month) period, the Department shall fine the permit holder $1,000 per violation and suspend the permit for thirty (30) business days.
   5. Upon five or more violations of this [Article/Chapter] at a location within any sixty (60) month period, the Department shall revoke the permit.
   6. Any violation of this [Article/Chapter] may be subject to the penalties provided in this subdivision and each day on which a violation occurs or is suffered to continue shall constate a separate violation.

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| **COMMENT**: This provision designates the length for permit suspensions under subsection (1). 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. The Department can fine one violation or many that occur at a given time as necessary to induct compliance with this chapter. It does not have to fine every violation it can provide, but it does have to revoke a license upon a fifth violation of this [Article/Chapter].  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. |

1. **Appeal of Suspension or Revocation**. The Department’s decision 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, Board of Supervisors, 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 10 days of mailing of the Department’s decision. A timely appeal shall stay the action appealed. No appeal is available for a revocation pursuant to subsection (4) below.

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| **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. |

1. **Revocation of Permit Wrongly Issued**. A Conditional Use Permit and [Cannabis Retailing operators 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 subsection (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 and is subject to judicial review pursuant to section 1094.5 of the California Code of Civil Procedure.

### Section O. CANNABIS RETAILING WITHOUT A VALID PERMIT

1. In addition to any other penalty authorized by law, if the Department finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any Person issued a conditional use permit under this [Article/Chapter] has engaged in Cannabis Retailing at a location not identified in a valid conditional use permit issued under this [Article/Chapter], either directly or through agents or employees, that Person shall be ineligible to apply for, or to be issued, a Cannabis Retailer’s permit as follows:
   1. After a first violation of this section at a location within any sixty (60) month 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 90 days have passed from the date of the violation.
   2. After a second violation of this section at a location within any sixty (60) month 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 and eighty (180) days have passed from the date of the violation.
   3. After a third violation of this section at a location within any sixty (60) month 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 a year has passed from the date of the violation.
   4. After of a fourth or subsequent violation of this section at a location within any sixty (60) month 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).

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| **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. |

1. Cannabis and Cannabis Products offered for sale in violation of this [Article/Chapter] are subject to seizure by the Department or any peace officer and shall be forfeited after reasonable notice to the permit holder and to any other Owner of the Cannabis or Cannabis Products and an opportunity to demonstrate the Cannabis and Cannabis Products were not offered for sale in violation of this [Article/Chapter]. Any person aggrieved by a Department decision to forfeit Cannabis and Cannabis Products may appeal under the procedures of Section II(N)(3) of this [Article/Chapter]. Forfeited Cannabis and Cannabis Products shall be destroyed after all internal appeals have been exhausted and the time to seek judicial review under Code of Civil Procedure section 1094.6 has expired without the filing of a lawsuit or, if such a suit is filed, after a final, non-appealable judgment enters in that suit.

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| **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 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. |

1. For the purposes of the civil remedies provided in this [Article/Chapter]:
   1. Each day on which Cannabis or a Cannabis Product is offered for sale in violation of this [Article/Chapter]; or
   2. Each individual Cannabis or Cannabis Product distributed, sold, or offered for sale in violation of this [Article/Chapter], shall constitute a separate violation of this [Article/Chapter].

### Section P. ADDITIONAL REMEDIES

1. The remedies provided by this [Article/Chapter] are cumulative and in addition to any other remedies available at law or in equity; no election of remedies shall apply, provided only that no sum due the [City/County] under this [Article/Chapter] may be recovered more than once except as permitted by applicable law, such as Business & Professions Code section 17082 or Government Code section 38773.7.The Unfair Businesses Practices Law (Bus & Prof Code section 17082) also allows recovery of attorneys’ fees as well as treble damages.

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| **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 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. |

1. Whenever evidence of a violation of this [Article/Chapter] is obtained in any part through the participation of a Person under the age of 21, 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.

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| **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. |

1. 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 $250 and not exceeding $1,000 per violation.

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| **COMMENT**: This provision provides an option for civil fines for violating the licensing ordinance which would require 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). But note that the ordinance defines each sale of each product on each day as a separate violation, so substantial fines might be sought in an appropriate case. |

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

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

1. Violations of this [Article/Chapter] are hereby declared to be public nuisances.

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| **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 a defendant to do, or to refrain from doing, specified acts). |

1. 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.

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| **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, if 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 nuisance abatement procedure in which abatement costs can be collected as a special assessment on the property roll against property on which a violation occurs. |

## SECTION III. MARKETING AND ADVERTISING

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

### Section A. DEFINITIONS

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

### Section B. Restrictions on Claims, Attractiveness to Youth, and Images of Risky Behavior.

1. No claims may be made in Advertising or Marketing materials in [City/County] for Cannabis or Cannabis Products, brands or licensees that their products or activities 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 any required display of license or permit numbers.
2. Advertising and Marketing materials in [City/County] for adult-use Cannabis or Cannabis Products, brands, licensees, or commercial cannabis-related services may not include claims of health, therapeutic or curative effects of Cannabis or Cannabis Products, including without limitation health and medical claims and structure and function claims as defined by the Food and Drug Administration and the Federal Trade Commission.
3. Products that may not be sold in [City/County] may not be Advertised in [City/County].
4. Advertising and Marketing materials in [City/County] for Cannabis and Cannabis Products, brands, licensees, or commercial cannabis-related services may not be Attractive to Youth.
5. Advertising and Marketing materials in [City/County] for Cannabis and Cannabis Products, brands, licensees, or commercial cannabis-related services may not depict activities or conditions risky when under the influence of Cannabis, including operating a motorized vehicle, pregnancy, breastfeeding or other activities specifically identified in written guidelines adopted by the Department for the enforcement of this section.

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| **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 highly potent shatter), it may likely prohibit Advertising for those Products. While state regulations do raise important prohibitions on untrue or misleading health-related statements, given that there is not currently an objective scientific system or infrastructure in place for assessing the validity of health, curative or therapeutic claims for Cannabis — such as exists, for example, for FDA-approved medications — we recommend not permitting any such health, curative or therapeutic claims, at least on products sold for adult-use transactions. State Law prohibits advertising or marketing Cannabis or Cannabis Products so as to encourage youth under 21 years to consume Cannabis or Cannabis Products (Business and Professions Code section 26152(f)).  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 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(b) of the Business & Professions Code). The 28.4% standard is drawn from the voluntary alcohol industry codes[[106]](#footnote-106) and has been well documented in the alcohol policy literature to be ineffective in protecting youth from overexposure to alcohol advertising.[[107]](#footnote-107) We also know that exposure to alcohol advertising is associated with a decreased perception of risk of use.[[108]](#footnote-108) A complete prohibition on broadcast advertising would be ideal, or at a minimum a 15% standard limited to those age 12–20 and would focus on those youth most vulnerable and most exposed to this kind of advertising. The 15% standard is recommended by the National Research Council/Institute of Medicine’s report on underage drinking commissioned by Congress,[[109]](#footnote-109) and the adoption of this standard was recommended by the state’s Cannabis Advisory Committee. Research has shown this more restrictive threshold does not have a major effect on the industry’s ability to reach adult consumers.[[110]](#footnote-110) 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 in some places.[[111]](#footnote-111)  However, we do not now recommend local governments regulate broadcast or electronic media. Section 843 of the Federal Controlled Substances Act (21 USC § 843(c)) 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) though this contradicts current state law, thereby creating a difficult legal quandary. |

1. **OPTION**: Advertising and Marketing materials may not:
   1. Display consumption of Cannabis or Cannabis Products;
   2. Encourage the use of Cannabis because of its intoxicating effect;
   3. Encourage excessive or rapid consumption of Cannabis or Cannabis Products;
   4. Include claims, beyond listing the product’s cannabinoid content, that are related to potency, strength, or the product’s intoxicating effects “high;” or
   5. Claims or terms such as “natural” or “organic” aside from instances where the terms are used in an ingredient list to describe an added non-Cannabis ingredient.

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| **COMMENT**: Measures similar to (6)(b) and (c) are in effect for alcohol advertising and marketing through voluntary industry standards. These restrictions, along with (6)(a) and (d), call for the adoption of familiar and commonsense standards, but may nonetheless be subject to First Amendment challenge as prior restraints on lawful speech. |

### Section C. Restrictions on Branded Merchandise.

1. No Cannabis Retailer, Cannabis manufacturer, Cannabis cultivator, Cannabis or Cannabis Product or commercial Cannabis-related service brand identification, including logos, trademarks or tradenames, may be used or licensed for use on clothing, toys, stickers, games, or game equipment, or other items that are typically marketed primarily to or used primarily by youth under 21, or that are Attractive to Youth.

### Section D. (OPTION) Warning Label Requirements.

1. Any Person who posts or who causes to be posted an Advertisement for a Cannabis Retailer, Cannabis manufacturer, Cannabis cultivator, 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 the following warning in the Advertisement:

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

1. 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.
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 Surgeon General, 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 and vaping marijuana has been associated with lung disease.
6. Advertisements must include messages “(a)” through “(e)” above in equal and rotating proportion such that each message receives approximately the same audience exposure for any given Advertisement during the use of that Advertisement.
7. The warning must be enclosed in a box occupying at least 15% of the area of the Advertisement.
8. 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 font that is clearly legible to 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 (i.e., left to right, or bottom to top).

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| **COMMENT**: Local government is on surer legal footing addressing exclusively local Advertising. We have not addressed television/radio advertising in this Model Ordinance because local governments generally do not regulate these media.  California state law does not require warnings on Advertisements for Cannabis or Cannabis Products however Alaska, Maine, Michigan, Oregon, Washington, Nevada and Massachusetts do. Similar warnings on Advertisements for tobacco and pharmaceuticals have 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(c)); 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 found “substantial evidence.”  Billboards had been a major problem in California especially after State regulations weakened Prop 64 restrictions on billboards on highways. However, the least controversial way to avoid the presence of cannabis billboards in your community is to have a general prohibition on billboards for aesthetic or safety reasons. These have generally withstood scrutiny. |

### Section E. General Requirements.

1. 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 to conform to current public health science and other objective information, and in no event less often than once every three years.
2. **Removal of Non-Conforming Advertising or Marketing**. A Person must remove any Advertising Sign, display, or Advertisement if the Department finds it violates this [Article/Chapter]. The Department will notify the Person of the violation and specify a reasonable time in which to remove the relevant Advertising sign, display or Advertisement.
3. The provisions of this section apply to Advertising or Marketing by any Person containing 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, or general messages promoting Cannabis or Cannabis Products.

### Section F. Enforcement and Penalties.

1. The remedies provided by this [Article/Chapter] are cumulative and in addition to any other remedies available at law or in equity; no election of remedies shall apply, provided only that no sum due the [City/County] under this [Article/Chapter] may be recovered more than once except as permitted by applicable law, such as Business & Professions Code section 17082 or Government Code section 38773.7.
2. Violations of this [Article/Chapter] may, in the discretion of the [City Prosecutor/District Attorney], be prosecuted as infractions rather than misdemeanors when the interests of justice so require.
3. 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 $250 and not exceeding $1,000 per violation.
4. For the purposes of the civil remedies provided in this [Article/Chapter];
   1. Each day on which Cannabis or a Cannabis Product is advertised in violation of this [Article/Chapter]; or
   2. Each individual instance of advertising of Cannabis or Cannabis Product in violation of this [Article/Chapter] shall constitute a separate violation of this [Article/Chapter].
5. 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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