REGULATION OF HEMP-DERIVED PRODUCTS[[1]](#footnote-1)

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

## SECTION I. FINDINGS

**WHEREAS,** the federal Agricultural Improvement Act of 2018 (2018 Farm Bill) authorized the cultivation of hemp and production of hemp-derived products by defining hemp and distinguishing it from cannabis, effectively removing both from the U.S. Drug Enforcement Administration’s (DEA) schedule of Controlled Substances[[2]](#footnote-2); and

**WHEREAS,** Section 297D, subsection (c) of the Agricultural Improvement Act of 2018 (2018 Farm Bill) states: “nothing in this subtitle shall affect or modify the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or section 351 of the Public Health Service Act (42 U.S.C. 262), or the authority of the Commissioner of Food and Drugs and the Secretary of Health and Human Services under those acts or to promulgate Federal regulations and guidelines that relate to the production of hemp under those acts; and

**WHEREAS,** the United States Food and Drug Administration (FDA) currently prohibits the sale of foods, beverages, and dietary supplements intended for human consumption that contain hemp-derived cannabinoids; and

**WHEREAS,** consumable hemp-derived products that meet the legal limit of 0.3 percent tetrahydrocannabinol, a limit originally designed to prevent the sale of intoxicating hemp plant material, are widely sold in formulations such as beverages and edibles, that contain elevated amounts of intoxicating cannabinoids,[[3]](#footnote-3) even substantially exceeding the maximum allowable amounts in legal cannabis edibles; and

**WHEREAS,** AB 45 regulating industrial hemp products in the State of California has, since 2021, allowed the sale of foods with psychoactive cannabinoids and sale of edible products containing high amounts of intoxicating cannabinoids with no age restrictions; and

**WHEREAS,** cannabinoid-containing products are often manufactured as drinks, beverages, candies, and other edibles; and packaged and advertised to target youth;[[4]](#footnote-4),[[5]](#footnote-5) and

**WHEREAS,** the 2018 Farm Bill and AB 45 enabled the production of various artificially derived and intoxicating cannabinoids typically produced from CBD in hemp such as delta-8 tetrahydrocannabinol, delta-10-tetrahydrocannabinol, THC-O acetate, and hexahydrocannabinol and allowed the sale of these products in retail stores that are accessible to minors, such as smoke shops and convenience stores; and

**WHEREAS,** there is little clinical research on the short- or long-term safety of these artificially derived cannabinoids, and some (such as THC-P) are up to 30 times more potent than traditional delta-9 tetrahydrocannabinol (THC); and

**WHEREAS,** widespread availability of artificially derived cannabinoids has resulted an increasing number of exposures and adverse events,[[6]](#footnote-6) and

**WHEREAS,** as of March 2023, 17 U.S. states—Alaska, Arizona, Colorado, Connecticut, Delaware, Idaho, Iowa, Michigan, Minnesota, Montana, Nevada, New York, North Dakota, Rhode Island, Oregon, Utah, and Vermont—prohibit the sale of delta-8 tetrahydrocannabinol, the most common of these artificially derived cannabinoids; and

**WHEREAS,** young people are much more likely to use candy or fruit-flavored tobacco[[7]](#footnote-7) and alcohol products;[[8]](#footnote-8) and

**WHEREAS,** young people in California were estimated to consume 47% of alcopops (sweetened, fruit-flavored alcoholic beverages) sold in the state in 2007;[[9]](#footnote-9) and nationwide, minors are twice as likely to consume alcopops as adults;[[10]](#footnote-10) the U.S. FDA and the U.S. Surgeon General have stated that flavored tobacco products such as flavored vapes are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction[[11]](#footnote-11) and similar findings are expected for cannabinoid products, whether derived from hemp or cannabis; and

###### **WHEREAS,** intoxicating hemp products, which should never be consumed by children and yet are clearly made attractive to children, have proliferated widely in smoke shops, convenience stores, and other retailers of hemp products in California; and

###### **WHEREAS,** some intoxicating hemp products use the widely recognized marketing style, colors, and names of candies and foods typically marketed to children, often accompanied by images resembling those products; and

###### **WHEREAS,** nationally poisonings of children 6 and under by edible cannabinoid ingestions increased 1,375% between 2017 and 2021[[12]](#footnote-12), growing in severity in recent years with many resulting in intensive care stays or in need for mechanical ventilation, and even in death;[[13]](#footnote-13) and

###### **WHEREAS,** of the 28,630 cannabinoid poisonings reported to the National Poison Data Center between 2017 and 2019, the proportion from manufactured products was increasing rapidly, while the proportion from plant matter declined; and

###### **WHEREAS,** the majority of cannabinoid poisoning ingestions reported nationally were in those under age 20. In those under age 10, edibles were the first cause of poisoning cases, followed by plant material, then concentrates and vaping products, while for those ages 10–20 years plant material was first, followed by edibles, concentrates and vaping products, demonstrating that the problem extends beyond edibles; and

**WHEREAS,** between 2010 and 2020 cannabinoid exposures reported to California Poison Control, and specifically those for those aged 13 and under, rose significantly following legalization of adult-use cannabis in 2016 and initiation of retail sales in 2018; of these, 50% involved children, half of these below age 12; 79% involved ingestion and 18% inhalation; chocolate and candy, other edibles and drinks, and gummies increased from near zero before recreational legalization to thousands of exposures per year by 2020. There were only 16 total reported gummy exposures between 2010 and 2015; these increased to 409 exposures in 2020 alone;[[14]](#footnote-14) and

###### **WHEREAS,** cannabis-related emergency room visits in California increased 53% just between 2016 and 2019; and

######  **WHEREAS**, between January 2021 and February 2022, national poison control centers received 2,362 reports of exposures involving Δ8 tetrahydrocannabinol (Δ8THC). Of these cases, approximately 58 percent involved adults, 41 percent involved pediatric patients, and 1 percent did not report age. Additionally, of these 2,362 cases, 40 percent were due to accidental exposure, and 82 percent of these accidental exposures involved pediatric patients;[[15]](#footnote-15)- [[16]](#footnote-16)[[17]](#footnote-17) and

###### **WHEREAS,** school districts across the state have experienced incidences of cannabis- or hemp-poisoned children, often in groups, requiring evacuation by ambulance for emergency services, typically after ingesting products marketed to resemble candies or chips; and

**WHEREAS,** at Rady Children’s Hospital in San Diego, the number of children under age 10 testing positive for THC has quadrupled since legalization in 2016. Half of ingestions by young children lead to hospitalization and one in 10 leads to intensive care. The vast majority of these ingestions were from edibles, of which three quarters from candy or gummy products; and

**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, also noted evidence of association of cannabis use with harm in a wide range of areas, and industrial hemp final-form products often contain the same or greater doses of THC than the cannabis products NASEM studied. The NASEM study found “substantial evidence” to support the following conclusions:

Initiation of use at an earlier age or more frequent use is a risk factor for the development of problem cannabis use;

Cannabis smoking during pregnancy is associated with low birth weight;

Cannabis use is associated with increased risk of motor vehicle crashes;

Cannabis use increases the risk of development of schizophrenia and other psychoses, with the highest risk among the most frequent users;

Long-term cannabis smoking is associated with worse respiratory symptoms and more frequent chronic bronchitis episodes; and

Increases in cannabis use frequency are associated with developing problem cannabis use; and more recent clinical research has identified further long-term harms to fetal health such as adverse neurobehavioral effects in later childhood.[[18]](#footnote-18),[[19]](#footnote-19)

**NOW THEREFORE**, it is the intent of the [City/County], in enacting this ordinance, to ensure responsible retailing of consumable hemp-derived products, without allowing the sale of intoxicating products and products of unknown safety, especially those accessible to minors.

## SECTION 2. 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 industrial hemp, 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;
3. **“Advertising Sign”** means any sign, poster, display, billboard, or any other stationary, permanently affixed, or mobile advertisement promoting the sale of industrial hemp products that are not cultivated, manufactured, or distributed, or sold on the same lot or parcel.
4. “**Artificially derived cannabinoid“** means any cannabinoid or cannabinoid derivative produced partially or wholly through means of chemical synthesis; prohibited cannabinoids and cannabinoids derivatives include:
	1. Any cannabinoid that has been chemically transformed after it was extracted from the *Cannabis sativa* L. plant in its fresh, frozen, or dried state, except for transformations/conversions that result from naturally occurring degradation or the application of heat, light, or pressure;
	2. Artificially derived or synthesized cannabinoids and cannabinoid derivatives, including:
* Delta-3-tetrahydrocannabinol,
* Delta-8-Tetrahydrocannabinol,
* Delta-8-Carboxy-Tetrahydrocannabinol,
* Delta-8-tetrahydrocannabinol acetate ester,
* Delta-9-Carboxy-Tetrahydrocannabinol,
* Delta-9-tetrahydrocannabinol acetate ester,
* Delta-10-tetrahydrocannabinol,
* Delta-11-tetrahydrocannabinol,
* Hexahydrocannabinol,
* Hexahydrocannabinol-O-acetate,
* Hexahydrocannabiphorol,
* Tetrahydrocannabinol-O-acetate;
* Tetrahydrocannabioctyl,
* Tetrahydrocannabihexol,
* Tetrahydrocannabutol,
* Tetrahydrocannabiphorol,
* Tetrahydrocannabiphorol Acetate,
* 11-nor-Delta-9-Tetrahydrocannabinol-9-Carboxylic Acid,
* Cannabidivarin,
* Cannabielsoin, and
* Hexahydrocannabidiol,

or any other cannabinoid that either the California Department of Public Health or the U.S Drug Enforcement Administration. determines not to be present in nature in significant amounts; and

* 1. Cannabinoids or cannabinoid-receptor agonists produced wholly through chemical synthesis, including those cited in Health and Safety Code 11357.5, unless sold as a pharmaceutical product approved by the U.S. Food and Drug Administration.
1. **“Attractive to Children”**means any of the following:

(1) Product design or use of images in design, packaging, labeling, or advertising that are attractive to children, including, but not limited to, any of the following:

(A) Cartoons, toys, or robots.

(B) Humans, animals, or any other real or fictional animate creature.

(C) Fruits or vegetables.

(2) Any likeness to images, characters, or phrases that are commonly used to advertise to children.

(3) Any imitation of candy packaging or labeling, or other packaging and labeling of cereals, sweets, chips, or other food products typically marketed to children.

(4) The terms “candy” or “candies” or variants in spelling such as “kandy” or “kandee.”

(5) Brand names or close imitations of brand names of candies, cereals, sweets, chips, or other food products commonly marketed to children.

(6) Any other image or packaging that is easily confused with commercially available foods that do not contain cannabis and are commonly marketed to children.

1. **“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.
2. **“Children or Youth”** mean those under age 21.
3. **“Delivery”** means the commercial transfer of final-form industrial hemp products to a customer at a location other than the retail premises of a hemp retailer. “Delivery” 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 location other than the retail premises of a hemp retailer
4. **“Final-form product”** is a product intended for retail sale for consumer use.
5. **“Hemp-derived”** refers to all products, consumable or otherwise, manufactured or extracted from a hemp plant.
6. **“Industrial hemp” or “hemp”** as defined in Section 11018.5 of the Health and Safety Code means an agricultural product, whether growing or not, that is limited to types of the plant *Cannabis sativa* L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis.

## SECTION 3. PROVISIONS

### *Limits on artificially derived cannabinoids.*

### It is prohibited to sell, deliver or manufacture in [City/County] an industrial hemp final-form product that contains an artificially derived cannabinoid.

### *Limits on intoxicating cannabinoids.*

### It is prohibited for a person not licensed pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code to sell, deliver or manufacture an industrial hemp final-form product that contains more than one milligram (1 mg) per package or more than half of one milligram (0.5 mg) per dose of total tetrahydrocannabinol (THC) or a comparable cannabinoid or any other cannabinoid determined to be intoxicating by the State Department of Public Health pursuant to Section 111921.7, or by the federal Food and Drug Administration.

### The sale, delivery, and manufacture of an industrial hemp final-form product with total THC [(delta 8-tetrahydrocannabinolic acid (mg) + delta 9- tetrahydrocannabinolic acid (mg)) x 0.877] + [delta 8-tetrahydrocannabinol (mg) + delta 9- delta 8-tetrahydrocannabinol (mg)] above the limits specified in subsection “a” are prohibited.

### If an intoxicating cannabinoid is more potent on a per mg basis by relevant measures of impairment than delta-9-tetrahydrocannabinol, the limit per package is the equivalent impairing dose to 1 mg of delta-9-tetrahydrocannabinol, unless or until entirely prohibited by applicable law.

### *Age Restriction.* Final-form industrial hemp products, other than those for topical use, that contain cannabinoids including cannabidiol or tetrahydrocannabinol may not be sold to children or youth.

### *Products for Inhalation.* It is prohibited to sell, deliver or manufacture final-form hemp products containing cannabinoids for inhalation or combustion.

### *Attractive to Children*. It is prohibited to sell, deliver, manufacture or advertise final-form industrial hemp products that are attractive to children, or to advertise in ways attractive to children as those terms are defined in this [Article / Chapter].

### *Marketing audience*. In addition to the definition in Section 2 (5), advertising, of final-form industrial hemp products shall only be displayed after a licensee has obtained reliable, current, audience composition data demonstrating that at least 85 percent of the audience viewing the advertising or marketing is reasonably expected to be 21 years of age or older.

## SECTION 4. 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.

## SECTION 5. EFFECTIVE DATE

The law will go into effect 30 days after second reading by the [City Council/Board of Supervisors] of [City/County].

SECTION 6. PENALTIES. A violation of this [Article/Chapter] shall be punishable pursuant to [article / chapter / section] \_\_\_ of this Code.

1. **Note to Readers:** The legal information in this brief does not constitute legal advice or legal representation. For legal advice readers should consult an attorney in their state. [↑](#footnote-ref-1)
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3. Volkow, N., & Sharpless, N. E. (2021, May 10). *Establishing 5mg of THC as the Standard Unit for Research*. <https://nida.nih.gov/about-nida/noras-blog/2021/05/establishing-5mg-thc-standard-unit-research> [↑](#footnote-ref-3)
4. Associated Press. (2023, January 19). *Flavored Cannabis Marketing Is Criticized for Targeting Kids*. <https://www.usnews.com/news/health-news/articles/2023-01-19/flavored-cannabis-marketing-is-criticized-for-targeting-kids>; [↑](#footnote-ref-4)
5. Moreno, M. A., Jenkins, M., Binger, K., Kelly, L., Trangenstein, P. J., Whitehill, J. M., & Jernigan, D. H. (2022). A content analysis of cannabis company adherence to marketing requirements in four states. *Journal of Studies on Alcohol and Drugs*, *83*(1), 27–36 [↑](#footnote-ref-5)
6. # Food and Drug Administration. *FDA Issues Warning Letters to Companies Illegally Selling CBD and Delta-8 THC Products. Violations Include Marketing Unapproved New Drugs, Misbranding, Adding Delta-8 THC to Food Products*. May4, 2022. Accessed at: https://www.fda.gov/news-events/press-announcements/fda-issues-warning-letters-companies-illegally-selling-cbd-and-delta-8-thc-products.

 [↑](#footnote-ref-6)
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8. Siegel M, Chen K, DeJong W, et al. *Differences in alcohol brand consumption between underage youth and adults-United States, 2012*. Subst Abuse. 2015;36(1):106-112. doi:10.1080/08897077.2014.883344 [↑](#footnote-ref-8)
9. Rosen, S & Simon, M. *The cost of alcopops to youth and California*: A publication of Marin Institute, 2007. Marin Institute [↑](#footnote-ref-9)
10. Siegel et al., ibid [↑](#footnote-ref-10)
11. Food and Drug Administration. Fact Sheet: *Flavored Tobacco Products*.; 2011;

U.S. Department of Health and Human Services. *Preventing Tobacco Use among Youth and Young Adults: A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2012:539 [↑](#footnote-ref-11)
12. Tweet MS, Nemanich A, Wahl M. *Pediatric Edible Cannabis Exposures and Acute Toxicity: 2017–2021.* Pediatrics. 2023;151(2):e2022057761 [↑](#footnote-ref-12)
13. Carey, J., & Cook, G. (n.d.). *Virginia Mother Charged With Murder After 4-Year-Old Son Dies From Eating THC Gummies*. <https://www.nbcwashington.com/news/local/virginia-mother-charged-with-murder-after-4-year-old-son-dies-from-eating-thc-gummies/3187538/> [↑](#footnote-ref-13)
14. Roth W, Tam M, Bi C, Kim J, Lewis J, Ho R, Apollonio DE. Changes in California cannabis exposures following recreational legalization and the COVID-19 pandemic. Clin Toxicol (Phila). 2022 May;60(5):632-638. doi: 10.1080/15563650.2021.2006212. Epub 2021 Dec 6. PMID: 34871128. [↑](#footnote-ref-14)
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