

Cities and Regulation of Edible Cannabinoid Products

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A new law was enacted at the end of the 2022 legislative session that allows certain edible and beverage products infused with tetrahydrocannabinol (THC) to be sold. Since the enactment of the law, the League of Minnesota Cities has been researching and collecting information from state agencies and stakeholders to answer questions pertaining to local regulatory authority, law enforcement, taxing, and employment. The following frequently asked questions (FAQ) aim to provide information to cities on the new law to assist local governments in making decisions related to the law. The League will continually update the information below as necessary.

(Updated July 28, 2022)

Get answers to FAQs regarding the new law allowing certain edible and beverage products containing THC extracted from hemp to be sold.

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General information

Q1. What does the new law do?

A1. It is now legal to sell certain edibles and beverages infused with tetrahydrocannabinol (THC), the cannabis ingredient extracted from hemp.

The new law was passed by the Legislature as part of [Chapter 98](#). Article 13 makes several changes to [Minnesota Statutes, section 151.72](#) regarding the sale of certain cannabinoid (CBD) products. The changes took effect on July 1.

The new law amends the scope of sale of any product that contains cannabinoids extracted from hemp and that is an edible cannabinoid product or is intended for human or animal

consumption.

Previous law authorized a product containing nonintoxicating cannabinoids to be sold, but the authority to sell edible CBD products was unclear. The new law expands the authority to include nonintoxicating cannabinoids, including edible cannabinoid products, provided they do not contain more than 0.3% of any THC. An edible cannabinoid product also cannot exceed more than five milligrams of any THC in a single serving, or more than a total of 50 milligrams of any THC per package.

Q2. Under the law, where are edible cannabinoids allowed to be sold?

A2. The new law does not limit where edible cannabinoids products may be sold. However, certain businesses by their nature maybe be limited on their ability to sell the products. Liquor stores, for example, are limited to selling specific items set by Minnesota Statute, section 340A.412, subd. 14. The Alcohol and Gambling Enforcement Division (AGE) of the Minnesota Department of Public Safety has advised the League of Minnesota Cities that products containing CBD, hemp, or THC are not allowed for sale at an exclusive liquor store. In addition, AGE has informed LMC that a liquor store's ability to sell food pursuant to Minnesota Statute, section 340A.412, subd. 14 (b), does not include edible cannabinoid products.

Q3. Could my city's municipal liquor store sell the edible cannabinoid products?

A3. Liquor stores are limited to selling specific items set by Minnesota Statute, section 340A.412, subd. 14. The Alcohol and Gambling Enforcement Division (AGE) of the Minnesota Department of Public Safety has advised the League of Minnesota Cities that products containing CBD, hemp, or THC are not allowed for sale at an exclusive liquor store. AGE has advised LMC that CBD, hemp, or THC infused beverages are not intended to be mixed with alcoholic beverages and are not considered soft drinks. In addition, AGE has informed LMC that a liquor store's ability to sell food pursuant to Minnesota Statute, section 340A.412, subd. 14 (b), does not include edible cannabinoid products. Due to this guidance, LMC recommends cities refrain from selling such products at their municipal liquor stores.

Q4. What regulations are in place for packaging for edible cannabinoids?

A4. Along with testing and labeling requirements, an edible cannabinoid must meet several requirements, including that it:

- Not bear the likeness or contain cartoon-like characteristics.
- Not be modeled after a brand of products primarily consumed or marketed to children.
- Not be made by applying an extracted or concentrated hemp-derived cannabinoid to a commercially available candy or snack food item.
- May not contain an ingredient, other than a hemp-derived cannabinoid, that is not approved by the federal Food and Drug Administration.
- May not be packaged in a way that resembles any commercially available food product.
- Must not be packaged in a container that could reasonably mislead any person to believe that it contains anything other than an edible cannabinoid product.

Q5. Are these products legal under federal regulations?

A5. The 2018 Farm Bill made several changes to federal law related to hemp. Under the law, hemp was removed from the controlled substance act, including derivatives, extracts, and cannabinoids, provided those substances contained less than 0.3% THC concentration. If a product contains more than 0.3% THC it is considered marijuana and not hemp. Pursuant to the Farm Bill, Minnesota has legalized the production of hemp through its [industrial hemp program](#).

Although hemp extracts that meet the mandated THC level are no longer controlled substances, the Farm Bill did not alter the authority of other federal agencies, including the Food and Drug Administration (FDA) from regulating hemp and hemp byproducts. Under current [FDA regulations](#), CBD or THC products cannot be sold as a dietary supplement and cannot be added to food for humans or animals.

Q6. Where do the edible cannabinoid products come from?

A6. Under current law, these products can be manufactured in Minnesota but also imported from other states. Growing hemp in Minnesota is governed by the Department of Agriculture, though the MDA Hemp Program does not regulate cannabis extracts, development and manufacturing of cannabis extracts, or the retail and marketing of cannabinoid products. Cities may want to consider zoning implications for manufacturing and production of cannabinoid products.

Q7. How are the new products taxed?

A7. It is the understanding of LMC that edible cannabinoid products legalized under the new law are subject to Minnesota sales tax. LMC is waiting for more guidance from the Minnesota Department of Revenue to determine if any exemptions apply. The new law does not authorize cities to tax the products in their communities, however LMC is waiting on more information as to whether the products would be subject to a local food and beverage tax.

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Enforcement and public safety

Q8. How is the new law enforced?

A8. The Minnesota Board of Pharmacy has regulatory authority over drug products that are implicitly or explicitly intended for human or animal consumption. This includes products regulated in the new law. If a product does not meet all the requirements of the new law, the product may be considered [misbranded](#) or [adulterated](#). The sale of a misbranded or adulterated product is a [misdemeanor-level crime](#) which is to be prosecuted by the [county attorney](#) where the offense took place. Questions regarding whether a specific product deviates from the requirements of the new law should be forwarded to the [Minnesota Board of Pharmacy](#). The Board of Pharmacy has provided a [form to file complaints against licensed or unlicensed cannabis businesses \(pdf\)](#) and an [inspection checklist to assist law enforcement \(pdf\)](#).

In addition, the new law limits the sale of CBD and THC products to persons over the age of 21. The sale of CBD and THC products to a person under the age of 21 is a misdemeanor-level crime which is to be prosecuted by the county attorney where the offense took place. Cities will need to work with local law enforcement and the county attorney to determine how to enforce this requirement.

If cities desire to further regulate CBD and THC products within their jurisdiction, they will need to work with their city attorney to adopt local regulations.

The League is working with the Minnesota Chiefs of Police Association and Minnesota Sheriff's Association to understand potential implications for law enforcement and identify additional questions pertaining to the enforcement of these new products along with employment related questions for law enforcement.

Q9. What are penalties for someone who violates?

A9. A violation of the new law is a misdemeanor. In most cases, the county attorney is charged with prosecuting these violations.

Q10. How do our officers determine if a driver is under the influence of these new products?

A10. The new law does not change the current rules relating to driving under the influence of a cannabinoid. Officers should use the same process to determine sobriety as they have used if they suspected a driver was under the influence of marijuana.

Q11. Could cities prohibit the sale of edible cannabinoids entirely?

A11. In most states that have adopted adult use cannabis legislation, local governments are given the option to either opt-in or opt-out of cannabis in their communities. This framework helps to maintain local control of the cannabis issue. The new Minnesota law does not provide such an option. Therefore, the new law makes the new cannabinoid products legal in every city throughout the state.

Without a clear opt-out option, the question as to whether a city could completely prohibit the sale of edible cannabinoids is an open question. One potential approach would be to follow the Minnesota House Research's suggestion to LMC that it may be possible for a city to classify cannabis edibles containing THC as an intoxicating cannabinoid and therefore would not be allowed under the new law.

Arguments have also been made that a city may be able to prohibit the sale of edible cannabinoids products under its authority to provide for the health safety and welfare of its community. If a city were to attempt to prohibit edible cannabinoids under this authority, it would need to work with its city attorney to develop findings that clearly show the dangers of edible cannabinoids products and the need to prohibit the products. Cities may want to look at communities that have banned the sale of flavored tobacco products as a model for such prohibitions.

Q12. Is our city required to adopt regulations under the new law?

A12. The new law does not require cities to take action in regulating the new products. If a city chooses not to adopt additional regulations, the sale and production of these new products will be governed by the city's existing zoning and other regulations. In addition, the new law gives local law enforcement power to enforce violations as a misdemeanor.

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City licensing

Q13. What authority do cities have regarding licensing the sale of edible cannabinoids?

A13. A city's authority to license comes from either a specific grant of authority from the Legislature or from its authority to provide for its general health, safety, and welfare. When a city official proposes local licensing of any activity or occupation, a city first must determine whether the state already licenses that activity and, if so, whether the law forbids or allows a local license.

Q14. What types of restrictions should we consider in regulating cannabinoids?

A14. If a city decides to regulate edible cannabinoids or other cannabinoid products, the types of regulations can vary from city to city. Some items a city may consider when drafting these regulations include:

- What areas of the city edible cannabinoids may be sold or manufactured or distributed.
- What business should be allowed to sell edible cannabinoids.
- Age of person selling the product.
- Location of products within retail establishment.
- Pop-up sales.
- Transient merchants.
- Vending machines.
- Distance from other uses (schools, parks, residential, etc.).
- Distance between retailers.
- Delivery services.
- Online sales.
- Limit number of establishments within the city.
- Age verification.
- Hours.
- Background checks.

Q15. Can a city add edible cannabinoid products to its existing tobacco licensing program?

A15. The requirements and legal authority for tobacco products are unique to those products. While some aspects of tobacco regulations may be used when regulating edible cannabinoid products, the products and the authority to regulate them are quite different. If a city chooses to license edible cannabinoid sellers, it would be best to do so separately from tobacco regulations or be sure to carefully draft new language in an existing ordinance that follows the unique requirements of the new law.

Q16. If our city licenses edible cannabinoid products, how much can we charge as a license fee?

A16. When setting fees, cities should consider a number of things. First, cities should not view municipal licensing as a significant source of revenue. License fees must approximate the direct and indirect costs associated with issuing the license and policing the licensed activities. License fees that significantly exceed these costs are considered unauthorized taxes.

This means a license fee may not be so high as to be prohibitive or produce any substantial revenue beyond the actual cost to issue the license and to supervise, inspect, and regulate the licensed business.

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Zoning

Q17. What authority do cities have regarding zoning for where the products could be sold?

A17. Nothing in the new law limits a city's zoning authority related to CBD and THC products. No Minnesota court has interpreted the limits on zoning authority in this context, but at least one court in another state has ruled that a state law related to cannabis did "not nullify a municipality's inherent authority to regulate land use under [state] law so long as the municipality does not prohibit or penalize all medical marijuana cultivation ... and so long as the municipality does not impose regulations that are unreasonable and inconsistent with regulations established by state law." *DeRuiter v. Township of Byron*, 505 Mich. 130, 949 N.W.2d 91 (2020). It is unknown if a Minnesota court would come to the same conclusion.

Cities should be thoughtful and intentional about how zoning regulations related to cannabinoid products affect their communities and work with their city attorney to determine what, if any, zoning restrictions should be adopted. Cities will need to consider not only zoning regulations related to retail sales of CBD and THC products but also the manufacturing and production of the products within the city. Unless specifically differentiated in a zoning ordinance, a city's general manufacturing and production zoning provisions will likely apply to CBD and THC production as well.

Q18. Could cities adopt a moratorium prohibiting the sale, manufacturing or, distribution of cannabinoids so it can study the issue?

A18. A moratorium is a tool cities use to pause specific uses in order that the city may study the issue in anticipation of future regulations. A moratorium is limited to a period of one year. To adopt a moratorium, a city must follow the procedures in [Minnesota Statute, section 462.355, subd. 4](#). The statute specifies the specific instances where a city may adopt a moratorium. If a

city were to adopt a moratorium prohibiting the sale or manufacturing of edible cannabinoid products, it should work with its city attorney to clearly state the legal justification for the moratorium.

If a city does adopt a moratorium, it must actually review and study the issue or meet one of the other requirements of the statute. More information on moratoriums can be found in the [LMC Zoning Guide for Cities](#).

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City employment and personnel issues

Q19. Does the new Minnesota legal cannabinoid law change anything about how we do drug testing for CDL holders?

A19. No, cities with positions requiring an employee to hold a commercial driver's license (CDL) will recall these positions are regulated by federal law, and those regulations are supervised by the Federal Department of Transportation (DOT). Federal law preempts state law related to cannabinoid use; in fact the DOT states in its [DOT Recreational Marijuana Notice](#) it does not authorize the use of Schedule I drugs, including marijuana, for any reason. As a result, cities should continue to follow their drug-testing procedures related to CDL holders and may enforce prohibitions against any use of cannabinoids for CDL holders, regardless of state law protections.

Although there is a legal difference between marijuana and hemp, [DOT warns](#) CDL drivers the hemp products could lead to a positive marijuana test; therefore CDL holders are ultimately responsible if those products lead to a positive marijuana test.

Cities can find more information on the effects of the new law on drug testing in the [LMC Drug and Alcohol Testing Toolkit](#), starting on page 22.

Q20. Does the new law change anything related to employees who carry a firearm?

A20. No. Public safety employees who carry a firearm cannot lawfully use marijuana under federal law. [Federal law](#) prohibits cities from providing firearms or ammunition to an employee it knows or has reason to think is using marijuana. Although there is a legal difference between marijuana products and hemp products, it is the understanding of LMC that it may not be possible to differentiate the products in a drug test. Officers should be mindful of any substance they ingest because they are ultimately responsible if those products lead to a positive marijuana test.

Q21. Are there now “acceptable” limits of cannabinoids for non-CDL employees for purposes of drug testing at work (i.e., those we test under state drug and alcohol testing law)?

A21. There isn't a clear answer, since THC can remain in the body for several weeks after usage (and long after any intoxicating or impairing effects have since disappeared), so positive test results may not indicate any wrongdoing on the employee's part and may just be evidence of an

employee's lawful actions done outside of work. The League of Minnesota Cities recommends that employers thoroughly document any suspicions of an employee being under the influence and to work closely with their city attorney(s) before taking any action against the employee. With this new area of law, a city may want to avoid relying on the results of traditional tests that detect metabolites remaining in a person's body (for many days or weeks after using marijuana) and instead focus on implementing reasonable-suspicion drug-testing protocols to detect marijuana intoxication based on behavioral observations. Keep in mind, employers may prohibit all employees from being under the influence while the employee is working. That would include employees who operate vehicles. Employers may want to revise their policies to clarify that employees still may not be under the influence of cannabis, legal or otherwise, while at work.

The [National Drug-Free Workplace Alliance](#) offers a toolkit to help employers work through the complex and confusing issue of marijuana and the workplace.

Q22. Can we still prohibit employees from being under the influence of cannabinoids while at work? Does the League have a model policy with updated language?

A22. Yes, employers can continue to prohibit employees from being under the influence of cannabinoid products, including edibles, while at work. Although employers' obligations and restrictions related to marijuana use vary widely across the states, there is no law we are aware of that requires employers to allow cannabinoid use during work hours or to allow an employee to report to work impaired. Thus, employers may continue to maintain drug-free policies at the workplace and discipline employees who use cannabinoids during working hours or who report to work impaired. In fact, one could argue that under the [Occupational Safety and Health Administration's \(OSHA\) General Duty Clause](#) of the Occupational Safety and Health Act, employers are required to furnish a workplace free from recognized hazards that are likely to cause serious physical harm. This provision of the Act is typically used in accident cases where toxicology screens are positive.

OSHA's new electronic recordkeeping rule, [clarified on 10/11/2018](#), states "If the employer chooses to use drug testing to investigate the incident, the employer should test all employees whose conduct could have contributed to the incident, not just employees who reported injuries," with respect to using drug testing to evaluate the root cause of a workplace incident that harmed or could have harmed employees. Thus, if a city has a non-DOT drug-testing policy in place, a protocol following this guidance is important.

The League has a [Non-DOT Drug and Alcohol Testing and Drug-Free Workplace Act model policy](#) that has been updated initially, and will be continually updated as the League learns more.

Q23. Can employees be in possession of edibles or other cannabinoid products while at work?

A23. Cities may enact policies prohibiting employees from bringing cannabinoid products, including edibles, to work.

Q24. Do we need to change anything in our collective bargaining agreement with regard to discipline of employees who use cannabinoid products?

A24. No, but ensure your city's drug-testing policy has been updated and your supervisors are trained on the behavioral signs and symptoms associated with impairment. Of course, if the collective bargaining agreement includes language that policy changes need to be negotiated, then there would need to be a meeting with the union if the city's policy changes.

Q25. Can employees use cannabinoid products off-duty?

A25. It depends. Certain types of employees, such as law enforcement officers and other employees issued firearms and ammunition as part of their jobs, are subject to regulations from the federal Bureau of Alcohol, Tobacco and Firearms, which prohibits firearms and ammunitions to be given to individuals who do or are believed to use illegal drugs. As noted above, city positions required to hold a commercial driver's license are subject to Department of Transportation regulations and are not authorized for the use of Schedule I drugs, including marijuana, for any reason. Thus, these types of employees could be prevented from using cannabinoid products both on and off duty. Other employees who are not subject to that or other federal regulations would likely be able to use cannabinoid products while they are off duty, as there is nothing under Minnesota law which prohibits certain classes of employees from using cannabinoid products off duty, as long as they are not impaired at work.

If there are any questions regarding whether an employee could be prevented from using cannabinoid products while off-duty due to federal regulations, please consult your city attorney before any action is taken.

Q26. How does this impact the requirements of the Drug-Free Workplace Act?

A26. It does not. The Drug-Free Workplace Act of 1988 (DFWA) requires federal grantees and contractors to implement a drug-free workplace policy and establish a drug-free awareness program as a precondition for receiving a federal grant or a contract. However, the DFWA does not require covered employers to test employees for drugs or terminate them for drug-related violations, so the new Minnesota state law does not impact the DFWA directly. Minnesota law allows employers to prohibit employees from bringing legal cannabinoid products to work and permits employers to prohibit employees from being under the influence while at work. It would be best practice for cities with drug-free work policies to keep those in effect. If a city wishes to do so, it can update its policy to include lawful cannabinoid products within its scope.

Q27. Should my city still continue to include marijuana as a pre-employment panel screen for my Non-DOT employees?

A27. That is for each city to decide for itself. Because currently there are no devices or blood tests available that measure marijuana impairment, and because a best practice approach for Non-DOT marijuana drug testing is to base testing on behavioral observations, some employers are excluding marijuana from their pre-employment Non-DOT drug screens. Some states even prohibit an employer from refusing to hire an applicant simply because of a positive drug test,

but Minnesota is currently not one of these states at this time. Any city that chooses to continue to test for THC for Non-DOT positions must be aware of the fact that these substances may remain in an individual's system for weeks after the impairing effect of the drug has worn off. Thus, it will be difficult, if not impossible, to determine whether the positive test indicates usage in violation of the city's drug-free workplace policy or indicates lawful usage during an employee's time-off from work. Cities should consult with their city attorneys prior to taking any action based upon a positive drug test for THC.

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