



CITY COUNCIL WORKSESSION AGENDA

MONDAY, AUGUST 15, 2022

SPRING LAKE PARK CITY HALL, 1301 81ST AVE NE at 6:00 PM

- 1. CALL TO ORDER**
- 2. DISCUSSION ITEMS**
 - A.** [Edible Regulation Discussion](#)
- 3. REPORT**
- 4. ADJOURN**

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk at 1301 81st Avenue NE, Spring Lake Park, MN 55432. Ph.763-784-6491 at least 48 hours in advance.



Memorandum

To: Mayor Nelson and Members of the City Council

From: Daniel R. Buchholtz, MMC, Administrator, Clerk/Treasurer

Date: July 14, 2022

Subject: Hemp-derived THC edibles

On July 1, 2022 a new Minnesota law took effect that allows people 21 and over to purchase and consume food and beverages with no more than 5mg of hemp-derived THC per serving and no more than 50mg per package.

I have included information from the League of Minnesota Cities with this memorandum.

Accounting Clerk/Special Projects Coordinator Haley Morrison has reached out to our tobacco licensees to determine if they are selling the new hemp-derived THC edibles. Two establishments, Spring Lake Tobacco Plus, Inc and Dick's Vape Shop, indicated that they are selling edibles. One additional establishment has indicated that they are exploring selling edibles. None of the gas stations in the City which have a tobacco license are selling edibles.

Here is a link to [HF 4065](#), which legalized hemp derived THC edibles. The applicable language begins on line 352.4 and continues through 357.6.

The City has authority to be more restrictive than state law, but not less restrictive. Some cities have implemented a moratorium on the sale of edibles to allow time to study the issue. Other cities are working on a licensing ordinance. City staff is recommending implementing a licensing ordinance.

A possible licensing ordinance is included with this memorandum. The proposed licensing ordinance included with the packet, limits the sale of edible cannabinoid products to exclusive tobacco stores. If the City Council wishes to expand eligible businesses, we can do so at the present time or at a future time through an ordinance amendment. The outline of this ordinance is similar to what the City of Blaine is working on.

Staff doesn't believe it can draft a future proof ordinance that would be able to address the future legalization of recreational marijuana due to a significant number of unknowns. However, this ordinance will work well based on the law that was approved by the Legislature.

If you have any questions, please don't hesitate to contact me. We look forward to the discussion.

Cities and Regulation of Edible Cannabinoid Products

Published: July 15, 2022

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.

General information

Q1. What does the new law do?

Q2. Under the new law, where are edible cannabinoids allowed to be sold? *(Updated July 20, 2022)*

Q3. Could my city's municipal liquor store sell the edible cannabinoid products? *(Updated July 20, 2022)*

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

Q5. Are these products legal under federal regulations? *(Updated July 22, 2022)*

Q6. Where do the edible cannabinoid products come from?

Q7. How are the new products taxed?

Enforcement and public safety

Q8. How is the new law enforced? *(Updated July 28, 2022)*

Q9. What are penalties for someone who violates?

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

Q11. Could cities prohibit the sale of edible cannabinoids entirely? *(Updated July 19, 2022)*

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

City Licensing

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

Q14. What types of restrictions should we consider in regulating cannabinoids? (Updated July 19, 2022)

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

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

Zoning

Q17. What authority do cities have regarding zoning for where the products could be sold? (Updated July 19, 2022)

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

City employment and personnel issues

Q19. Does the new Minnesota legal cannabinoid law change anything about how we do drug testing for CDL holders? (Updated July 22, 2022)

Q20. Does the new law change anything related to employees who carry a firearm? (Updated July 22, 2022)

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)?

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?

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

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

Q25. Can employees use cannabinoid products off-duty?

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

Q27. Should my city still continue to include marijuana as a pre-employment panel screen for my Non-DOT employees? (Updated July 19, 2022)

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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**SPRING LAKE PARK
ORDINANCE XX**

NOW THEREFORE, be it ordained by the Council of the Spring Lake Park, in the State of Minnesota, as follows:

SECTION 1: **ADOPTION** “11.48 EDIBLE CANNABINOID PRODUCTS” of the Spring Lake Park Municipal Code is hereby *added* as follows:

ADOPTION

11.48 EDIBLE CANNABINOID PRODUCTS(*Added*)

SECTION 2: **ADOPTION** “11.48.010 Purpose And Intent” of the Spring Lake Park Municipal Code is hereby *added* as follows:

ADOPTION

11.48.010 Purpose And Intent(*Added*)

The Minnesota Legislature adopted M.S. § 151.72, making it legal to sell certain edibles and beverages infused with tetrahydrocannabinol (THC), the cannabis ingredient extracted from hemp. The City Council deems it necessary to provide for the regulation of edible cannabinoid products in order to protect the public health safety and welfare and to ensure that edible cannabinoid products are sold in accordance with State Law.

SECTION 3: **ADOPTION** “11.48.020 Adoption Of State Law By Reference” of the Spring Lake Park Municipal Code is hereby *added* as follows:

ADOPTION

11.48.020 Adoption Of State Law By Reference(*Added*)

The provisions of M.S. § 151.72, as it may be amended from time to time, are hereby adopted by reference and are made a paragraph of this section as if set out in full.

SECTION 4: **ADOPTION** “11.48.030 Definitions” of the Spring Lake Park Municipal Code is hereby *added* as follows:

ADOPTION

11.48.030 Definitions(*Added*)

In additions to the definitions contained in M.S. § 151.72, as it may be amended from time to time, the following terms are defined for purposes of this section.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell edible cannabinoid products are following and complying with the requirements of this chapter. **COMPLIANCE CHECKS** shall involve the use of persons under the age of 21 authorized by this chapter. **COMPLIANCE CHECKS** may also be conducted by other units of government for the purpose of enforcing appropriate state and local laws and regulations relating to edible cannabinoid products.

TOBACCO STORE. A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is incidental.

SECTION 5: **ADOPTION** “11.48.040 License” of the Spring Lake Park Municipal Code is hereby *added* as follows:

ADOPTION

11.48.040 License(*Added*)

- A. *License required.* No person shall sell or offer to sell any edible cannabinoid product without first having obtained a license to do so from the city.
- B. *License eligibility.* No license shall be issued except to a person operating a tobacco store licensed under SLPC 11.12, as it may be amended from time to time.
- C. *Application.* An application for a license to sell edible cannabinoid products shall be made on a form provided by the city. Upon receipt of a completed application, the Administrator, Clerk/Treasurer shall forward the application to the Police Department for the purpose of conducting a background check on the applicant. The Police Department shall have ten (10) days to complete the background check. Upon completion of the background check, the Police Department shall forward the application and investigation results to the City Council for action at its next regularly scheduled meeting. If the Administrator, Clerk/Treasurer determines that an application is incomplete, he/she shall return the application to the applicant with notice of the information necessary to make the application complete.
- D. *Action.* The City Council may either approve or deny the license, or it may delay

action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council approves the license, the Administrator, Clerk/Treasurer shall issued the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.

E. *License fee.* No license shall be issued under this chapter until the appropriate license fee is paid in full. The annual fee for a license under this chapter shall be established in the city's ordinance establishing fees and charges, as may be amended from time to time. Initial license applications covering a period of less than one year shall be charged a fee calculated on a monthly pro rata basis.

F. *Restriction on issuance.*

1. No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the city are delinquent and unpaid. IN the event an action has been commenced pursuant to the provisions of M.S. Ch. 278, as it may be amended from time to time, questioning the amount or validity of taxes, the Council may, on application by the licensee, waive strict compliance with this paragraph. No waiver may be granted, however, for taxes or any portion thereof which remain unpaid for a period exceeding one year after becoming due.

2. No license shall be issued for a premises within 500 feet of any school or church. The distance is to be measured from the closest side of the school or church to the closest side of the structure on the premises within which edible cannabinoid products are to be sold.

3. No license shall be granted if the applicant, responsible party, owner, manager or any other person involved with the licensee:

a. Is under the age of 21;

b. Who is not of good moral character and repute;

c. Who has been convicted, within five years prior to the application for such license, of any violation of any law of the United States, this state or any other state or territory or of any local ordinance regarding the manufacture, sale or distribution of edible cannabinoid products.

G. *Term.* All licenses issued under this chapter shall expire on December 31 of each year.

H. *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in this chapter.

I. *Transfers.* All licenses issued under this chapter shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

J. *Display.* All licenses shall be posed and displayed in plain view of the general public on the licensed premises.

K. *Renewals.* The renewal of a licenses issued under this chapter shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but not more than 60 days before the expiration of the current license.

L. *Issuance as privilege and not a right.* The issuance of a license issued under this

chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

SECTION 6: **ADOPTION** “11.48.050 Unlawful Acts” of the Spring Lake Park Municipal Code is hereby *added* as follows:

ADOPTION

11.48.050 Unlawful Acts(*Added*)

A. *Unlawful sales.* It shall be a violation of this chapter for any person to sell any edible cannabinoid product:

1. To any person under the age of 21 years;
2. By means of any type of vending machine;
3. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the edible cannabinoid product and whereby there is not a physical exchange of the edible cannabinoid product between the licensee or the licensee's employee, and the customer; or
4. That is in violation of M.S. § 151.72, as it may be amended from time to time.

B. *Use of false identification.* It shall be a violation of this chapter for any person to attempt to disguise his/her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

SECTION 7: **ADOPTION** “11.48.060 Licensee Responsibility” of the Spring Lake Park Municipal Code is hereby *added* as follows:

ADOPTION

11.48.060 Licensee Responsibility(*Added*)

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of edible cannabinoid products on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the employee to whatever penalties are appropriate under this code, state law or other applicable law or regulation.

SECTION 8: **ADOPTION** “11.48.070 Compliance Checks; Inspections” of the Spring Lake Park Municipal Code is hereby *added* as follows:

A D O P T I O N

11.48.070 Compliance Checks; Inspections(*Added*)

All licensed premises shall be open to inspection by the City Police Department or other authorized city official during regular business hours. The City shall conduct compliance checks from time to time but at least twice per year. The City will conduct at least one compliance check that involves the participation of a person between the ages of 18 and 20 to enter the licensed premises to attempt to purchase edible cannabinoid products. Persons under the age of 21 used for compliance checks shall not be guilty of an unlawful purchase or attempted purchase, nor the unlawful possession of edible cannabinoid products when those items are obtained or attempted to be obtained as part of the compliance check. No person under the age of 21 used in compliance checks shall attempt to use a false identification misrepresenting the person's age and all persons under the age of 21 lawfully engaged in a compliance check shall answer all questions about their age asked by the licensee or his/her employee and shall produce any identification, if any exists, for which he/she is asked.

SECTION 9: **ADOPTION** “11.48.080 Violations And Penalty” of the Spring Lake Park Municipal Code is hereby *added* as follows:

A D O P T I O N

11.48.080 Violations And Penalty(*Added*)

A. *Misdemeanor prosecution.* Nothing in this chapter shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this chapter.

B. *Violations.*

1. *Notice.* Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, an administrative offense citation pursuant to SLPC 3.20, setting forth the alleged violation and the alleged violator's right to be heard on the accusation.
2. *Hearing.* The person accused of violating this chapter may request a hearing in writing within 14 days of receipt of the notice of violation and a hearing shall be scheduled, the time and place of which shall be provided to the accused violator.
3. *Hearing officer.* The City Council, or its designee, shall appoint a person to serve as the hearing officer.
4. *Decision.* If the hearing officer determines that a violation of this chapter did

occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under this section, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the acquitted accused violator.

5. *Appeal.* Appeals of any decision made by the hearing officer shall be made to the City Council in writing within seven days of receipt of the hearing officer's decision. The decision of the City Council shall be final.

6. *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

C. *Administrative penalties.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative find of \$500 for a first violation of this chapter, \$1,000 for a second offense at the same licensed premises within a 36-month period and \$2,000 for a third or subsequent offense at the same location within a 36-month period. After the third offense, the license is automatically suspended for seven days commencing the day following the date of the third offense. In addition to the seven day suspension, the City Council shall conduct a hearing at the next regular Council meeting following the third violation to determine whether the license should be suspended longer than seven days. Any additional suspension may be for the remainder of the license period or 90 days, whichever is greater. Upon a fourth violation at the same location within a 36-month period, the license will be revoked.

SECTION 10: **RENUMBER** “11.48 LICENSE BACKGROUND CHECKS” of the Spring Lake Park Municipal Code is hereby *renumbered* as follows:

RENUMBER

11.48 LICENSE BACKGROUND CHECKS

11.~~48~~⁵² LICENSE BACKGROUND CHECKS

SECTION 11: **RENUMBER** “11.48.010 Purpose” of the Spring Lake Park Municipal Code is hereby *renumbered* as follows:

RENUMBER

11.48.010 Purpose

11.~~48~~⁵².010 Purpose

SECTION 12: **AMENDMENT** “11.48.020 Criminal History License Background Investigations” of the Spring Lake Park Municipal Code is hereby *amended* as follows:

A M E N D M E N T

11.~~48~~52.020 Criminal History License Background Investigations

- A. The Police Department is hereby required, as the exclusive entity within the city, to do a criminal history background investigation on the applicants for the following licenses within the city:
1. Peddlers, solicitors and transient merchants;
 2. Tobacco or edible cannabinoid products;
 3. Intoxicating liquor;
 4. Wine and 3.2% malt;
 5. Liquor pawnbrokers;
 6. Second hand goods;
 7. Dealer vehicles for hire;
 8. Sauna;
 9. Massage services;
 10. Sexually oriented business;
 11. Lawful gambling premises;
 12. Permit bingo hall;
 13. Kennel license; and
 14. Used car dealership.
- B. *Conducting the criminal history background investigation.* In order to screen license applicants, the Police Department is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehensions Computerized Criminal History information system in accordance with BCA policy. Any data that is accessed and acquired shall be maintained at the Police Department under the care and custody of the chief law enforcement official or his or her designee. A summary of the results of the Computerized Criminal History data may be released by the Police Department to the licensing authority, including the City Council, the City Administrator or other city staff involved in the license approval process.
- C. Before the investigation is undertaken, the applicant must authorize the Police Department by written consent to undertake the investigation. The written consent must fully comply with the provisions of M.S. Ch. 13, as it may be amended from time to time, regarding the collection, maintenance and use of the information. Except for the positions set forth in M.S. § 364.09, as it may be amended from time to time, the city will not reject an applicant for a license on the basis of the applicant’s prior conviction unless the crime is directly related to the license sought and the conviction is for a felony, gross misdemeanor, or misdemeanor with a jail sentence. If the city rejects the applicant’s request on this basis, the city shall notify the applicant in writing

of the following:

1. The ground and reasons for the denial;
2. The applicant compliant and grievance procedure set forth in M.S. § 364.06, as it may be amended from time to time;
3. The earliest date the applicant may reapply for the license; and
4. That all competent evidence of rehabilitation will be considered upon reapplication.

SECTION 13: **RENUMBER** “11.48.030 Investigation Fee” of the Spring Lake Park Municipal Code is hereby *renumbered* as follows:

R E N U M B E R

11.48.030 Investigation Fee

11.~~48~~⁵².030 Investigation Fee

SECTION 14: **EFFECTIVE DATE** This Ordinance shall be in full force and effect upon approval and publication according to law.

SECTION 15: The City Fee Schedule is hereby amended to establish the Edible Cannabinoid License fee at \$500/year.

PASSED AND ADOPTED BY THE SPRING LAKE PARK COUNCIL

_____.

	AYE	NAY	ABSENT	ABSTAIN
Councilmember Wendling	_____	_____	_____	_____
Councilmember Delfs	_____	_____	_____	_____
Councilmember Goodboe-Bisschoff	_____	_____	_____	_____
Councilmember Dircks	_____	_____	_____	_____
Mayor Nelson	_____	_____	_____	_____

Presiding Officer

Attest

Robert Nelson, Mayor, Spring Lake
Park

Daniel R. Buchholtz, Administrator,
Clerk/Treasurer Spring Lake Park