

# Adult-Use Cannabis: What Cities Need to Know

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*Updated Aug. 1, 2023*

A new law enacted at the end of the 2023 legislative session legalizes adult-use cannabis in Minnesota and establishes a regulatory framework over the cannabis industry. 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.

[Read the full bill](#)

The following frequently asked questions (FAQs) aim to provide information to cities about the new law to assist local governments in making decisions related to the law. The League will continually update this information as necessary.

## Get answers to FAQs regarding the new law on adult-use cannabis

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## **General information**

**Q1. What does the new law do?**

**A1.** The new law legalizes the possession, use, manufacturing, and sale of certain cannabis products within the state. It establishes the Office of Cannabis Management (OCM), which is charged with, among other things, enforcing an organized system of regulation for the cannabis industry and the hemp consumer industry. The law also:

- Establishes labor standards for the use of cannabis and hemp products by employees and testing of employees.
- Establishes expungement procedures for certain individuals previously convicted of a crime related to cannabis.

Possession, use, and home growth under this new law will be legal beginning Aug. 1, 2023, and legal sales are expected to begin in January of 2025. Various other effective dates are noted throughout these FAQs as they apply.

[Access the Office of Cannabis Management's website](#)

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**Q2. How much cannabis can a person legally possess?**

**A2.** This law allows a person of 21 years of age or older to:

- Use, possess, or transport cannabis paraphernalia.
- Possess 2 ounces or less of cannabis flower in a public place.
- Possess 2 pounds or less of cannabis flower in a person's residence.
- Possess or transport 8 grams or less of adult-use cannabis concentrate.

- Possess or transport edible products infused with a total of 800 milligrams or less of tetrahydrocannabinol.
- Give away cannabis flower and products in an amount that is legal for a person to possess in public.

The law authorizes an individual to use adult-use cannabis flower and adult-use cannabis products:

- In a private residence including the individual's curtilage or yard.
- On private property, unless the owner of the property prohibits the use of the products.
- On the premises of an establishment or event licensed to permit on-site consumption.

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### Q3. Are cannabis products legal under federal regulations?

**A3.** Marijuana remains a Schedule I drug under federal law, meaning it is illegal, with limited exceptions, to grow, process, sell or possess marijuana from a federal standpoint.

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### Q4. Can a person grow their own cannabis?

**A4.** The law authorizes a person to cultivate up to eight cannabis plants, of which four or fewer may be mature, flowering plants provided that it is in an enclosed, locked space that is not open to public view.

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### Q5. Does the Clean Indoor Air Act apply to cannabis products?

**A5.** A person may not use cannabis flower, cannabis products, or hemp-derived consumer products in a manner that involves the inhalation of smokes, aerosol, or vapor at any location where smoking is prohibited under the Clean Indoor Air Act.

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### Q6. What types of licenses will the OCM issue?

**A6.** The OCM will issue the following types of licenses:

- Cannabis microbusiness.
- Cannabis mezzobusiness.
- Cannabis cultivator.
- Cannabis manufacturer.
- Cannabis retailer.
- Cannabis wholesaler.
- Cannabis transporter.
- Cannabis testing facility.
- Cannabis event organizer.

- Cannabis delivery service.
- Lower-potency hemp edible manufacturer.
- Medical cannabis cultivator.
- Medical cannabis processor.
- Medical cannabis retailer.

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## Q7. Can cannabis start to be sold now?

**A7.** Cannabis will not be able to be sold until the Office of Cannabis Management is established and able to issue licenses. Communication from state agencies indicate an intended timeline of January 2025 for when sales will be live to the public. Before beginning sales, a cannabis retailer must obtain a local retail registration. Any business attempting to sell cannabis products before licenses are issued should be reported to the Department of Health.

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## Q8. Under the new law, where can adult-use cannabis be sold?

**A8.** Cannabis products and hemp derived consumer products may only be sold in business with a license issued by the OCM.

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## Q9. Could my city's municipal liquor store sell adult-use cannabis?

**A9.** The law adds edible cannabinoid products as an item allowed to be sold at exclusive liquor stores, including municipal liquor stores. The ability of cities to sell cannabinoid products at a liquor store is unique to Minnesota and may create new and complex coverage and liability questions around these products. The League and the League of Minnesota Cities Insurance Trust (LMCIT) are working on guidance for cities considering selling cannabinoid products at their municipal liquor stores. This information will be updated when such guidance is drafted.

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## Q10. Can my city have a municipal cannabis retail store?

**A10.** The new law authorizes cities to operate a municipal cannabis retail store. This is a unique opportunity for Minnesota cities and more research is needed to determine the legal ramifications of such an operation.

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## Q11. Can a retailer sell cannabis seeds for home growth of cannabis?

**A11.** A retailer or a seed labeler may begin selling cannabis seed starting Aug. 1, 2023. Seeds must meet the state requirements for seed labeling. [More information on cannabis seeds can be found from the Minnesota Department of Agriculture \(pdf\).](#)

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## Taxation and revenue

### Q12. How will these new products be taxed?

**A12.** A tax equal to 10% of gross receipts from retail sales of taxable cannabis products will be imposed on any taxable cannabis product retailer that sells cannabis products to customers.

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### Q13. Can our city impose its own cannabis tax?

**A13.** Cities are prohibited from imposing a tax solely on the sale of taxable cannabis products.

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### Q14. Do sales taxes apply?

**A14.** The state sales tax and local sales taxes apply to cannabis and hemp-derived cannabinoid products.

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### Q15. Who receives taxes collected from the sale of cannabis products?

**A15.** Revenues from the retail sales of cannabis products will be divided, with 80% going to the general fund and 20% to the local government cannabis aid account. Cities will receive 50% of the amount certified to the local government cannabis aid account.

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### Q16. What is considered a “taxable cannabis product retailer?”

**A16.** A taxable cannabis product retailer is a retailer that sells any taxable cannabis products. This includes a cannabis retailer, cannabis microbusiness, cannabis mezzobusiness, and lower-potency hemp edible retailer. Minn. Stat § 295.81, subd. 1(s).

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### Q17. How much revenue will cities receive from the local government cannabis aid fund?

**A17.** Half of the amount certified in the cannabis local government aid fund will go to cities. Cities will receive a distribution proportional to the number of cannabis businesses located in the city as compared to the number of cannabis businesses in all cities.

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### Q18. When will cities receive revenue from the local government cannabis aid account?

**A18.** The gross receipts tax goes is effective for gross receipts received after June 30, 2023. The law requires the Department of Revenue to certify the amount to be paid to each city by Sept. 1, 2024, and every year after, and the full amount must be paid on Dec. 26, 2024, and every year after.

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## Enforcement and public safety

### Q19. How is the new law enforced?

**A19.** All licensing issues will be enforced by the Office of Cannabis Management. Until the OCM is up and running, the currently legal hemp-derived edible products under Minn. Stat. § 151.72 will be temporarily regulated by the Department of Health, which is taking over the enforcement of edible cannabis products previously done by the Board of Pharmacy. Local law enforcement may still enforce illegal possession or use crimes where applicable.

[Access the Department of Health's site on the temporary regulation of lower-potency hemp edibles](#)

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### Q20. What are penalties for someone selling edible cannabis products that do not meet the state's requirements?

**A20.** If a retailer is found to be selling edible cannabis products that do not meet state requirements, the Department of Health may embargo the products and potentially destroy the products with the retailer paying for all court costs and fees, storage, and other proper expenses.

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### Q21. Can a person still be charged with possession of cannabis products?

**A21.** Beginning Aug. 1, 2023, the following actions are considered cannabis possession crimes:

- *Possession of cannabis in the first degree.* (Punishable by imprisonment for not more than five years or payment of a fine of not more than \$10,000, or both).
  - More than 2 pounds but not more than 10 kilograms of cannabis flower.
  - More than 160 grams but not more than 2 kilograms of cannabis concentrate.
  - Edible cannabis products, lower-potency hemp edibles, or hemp-derived consumer products infused with more than 16 grams but not more than 200 grams of THC.
- *Possession of cannabis in the second degree.* (Punishable by imprisonment for not more than one year or payment of a fine of not more than \$3,000, or both).
  - More than 1 pound but not more than 2 pounds of cannabis flower in any place other than the person's residence.
  - More than 80 grams but not more than 160 grams of cannabis concentrate.
  - Edible cannabis products, lower-potency hemp edibles, or hemp-derived consumer products infused with more than 8 grams but not more than 16 grams of THC.
- *Possession of cannabis in the third degree.* (Punishable by imprisonment for not more than 90 days or payment of a fine of not more than \$1,000, or both).
  - More than 4 ounces but not more than 1 pound of cannabis flower in any place other than the person's residence.
  - More than 16 grams but not more than 80 grams of cannabis concentrate.

- Edible cannabis products, lower-potency hemp edibles, or hemp-derived consumer products infused with more than 1,600 milligrams but not more than 8 grams of THC.
- *Possession of cannabis in the fourth degree.* (Punishable as a petty misdemeanor).
  - More than 2 ounces but not more than 4 ounces of cannabis flower in any place other than the person's residence.
  - More than 8 grams but not more than 16 grams of cannabis concentrate.
  - Edible cannabinoid products infused with more than 800 milligrams but not more than 1,600 milligrams of THC.

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## Q22. Can a person still be charged with sale of cannabis products?

**A22.** Beginning Aug. 1, 2023, the following actions are considered cannabis sale crimes:

- *Sale of cannabis in the first degree.* Punishable by imprisonment for not more than five years or to a payment of a fine of not more than \$10,000 or both if a person unlawfully sells more than 2 ounces of cannabis flower; more than 8 grams of cannabis concentrate; or edible cannabis products, lower-potency hemp edibles, or hemp-derived consumer products infused with more than 800 milligrams of THC:
  - To a minor and the defendant is more than 36 months older than the minor.
  - Within 10 years of two or more convictions of sale in the second or third degree.
  - Within 10 years of a conviction of first degree
- *Sale of cannabis in the second degree.* May be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both if an adult:
  - Unlawfully sells more than 2 ounces of cannabis flower; more than 8 grams of cannabis concentrate; or edible cannabis products, lower-potency hemp edibles, or hemp-derived consumer products infused with more than 800 milligrams of THC:
    - In a school zone, a park zone, or a drug treatment facility; or
    - Within 10 years of a conviction of sale of cannabis in the first, second, or third degree.
  - Unlawfully sells cannabis flower, cannabis concentrate, edible cannabis products, lower-potency hemp edibles, or hemp-derived consumer products to a minor.
- *Sale of cannabis in the third degree.* An adult may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than \$1,000, or both, if the adult unlawfully sells:
  - More than 2 ounces of cannabis flower.
  - More than 8 grams of cannabis concentrate.
  - Edible cannabis products, lower-potency hemp edibles, or hemp-derived consumer products infused with more than 800 milligrams of THC.
- *Sale of cannabis in the fourth degree.* An adult is guilty of a petty misdemeanor if they unlawfully sell:
  - Not more than 2 ounces of cannabis flower.
  - Not more than 8 grams of cannabis concentrate.

- Edible cannabis products, lower-potency hemp edibles, or hemp-derived consumer products infused with not more than 800 milligrams of THC.

A sale for no remuneration by an individual over the age of 21 to another individual over the age of 21 is not unlawful as cannabis sale in the fourth degree.

- *Sale of cannabis by a minor.* A minor is guilty of a petty misdemeanor if the minor unlawfully sells:

- Not more than 2 ounces of cannabis flower.
- Not more than 8 grams of cannabis concentrate.
- Edible cannabis products, lower-potency hemp edibles, or hemp-derived consumer products infused with not more than 800 milligrams of THC.

A minor is guilty of a misdemeanor if the minor unlawfully sells:

- More than 2 ounces of cannabis flower.
- More than 8 grams of cannabis concentrate.
- Edible cannabis products, lower-potency hemp edibles, or hemp-derived consumer products infused with more than 800 milligrams of THC.

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## Q23. Can a person be charged with a crime for cultivating cannabis?

**A23.** Beginning Aug. 1, 2023, the following are crimes related to the cultivation of cannabis.

- *Cultivation of cannabis in the first degree.* A person is guilty of cultivation of cannabis in the first degree and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person unlawfully cultivates more than 23 cannabis plants.
- *Cultivation of cannabis in the second degree.* A person is guilty of cultivation of cannabis in the second degree and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the person unlawfully cultivates more than 16 cannabis plants but not more than 23 cannabis plants.

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## Q24. Can a person be charged with a crime for using cannabis in public?

**A24.** Beginning Aug. 1, 2023, a city may adopt an ordinance establishing a petty misdemeanor offense for a person who unlawfully uses cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products in a public place other than the following.

- A private residence including the person's curtilage or yard.
- Private property not generally accessible by the public, unless the person is explicitly prohibited from consuming cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products on the property by the owner of the property.
- The premises of an establishment or event licensed to permit on-site consumption.

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## Q25. How do our officers determine if a driver is under the influence of adult-use cannabis?

**A25.** Officers will need to use the same process for determining if a person is under the influence of cannabis while operating a vehicle as they would have prior to the new law being enacted.

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## Q26. Is it a crime to use cannabis products while operating a motor vehicle?

**A26.** It is a misdemeanor for a person to use cannabis flower, a cannabis product, a lower-potency hemp edible, a hemp-derived consumer product, or any other product containing an artificially derived cannabinoid in a motor vehicle when the vehicle is on a street or highway.

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## Q27. Is it a crime to possess cannabis products in a motor vehicle?

**A27.** Beginning Aug. 1, 2023, a person may be charged with a misdemeanor if they possess cannabis products in a motor vehicle on a street or highway if the products meet any of the following conditions:

- Do not meet the packaging requirements set in statute.
- Have been removed from the packaging in which they were sold.
- Are in packaging that has been opened, or the seal has been broken.
- Are in packaging in which the contents have been partially removed.

It is not considered a crime if the cannabis products are in the trunk of the vehicle or in another area of the vehicle not normally occupied by the driver and passengers if the vehicle is not equipped with a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

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## Q28. Could cities prohibit the sale of adult-use cannabis entirely?

**A28.** Cities may not prohibit the possession, transportation, or use of cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products authorized by the new law.

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## Q29. Is our city required to adopt regulations under the new law?

**A29.** Cities are not required to adopt any new regulations under the new law. However, they will be required to register retail sellers and perform compliance checks.

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## Q30. Are prior convictions for cannabis use expunged and what is the city's role in that process?

**A30.** Certain cannabis-related convictions will be expunged by the Bureau of Criminal Apprehension. Upon receipt of a notice of expungement, cities are required to seal all records

related to the expungement, including the records of the person's arrest, indictment, trial verdict, and dismissal or discharge of the case.

Certain felony convictions will be reviewed by the Cannabis Expungement Board to determine what, if any, action should be taken related to a prior conviction. Cities will be required to provide the Cannabis Expungement Board free access to records held by law enforcement agencies or prosecuting authorities.

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### Q31. Can a city prohibit the use of cannabis in public places?

**A31.** A city may adopt an ordinance establishing a petty misdemeanor offense for a person who unlawfully uses cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products in a public place other than the following:

- A private residence including the person's curtilage or yard.
- Private property not generally accessible by the public, unless the person is explicitly prohibited from consuming cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products on the property by the owner of the property.
- The premises of an establishment or event licensed to permit on-site consumption.

Cities will need to work with their city attorney to craft an ordinance defining the areas where cannabis use will be prohibited.

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### Q32. Can our city ban the smoking of cannabis in public places?

**A32.** A city may adopt an ordinance establishing a petty misdemeanor offense for a person who unlawfully uses cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products in a public place other than the following:

- A private residence including the person's curtilage or yard.
- Private property not generally accessible by the public, unless the person is explicitly prohibited from consuming cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products on the property by the owner of the property.
- The premises of an establishment or event licensed to permit on-site consumption.

In addition, under the Minnesota Clear Indoor Air Act, cities are authorized to adopt more stringent regulations on smoking to protect individuals from secondhand smoke or from involuntary exposure to aerosol or vapor from electronic smoking devices. Cities have used this authority to prohibit smoking of tobacco products in public areas including parks, distances from business entrances, and outdoor restaurant patios. This same authority could be used to prohibit the smoking of cannabis in those areas.

Cities should check their ordinances to determine if a prohibition on smoking tobacco products in public places would also apply to cannabis products.

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## City regulation

### Q33. Can the city require sellers to have a city-issued license?

**A33.** A city may not require additional licenses other than the cannabis licenses issued by the OCM. However, the OCM will forward applications to cities for them to certify whether the proposed cannabis business complies with local zoning ordinance and, if applicable whether the proposed business complies with the state fire and building code. The OCM may not issue a license to a cannabis business that does not meet local zoning and land use laws.

In addition, upon receipt of an application for a cannabis license, the OCM will contact the city in which the business would be located and provide the city with 30 days in which to provide input on the application. This is the city's opportunity to provide the OCM with any additional information it believes is relevant to the OCM's decision on whether to issue a license, including but not limited to identifying concerns about the proposed location of a cannabis business, or sharing public information about the applicant.

Before a cannabis business begins making retail sales, it will be required to register with the city in which it is located.

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### Q34. When is our city required to issue retail registration to a cannabis retail business?

**A34.** A city is required to issue a retail registration to a cannabis microbusiness with a retail operations endorsement, cannabis mezzobusiness with a retail operations endorsement, cannabis retailer, medical cannabis retailer, or lower-potency hemp edible retailer that:

- Has a valid license issued by the OCM.
- Has paid the registration fee.
- Is found to be in compliance with the requirements of the applicable state laws through a preliminary compliance check performed by the city.
- Is current on all property taxes and assessments at the location where the retail establishment is located.

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### Q35. Can a retail registration issued by our city be transferred?

**A35.** Retail registration may not be transferred.

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### Q36. Is our city required to conduct compliance checks on businesses with a cannabis retail registration?

**A36.** Cities will be required to conduct compliance checks on retail cannabis businesses with a retail registration by the city. The OCM will develop standardized forms and procedures for these compliance checks.

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### Q37. Can our city charge a fee for a cannabis retail registration?

**A37.** A city may impose an initial retail fee of \$500 or up to half the amount of the applicable initial license fee charged by the OCM, whichever is less. The city may also charge a renewal retail registration fee of \$1,000 or up to half the amount of the applicable renewal license fee charged by the OCM, whichever is less.

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### Q38. Can my city limit the number of cannabis retailer licenses issued in our city?

**A38.** A city that issues cannabis retailer registrations may, by ordinance, limit the number of licensed cannabis retailers, cannabis mezzobusinesses with a retail operations endorsement, and cannabis microbusinesses with a retail operations endorsement to no fewer than one registration for every 12,500 residents. In addition, if a county has one active registration for every 12,500 residents, a city within the county is not obligated to register any additional cannabis businesses.

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### Q39. How does this impact my city's existing license for THC products?

**A39.** It appears that cities may continue to license edible cannabinoid products until the OCM begins issuing licenses. Those businesses that sell edible cannabinoid products to consumers must register with the Minnesota Department of Health by Oct. 1, 2023. However, once the OCM begins issuing lower-potency hemp edible retailer licenses, cities are likely preempted from continuing to issue their own licenses and would begin registering retailers through the city's cannabis retailer registration process.

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### Q40. Which state agency is charged with regulating edible cannabinoid products until the OCM begins licensing cannabis products?

**A40.** The Minnesota Department of Health is now charged with the regulations of edible cannabinoid products until the OCM begins issuing licenses. [Learn more on the Minnesota Department of Health website.](#)

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### Q41. What changes have been made to the edible cannabinoid law adopted in 2022?

**A41.** The new law allows for the continued sale of certain edible cannabinoid products with new limitations including:

- Manufacturers must have each batch of products tested to certify they comply with the standards adopted by the Minnesota Department of Health.
- Manufacturers must disclose information regarding foreign materials applied or added to the products.
- Labels must contain a batch number.

- Beverages cannot contain more than two servings per container.
- Edible cannabinoid products may not contain artificially derived or synthetic cannabinoids.
- Edible cannabinoid products, other than beverages, must be displayed behind a checkout counter.
- Retailers must verify age of purchaser.

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#### **Q42. Can edible cannabinoid products be sold for on-site consumption?**

**A42.** Until the OCM begins issuing licenses, the on-site consumption of edible cannabinoid products is limited to those businesses with an on-sale liquor license issued under Minnesota Statutes, Chapter 340A. In addition, the following conditions must be met:

- Products must be served in original.
- Products may not be sold to an intoxicated customer.
- Products must not be permitted to be mixed with alcoholic beverages.
- Products removed from packaging must remain on premises.

After the OCM is set up, it will issue on-site consumption endorsements for cannabis license holders.

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#### **Q43. Will I be able to prohibit cannabis events in my city?**

**A43.** The new law authorizes temporary cannabis events lasting no more than four days. To be approved for a cannabis event license, applicants must obtain any necessary permits or licenses issued by a local unit of government. Cities may not prohibit cannabis events, but they may set standards which the event organizer must meet. Cities may also permit on-site consumption for events but are not required to.

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#### **Q44. How does this impact my city's existing THC license program?**

**A44.** Local THC licenses may continue until the OCM begins issuing its own licenses, which state agencies anticipate beginning in January of 2025. When the OCM licensing begins, cities will need to follow the retail registration procedures outlined in the law.

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#### **Q45. How does the new law impact my city's existing THC moratorium?**

**A45.** The new law does not affect a current moratorium. If a city adopted a moratorium on low-potency edibles, it remains in place and will expire as noted when it was adopted.

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## Q46. Can the city's zoning regulation restrict where a business can operate?

**A46.** Cities are allowed to adopt reasonable restrictions on the time, place, and manner of the operations of a cannabis business provided that such restrictions do not prohibit the establishment or operation of cannabis businesses. Cities may prohibit the operations of a cannabis business within 1,000 feet of a school, or 500 feet of a day care, residential treatment facility, or an attraction within a public park that is regularly used by minors, including a playground or athletic field.

The OCM will develop model ordinances for reasonable restrictions on the time, place, and manner of a cannabis business.

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## Q47. Can cities adopt a moratorium prohibiting the sale, manufacturing, or distribution of adult-use cannabis to study the issue?

**A47.** Cities may adopt an interim ordinance if:

- It is conducting studies.
- Has authorized a study to be conducted.
- Has held or has scheduled a hearing for the purpose of considering adoption or amendment of reasonable restriction on the time, place, and manner of the operation of a cannabis business as defined in the new law.

Before adopting an interim ordinance, the city must hold a public hearing on the issue. The interim ordinance may be in place until Jan. 1, 2025. The authority for an extended moratorium does not apply to the sale or production of low-potency hemp edible products.

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## Q48: What if my city has complaints about a licensed cannabis business?

**A48.** The OCM will establish an expedited complaint process to receive, review, and respond to complaints made by cities about a cannabis business. The OCM will be required to respond to the complaint within seven days and perform any necessary inspections within 30 days. If certain cannabis businesses are deemed by the city to pose an immediate threat to the health or safety of the public, the OCM must respond within one business day.

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## Q49: Can a city deny a liquor license if they find that the business is selling cannabis or low-potency hemp products without a license?

**A49.** Yes. The new law prohibits a retail license from being issued to a person who has had a license or registration issued under ch. 342 or Minn. Stat. § 151.72, subd. 5b revoked; has been convicted of an offense under Minn. Stat. § 151.72, subd. 7; or has been convicted under any other statute for the illegal sale of marijuana, cannabis flower, cannabis products, lower-potency hemp edibles, hemp-derived consumer products, or edible cannabinoid products and the sale took place on the premises of a business that sells intoxicating liquor or 3.2% malt liquor.

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**Q50. Can a city suspend or revoke a tobacco license if they find that they are selling cannabis or low-potency hemp products without a license?**

**A50.** Yes. The new law allows a tobacco license to be suspended or revoked if the licensee has a registration or licensed under ch. 342 or Minn. Stat. § 151.72, subd. 5b revoked; is convicted of an offense under Minn. Stat. § 151.72, subd. 7; or has been convicted under any other statute for the illegal sale of marijuana, cannabis flower, cannabis products, lower-potency hemp edibles, hemp-derived consumer products, or edible cannabinoid products and the sale took place on the premises of a business that sells tobacco. A city must provide notice and an opportunity for a hearing before suspension or revocation.

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## City employment and personnel issues

**Q51. Does the new law allowing adult-use cannabis change anything about how we do drug testing for CDL holders?**

**A51.** 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](#) that 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.

Cities can find more information on existing drug testing policies in the [LMC Drug and Alcohol Testing Toolkit](#), starting on page 22. An updated model Non-DOT Drug, Alcohol and Cannabis Policies will be available once legal consultants have reviewed.

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**Q52. Does the new law change anything related to employees who carry a firearm?**

**A52.** 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 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.

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**Q53. Besides positions requiring a CDL or carrying a firearm, are there any other positions which are not affected by the new law?**

**A53.** Yes. The law excludes the following seven position classes from the law's changes:

1. A safety-sensitive position, as defined in as defined in Minn. Stat. § 181.950, subd. 13.

2. A peace officer position, as defined in Minn. Stat. § 626.84, subd. 1.
3. A firefighter position, as defined in Minn. Stat. § 299N.01, subd. 3.
4. A position requiring face-to-face care, training, education, supervision, counseling, consultation, or medical assistance to:
  1. Children.
  2. Vulnerable adults, as defined in Minn. Stat. § 626.5572, subd. 21.
  3. Patients who receive health care services from a provider for the treatment, examination, or emergency care of a medical, psychiatric, or mental condition.
5. A position funded by a federal grant.
6. Any other position for which state or federal law requires testing of a job applicant or employee for cannabis.
7. A position requiring a commercial driver's license or requiring an employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing of a job applicant or employee.

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#### **Q54. Can we still prohibit employees from being under the influence of cannabis while at work? Does the League have a model policy with updated language?**

**A54.** Yes, employers can continue to prohibit employees from being under the influence of cannabis products, while at work. For employers, a key focus will be workplace safety with the consideration that cannabis is more difficult to detect and test than alcohol. Employers may continue to maintain drug-free policies at the workplace and discipline employees who use cannabis during working hours or who report to work impaired.

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 Oct. 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, a non-DOT drug and cannabis-city testing policy with protocols following this guidance is important.

Under the new law, employers can enact and enforce work policies prohibiting the use, possession, and impairment of cannabis while at work or operating employer vehicles, equipment, and machinery. It is difficult to test for cannabis to determine if an employee is currently under the influence due to the drug's ability to be detectable for weeks after it is used. With the prohibitions on disciplining employees other than those listed in Q3, employers will be in a difficult position to take action against an employee who tests positive for cannabis. A best practice is for cities to train supervisors about the behavioral signs and symptoms of drug and cannabis use as well as how to document observations of potential impairment so should a situation occur in the workplace, supervisors can effectively respond and document what they observed leading to the situation.

An updated model Non-DOT Drug, Alcohol and Cannabis Policies will be available once legal consultants have reviewed.

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**Q55. If an employee is injured while being under the influence of cannabis at work, are they still entitled to workers' compensation benefits?**

**A55.** While each case is very fact-specific, the general rule is that if the injury was intentionally self-inflicted or the intoxication of the employee is the proximate cause of the injury, then the employer is not liable for compensation. The burden of proof of these facts is upon the employer.

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**Q56. Can employees be in possession of edibles or other cannabis products while at work?**

**A56.** Cities may enact policies prohibiting employees from bringing cannabis products, including edibles, to work. A best practice is for cities to train supervisors about the behavioral signs and symptoms of drug and cannabis use as well as documenting observations of potential impairment so should a situation occur in the workplace, supervisors can effectively respond and document what they observed leading to the situation.

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**Q57. Do we need to change anything in our collective bargaining agreement (CBA) regarding discipline of employees who use cannabis products?**

**A57.** Maybe. If cities have policies within their CBAs that relate to cannabis use and discipline, cities should consult with their city attorney to determine if any changes are needed. CBAs may address cannabis and cannabis testing, but the CBAs must at least meet the minimum employee rights guaranteed by the statute.

Ensure your city's drug and cannabis-testing policies have been updated and your supervisors are trained on the behavioral signs and symptoms associated with impairment as well as documenting observations of potential impairment. If the CBA 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.

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**Q58. Can employees use cannabis products off-duty?**

**A58.** It depends. See [Q1](#), [Q2](#), and [Q3](#) for a list of employees who can be prohibited from using cannabis products both on and off duty due to federal or state regulations. Other employees would be able to use cannabis products while they are off duty, if they are not impaired at work. If there are any questions regarding whether an employee could be prevented from using cannabis products while off-duty, please consult your city attorney before any action is taken.

In addition, the law prohibits an employer from taking adverse employment action against an employee who is a patient in the state's medical cannabis program unless a failure to do so

would violate federal or state law or regulations, or cause an employer to lose a monetary or incensing-related benefit under federal law or regulations.

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### Q59. How does this impact the requirements of the Drug-Free Workplace Act?

**A59.** 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 cannabis 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 cannabis products within its scope.

An updated model Non-DOT Drug, Alcohol and Cannabis Policies will be available once legal consultants have reviewed.

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### Q60. Should my city continue to include cannabis as a pre-employment panel screen for my non-DOT/safety-sensitive employees?

**A60.** The new Minnesota law prohibits an employer from refusing to hire an applicant simply because of a positive cannabis drug test. There are exceptions for positions where such testing and denial of job offer is required under applicable federal or state law. Cities will want to refer to the Q3, which provides a list of positions excepted from cannabis testing prohibitions. Practically speaking, if a position is not excepted, cities will need to determine whether they want to continue to test for cannabis in light of the limitation of the testing and confer with their city attorney before taking an action as a result of a positive test.

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## Edible cannabinoid products

### Q61. What is an edible cannabinoid product?

**A61.** An edible cannabinoid product is any product that is intended to be eaten or consumed as a beverage by humans, contains a cannabinoid in combination with food ingredients and is not a drug. The edible product must contain a maximum of 5 mg THC per serving. Edible cannabinoid products do not include products that are intended to be smoked or vaped.

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### Q62. What are the labeling requirements for edible cannabinoid products?

**A62.** Label's on THC edible products must include the following:

- Name, location, phone number, and website of manufacturer.

- Name and address of independent accredited laboratory used to test product.
- Batch number
- Amount or percentage of cannabinoids in each unit of the product.
- Statement stating that the product does not claim to diagnose, treat, cure, or prevent any disease and has not been evaluated or approved by the FDA.
- No claim that the product may be used or is effective for the prevention, treatment, or cure of a disease; or that it may be used to alter the structure or function of human or animal bodies, unless the claim has been approved by the FDA.
- Serving size
- Cannabinoid profile per serving and total.
- Ingredients
- The following Statement, “Keep this product out of reach of children.”

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### Q63. What are the restrictions on edible cannabinoid products?

**A63.** Edible cannabinoid product in Minnesota must meet the following requirements:

- Products may not bear likeness or contain cartoon-like characteristics of a real or fictional person, animal, or fruit that appeals to children.
- Products may not be modeled after a brand of products primarily consumed by or marketed to children.
- Products may not be made by applying cannabinoids to a commercially available candy or snack food item.
- Products may not contain other non-FDA approved ingredients.
- Products may not be packaged in a way that resembles other commercially available food products.
- Products may not be packaged in a container that includes items that could reasonably mislead a person to believe the package contains anything but an edible cannabinoid product.
- Must be packaged in child resistant, tamper-evident, and opaque packaging except if intended to be consumed as beverage.
- Contain no more than 5 mg THC per serving.
- Contain no more than 50 mg THC per package.
- Only contain Delta-8 or Delta-9 THC.
- Must be stored behind counter or in locked space.
- Must not be sold to those under the age of 21.

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## Q64. Can edible cannabinoid products be sold for on-site consumption?

**A64.** Edible cannabinoid products can be sold for on-site consumption if the seller also holds an on-sale liquor license. Products sold for on-site consumption may not be mixed with alcohol and may not be sold to a customer who the retailer knows or reasonably should know is intoxicated.

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## Q65. Can an exclusive liquor store sell edible cannabinoid products?

**A65.** An exclusive liquor store is authorized under state law to sell edible cannabinoid products.

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## Q66. Do retailers that sell edible cannabinoid products need to register with the state?

**A66.** Sellers of edible cannabinoid products must register with the state of Minnesota by Oct. 1, 2023. A registration system is being developed by the state and should be open on Aug. 1, 2023.

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## Q67. Who should I contact if a retailer is selling noncompliant products in my city?

**A67.** The Minnesota Department of Health (MDH) has established a complaint form to be used if a person suspects that an edible cannabinoid product is being sold in violation of state law. [Access the MDH complaint form](#). In addition, MDH has created a [Hemp-Derived Cannabinoid Product Compliance Fact Sheet for retailers \(pdf\)](#).

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## Q68. Where can I find more information on edible cannabinoid products?

**A68.** Visit the [Minnesota Department of Health webpage of frequently asked questions about edible cannabinoid products](#). In addition, MDH has created a [Hemp-Derived Cannabinoid Product Compliance Fact Sheet for retailers \(pdf\)](#).

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### Your LMC Resource

Research & Information Service staff members are ready to help you apply their broad knowledge to the issues you're dealing with today.

[Access online form to submit a question](#), or call us: (651) 281-1200 or (800) 925-1122