

REGULATING LOWER-POTENCY HEMP EDIBLE RETAIL SALES

A Model Ordinance for Minnesota



This model ordinance was prepared to assist Minnesota counties and cities interested in establishing local regulation of lower potency hemp edible retail sales.¹

Since hemp products were legalized for manufacture and sale in Minnesota on July 1, 2022, many local units of government either adopted an ordinance establishing a moratorium on lower-potency hemp edible retail sales or adopted licensing regulations for these products, while other jurisdictions chose not to prohibit or regulate the sale of these products.

¹ See MINN. STAT. § 342.01, subd. 34 for the definition of “hemp business” which includes lower-potency hemp edible retailer. Note this ordinance is limited to regulating lower-potency hemp edible retail sales and does not further regulate lower-potency hemp edible manufacturers beyond state law.

Hemp businesses, including lower-potency hemp edible retailers, were required to register with the Minnesota Department of Health until July 1, 2024, at which time authority over these registrations transferred to the Office of Cannabis Management (OCM). Under the new cannabis law, full licensing authority by the OCM over hemp businesses will take effect January 1, 2025. At that time, no city or county in Minnesota may license these manufacturers and retailers, and any prior ordinances regulating licensing over these entities must expire by this date. Local units of government are required to register lower-potency hemp edible retailers that are pre-approved for licenses or are licensed by the state, and are in compliance with local ordinances. (Minn. Stat. § 342.22) While local units of government do not have licensing authority, they may use their registration authority as a framework to set local regulations for the sale of these products through authority granted in the state cannabis law, as well as their authority to regulate to protect the general health, safety, and welfare of the community; and, in some cases, they may use their public health authority. From a public health standpoint, local units of government may wish to explore these other areas of regulatory authority aimed at reducing youth exposure and access, in addition to other areas that emphasize public health and prevention surrounding the sale of lower-potency hemp edibles.

While hemp businesses are subject to OCM licensing requirements, they are not explicitly included in all aspects of the “cannabis business”² regulatory scheme. As such, local units of government may have broader authority to regulate hemp businesses more stringently beyond the time, place, and manner restrictions prescribed for the regulation of cannabis businesses by local units of government.

It is important to note that local regulation of the retail sale of cannabis and lower-potency hemp edibles is untested in Minnesota courts. While the law is clear about some areas of local regulation that are permitted and not permitted, there is ambiguity in the law. For more information on authority for local regulation of the retail sale of cannabis, please see Public Health Law Center’s resources: [*Minnesota Regulation of Legalized Cannabis: FAQ Public Health Options*](#) and [*Minnesota’s New Cannabis Law*](#). A city or county planning to adopt this model ordinance, in whole or in part, should first review it with its attorney to determine suitability for the municipality’s circumstances. The city or county attorney should review the planned ordinance to ensure it conforms to applicable state and federal laws.

2 Cannabis businesses are defined to include the cannabis-specific businesses that will be licensed under the law, including cannabis microbusinesses, mezzobusinesses, cultivators, manufacturers, retailers, wholesalers, transporters, testing facilities, event organizers, delivery services, and medical cannabis combination businesses. [MINN. STAT. § 342.01, subd. 14](#)

Tips for Using this Model Ordinance

This model ordinance represents a balance between state standards, best public health policy practices, and practicality for city and county governments in Minnesota. Communities will differ on their readiness and willingness to adopt certain policy components contained in this model ordinance and, therefore, may or may not choose to adopt policies that go beyond minimum state requirements, such as:

- Limiting the number of lower-potency hemp edible retailers in a jurisdiction and regulating the distance between these retailers and youth-oriented facilities;
- Restricting the sale of lower-potency edibles to retail locations in which only persons 21 years and older are permitted, or restricting sales to cannabis retailers;
- Requiring lower-potency hemp beverages to be prohibited in self-service displays as is already the case under state law regarding non-beverage lower-potency hemp edibles;
- Establishing a minimum clerk age for employees selling lower-potency hemp edibles and beverages;
- Prohibiting pharmacies from selling lower-potency hemp edible products;
- Requiring lower-potency hemp edible and beverage products be sold in child-resistant packaging;
- Prohibiting sales of lower-potency hemp beverages for on-site consumption that are removed from their original packaging;
- Prohibiting sales of lower potency hemp edible products used as additives in commercially available food and beverages;
- Raising the minimum legal sales age to 25;
- Restricting the redemption of coupons and other price promotions for lower-potency hemp products;
- Prohibiting the delivery and/or online sales of lower-potency hemp edible products;
- Prohibiting the distribution of free or nominally priced samples of lower-potency hemp edibles; and
- Prohibiting on-site consumption of lower-potency hemp edibles.

Some provisions in this ordinance mirror the state law requirements while other provisions are more protective than the state law. Public health provisions that strictly conform to the state law are **highlighted in green** ✓ and public health provisions that exceed state law are **highlighted in orange** ⚠️. Provisions that are primarily structural or necessary for the operation of the ordinance are not highlighted. This model ordinance includes provisions that mirror state law and that enable local enforcement actions along with the state OCM enforcement of such provisions.

City and County Authority to Register and Regulate Lower-Potency Hemp Edible Retailers

State law allows cities and townships to delegate to the county their authority to register cannabis and lower-potency hemp edible retailers. (Minn. Stat. § 342.22, subd. 1) Counties will be responsible for the registration of retailers in any unincorporated area of the county and in any local units of government within the county that choose to delegate their registration authority. Along with registration authority, counties have the authority to regulate such businesses under the public health authority granted to them by the state under Minn. Statutes Chapter 145A. State law allows cities and towns to enact stronger protections than the county, but they cannot have policies less restrictive than those counties enact under their public health authority. Cities using this model policy should review any county requirements to ensure conformity or identify opportunities to enact more protective regulations.

Counties using this model ordinance may consider countywide provisions that would apply to the jurisdictions where they have authority to register the businesses.

Customizing the Ordinance

Context boxes are included throughout the ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A local unit of government wishing to adopt all or part of this ordinance should keep this in mind and remove the context boxes.

In some instances, blanks (such as [____]) prompt you to customize the language to fit your community's needs. In other instances, the ordinance offers you a choice of options (such as [choice one/choice two]). Some options are followed by a comment that describes the legal provisions in more detail. A degree of customization is always necessary to make sure the ordinance is consistent with a community's existing laws. Such customization also ensures that communities are using this model ordinance to address local needs and engender health equity.

Immigration Impacts of Cannabis and Lower-Potency Hemp Edibles Use or Sale

Federal law still prohibits and criminalizes the sale, use, possession, or growing of cannabis, despite Minnesota's decriminalization and legalization. As such, anyone who is not a U.S. citizen and who possesses, uses, sells, grows, or interacts in any way with cannabis or works in the cannabis industry may face severe immigration consequences, including the loss of legal permanent residency or other immigration status, or their removal or deportation from the United States. (8 U.S.C. § 1182(a)(2); 8 U.S.C. § 1227(a)(2)(B)(1); 8 U.S.C. § 1227(a)(1).) According to the Immigrant Law Center of Minnesota, even lower-potency hemp edibles may trigger some immigration consequences.

Unfortunately, most non-citizens are unaware of these risks, particularly in states that have decriminalized or legalized cannabis. Prior to issuing a registration, state and local governments are encouraged to alert registrants, registration applicants, and their employees that there are immigration risks for non-citizens who interact with cannabis or the cannabis industry and that these risks exist regardless of any local or state license or registration. Registrants who employ or contract with non-citizens for any task related to their cannabis business may put those non-citizen employees and their family members at risk of losing their legal status or facing deportation from the United States. This is the case even for those non-citizens who work with employment authorization granted by the U.S. Department of Homeland Security.

The Immigrant Law Center of Minnesota provides [background information](#) that could be incorporated into an information notice disseminated by local offices that process cannabis retail establishment registrations. The information is available in [several languages](#). Please contact the [Immigrant Law Center of Minnesota](#) for further information.

For an example of such an information notice from the State of California, see [Non-U.S. Citizen Referral Process and Possible Legal Consequences when Working in the Cannabis Industry](#).

Notice

For Cities

This ordinance is drafted in the form prescribed by [state law](#) for statutory cities. Statutory cities must publish their ordinances — or a summary thereof — in the city's official newspaper before they become effective. Home rule charter cities may have to follow the formatting and

other procedural requirements found in their city's charter. Charter cities should consult their charter and their city attorney to ensure they are following all charter requirements. All cities must provide copies of their ordinances to their county law library or its designated depository pursuant to Minn. Stat. § 415.021.

Additionally, Minn. Stat. § 415.19 requires statutory and home rule charter cities to post proposed new ordinances and ordinance amendments on the city website at least 10 days prior to a final vote by the city council, if the city already posts ordinances on its website. Under the same statute, within 10 days of a final vote, cities must also provide this same notice to all city listserv subscribers via their electronic notification system or, if the city does not have an electronic notification system, in the location where the city posts public notices.

For Counties

A county must publish notice in the county's official newspaper not less than ten days before the meeting at which the ordinance is to be considered pursuant to Minn. Stat. § 375.51, subd. 2. The notice will state the subject matter and the general purpose of the proposed ordinance. Proof of publication must be attached to the ordinance and filed in the office of the county auditor. Adopted ordinances—or a summary thereof—must be published in the county's official newspaper and provided to the county law library or designated depository pursuant to Minn. Stat. § 375.52.

Note

While the Public Health Law Center does not lobby, advocate, or directly represent communities, adopting effective public health policies starts early with education, stakeholder and community engagement, and a strong advocacy plan. If a community is unaware of resources available to them for engaging the community and developing an advocacy plan, or if a jurisdiction is considering adopting an ordinance and is interested in learning about the range of resources available, the Public Health Law Center can help through our publications and referrals to experts in the field.

This model ordinance was prepared by the Public Health Law Center, located at the Mitchell Hamline School of Law in St. Paul, Minnesota, and made possible by the financial support of the Minnesota Prevention Resource Center at the Association for Nonsmokers-Minnesota.

ORDINANCE NO. [_____]

AN ORDINANCE REGULATING THE RETAIL SALE OF LOWER-POTENCY
HEMP EDIBLES WITHIN THE [CITY/COUNTY OF _____], MINNESOTA

THE [CITY COUNCIL/COUNTY BOARD OF THE CITY/COUNTY
OF _____] DOES ORDAIN:

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Section 1. Findings of Fact.

Note

The Findings Section is important because it provides the evidentiary basis for the proposed lower-potency hemp retailer regulations and demonstrates a municipality's reasoning for adopting specific provisions. Findings of fact could include data, statistics, and relevant epidemiological information, for example, that support the purposes of the ordinance. In addition to providing educational background and building support for the ordinance, the findings can also serve a legal purpose. If the ordinance is challenged in court, the findings are an admissible record of the factual determinations made by the legislative body when considering the ordinance. Courts generally defer to legislative determinations of factual issues and can, in turn, influence a court's legal findings. A list of Findings of Fact supporting this model ordinance appears in a companion publication on Public Health Law Center's website titled, *Minnesota Findings for Local Regulation of Cannabis and Lower-Potency Hemp Edibles*.

NOW THEREFORE it is the intent of the [city council/county board], in enacting this ordinance, to regulate the establishment, operations, and sales of lower-potency hemp edible retailers located in [city/county].

Section 2. Applicability and Jurisdiction.

[Choose the city or county version and delete the language that is not applicable to the jurisdiction adopting this ordinance.]

[County version:]

- (A) **Authority.** The County Board of Commissioners is authorized to adopt this Ordinance by Minnesota Statutes sections 144.417, subd. 4(a), 145A.04, 145A.05, 152.0263, subd. 5, Chapter 342, and Chapter 375, and any other applicable state law, as may be adopted or amended from time to time.
- (B) **Jurisdiction.** The registration requirements of this ordinance in Sections 4, 5, and 6 govern the regulation of lower-potency hemp edible retailers in the unorganized territory of [___] County and in any city or town located in [___] County that does not register and regulate retail sales of cannabis or lower-potency hemp edibles. All other sections and provisions of this ordinance apply throughout [___] County unless otherwise specified.

- (C) **Nothing in this Ordinance shall prevent** cities and townships within [____] County from adopting stricter regulations to protect people from public health and public safety harms of the retail sale of cannabis and lower-potency hemp edibles.

[City version:]

- (A) **Authority.** The City Council is authorized to adopt this Ordinance by Minnesota Statutes sections 144.417, subd. 4(a), 145A.05, subd. 9, 412.221, subd. 32, 152.0263, subd. 5, Chapter 342, Chapter 412, and any other applicable state law, as may be adopted or amended from time to time.

Section 3. Definitions.

Except as otherwise provided or clearly implied by context, all terms are given their commonly accepted definitions. For this ordinance, the following definitions apply unless the context clearly indicates or requires a different meaning:

Advertisement. Any written or oral statement, illustration, or depiction that is intended to promote sales of lower-potency hemp edibles, or sales at a specific cannabis business or hemp business and includes any newspaper, radio, internet and electronic media, or television promotion; the distribution of fliers and circulars; and the display of window and interior signs in a cannabis business. “Advertisement” does not include a fixed outdoor sign that meets the requirements in Minn. Stat. § 342.64, subd. 2(b) as amended from time to time.

Attractive to underage persons. Products that are attractive to individuals under age 21 as described in Minn. Stat. § 342.62, subd. 3 and products prohibited under Minn. Stat. § 342.06(d), as may be amended from time to time.

Child resistant. Packaging that meets the poison prevention packaging standards in Code of Federal Regulations, title 16, section 1700.15.

Compliance checks. The system the [city/county] uses to investigate and ensure that those retail establishments authorized to sell lower-potency hemp edible products are following and complying with age verification and the requirements of this ordinance. Compliance checks may also be conducted by the [city/county] or other units of government for educational, research, and training purposes or for investigating or enforcing state or local laws and regulations relating to lower-potency hemp edible products.

Delivery sale. The sale of any lower-potency hemp edible product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a registered retail establishment. Delivery sale

includes, but is not limited to, the sale of any lower-potency hemp edible product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by registered retail establishments or third parties by any means, including curbside pickup.

Lower-potency hemp edible. “Lower-potency hemp edible” as defined in Minn. Stat. § 342.01, subd. 50, as amended from time to time.

Lower-potency hemp edible retailer. Any place of business with a license or endorsement to sell lower-potency hemp edible products to the public from the Office of Cannabis Management and that has a lower-potency hemp edible retail registration from the [city/county].

Moveable place of business. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

Pharmacy. A place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.

Registered cannabis retail business. Any cannabis business with a license or endorsement from the Office of Cannabis Management for retail sales of approved products and that has a cannabis retail registration from the [city/county].

Registered retail establishment. Refers to registered cannabis retail businesses, medical cannabis combination businesses with retail sales, and lower-potency hemp edible retailers.

Retail establishment. Any place of business where products are available for sale to the general public. “Retail establishment” includes, but is not limited to, grocery stores, tobacco product shops, convenience stores, liquor stores, gasoline service stations, bars, and restaurants.

Sale. Any transfer of goods for money, trade, barter, or other consideration.

Sample. Refers to any lower-potency hemp edible products that are offered free of charge or for sale at a nominal cost.

Self-service display. The open display of lower-potency hemp edible products in a retail establishment in any manner where any person has access to the products without the assistance or intervention of the registered retail establishment or its employee and where a physical exchange of the lower-potency hemp edible product from the registered retail establishment or its employee is not required to access the lower-potency hemp edible products.

Vending machine. Any mechanical, electric or electronic, or other type of device that dispenses licensed products upon payment by any form by the person seeking to purchase the Lower-Potency Hemp Edible product.

Youth-oriented facility. Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. Youth-oriented facilities include, but are not limited to, schools, playgrounds, places of worship, recreation centers, and parks.

Section 4. Registration.

Note

The County version would include this language to clarify that this section applies only to those jurisdictions and areas where the county is responsible for registration: “The provisions in this section apply to lower-potency hemp edible retailers and retail establishments operating in the unincorporated areas within the county and jurisdictions that have deferred registration to the county.”

- (A) **License required.** No person shall sell or offer to sell any lower-potency hemp edible product without first having obtained a license or retail endorsement to do so from the Office of Cannabis Management.
- (B) **Registration required.** No person shall sell or offer to sell any lower-potency hemp edible product without first being granted a registration by [the city/county]. Operating a retail establishment without a valid retail registration is a violation of this Ordinance and of Minn. Stat. § 342.22, subd. 5(e) and is subject to a civil penalty of up to \$2,000 per violation.

Registration

State law mandates that cannabis businesses and hemp businesses with retail sales, including lower-potency hemp edible retailers, must register with the city, town, or county in which the retail establishment is located. A county may issue a registration in cases where a city or town has provided consent for the county to issue the registration for the jurisdiction. A second registration from the county is not required if a city or town provides the registration.

- (C) **Application.** An application for a registration to sell lower-potency hemp edible products must be made on a form provided by the [city/county]. The application must contain the full name of the applicant and any true party of interest, the applicant's and true parties' residential and business addresses and telephone numbers, the name of the business for which the registration is sought, and any additional information the [city/county] deems necessary. Upon receipt of a completed application, the [city/county] will timely review the application. If an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.
- (D) **Action.** The [city/county] shall review the application for conformance with this Ordinance and all applicable state and local laws and rules, including but not limited to compliance with local zoning code, building code, and fire code. The [city/county] may approve or deny the application for a registration, or it may delay action for a reasonable period to complete any investigation of the application or the applicant deemed necessary. If the [city/county] approves the application, the [city/county] will issue the registration to the applicant. If the [city/county] denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.
- (E) **Term.** All registrations issued are valid for one calendar year from the date of issue.
- (F) **Revocation or suspension.** Any registration issued may be suspended or revoked following the procedures set forth in Section 11(A) of this ordinance.
- (G) **Transfers.** All registrations issued are valid only on the premises for which the registration was issued and only for the person to whom the registration was issued. The transfer of any registration to another location or person is prohibited.
- (H) **Display.** All registrations must be posted and displayed at all times at the registered retail establishment in plain view of the general public.
- (I) **Renewals.** The renewal of a registration issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days but no more than 60 days before the expiration of the current registration.
- (J) **Issuance is a privilege and not a right.** The issuance of a registration is a privilege and does not entitle the registration holder to an automatic renewal of the registration.

Provision that exceeds state law

- (K) **Maximum number of registrations.** The maximum number of lower-potency hemp edible retailer registrations issued by the [city/county] at any time is limited to [see “Registration Cap” context box below]. When the maximum number of registrations has been issued, the [city/county] may place persons seeking registration on a waiting list and allow them to apply on a first-come, first-served basis, as registrations are not renewed or are revoked. A new applicant who has purchased a business location holding a valid [city/county] registration will be entitled to priority, provided the new applicant meets all other application requirements in accordance with this ordinance.

Registration Cap for Lower-Potency Hemp Edible Retailers

Communities with a higher concentration of cannabis and lower-potency hemp edible retailers within their jurisdictions expose more youth and young adults to commercial cannabis and lower-potency hemp edible marketing, making it easier for them to obtain the products. Additionally, proximity to cannabis retailers is associated with increased harms of cannabis use including increases in poison control calls, increased cannabis use during pregnancy, cannabis related hospitalization during pregnancy, and an increase of cannabis use in adults and young adults. (Cantor, N., et. al. The association between physical availability of cannabis retail outlets and frequent cannabis use and related health harms: a systematic review. *The Lancet Regional Health — Americas* 2024;32: 100708 Published Online [https://www.thelancet.com/journals/lanam/article/PIIS2667-193X\(24\)00035-8/fulltext](https://www.thelancet.com/journals/lanam/article/PIIS2667-193X(24)00035-8/fulltext).) One way to address retailer density issues is to place a limit or cap on the number of registrations of cannabis retailers and lower-potency hemp edible retailers that may be issued by the city/county. The above provision would set the maximum number of registrations available for lower-potency hemp edible retailers. Note that while state law allows for local units of government to limit the number of cannabis and hemp businesses, it does not allow local jurisdictions to outright prohibit cannabis and hemp businesses (Minn. Stat. § 342.13).

Provision that strictly conforms to the state law

- (L) **Pharmacies Ineligible for Registration.** No new or renewed registration will be granted to a pharmacy or any retail establishment that operates an on-site pharmacy.

Section 5. Fees.

No registration will be issued under this ordinance until the appropriate registration fees are paid in full. The fees will be established pursuant to Minn. Stat. § 342.22, subd. 2, as may be amended from time to time.

Fee Limits

State law limits the registration fees that local jurisdictions may charge for cannabis businesses. This Fees provision reflects and limits fees pursuant to state law. No additional licensing fees may be charged. See Minn. Stat. § 342.22, subd. 2.

Section 6. Basis for Denial of Registration

(A) An initial application for registration or a renewal of registration with the [city/county] will be denied if:

Provisions that exceed state law

- (1) the applicant is under 21 years of age;
- (2) the applicant does not have a valid retail license, preapproved license, or retail endorsement from the Office of Cannabis Management;
- (3) the applicant fails to provide any of the information required on the licensing application or provides false or misleading information;
- (4) the applicant is prohibited by state, or local law, ordinance, or other regulation from holding a registration; or,
- (5) the applicant fails a pre-application inspection by the [city/county] as provided under Minn. Stat. § 342.22, subd. 3(b) as amended from time to time.

- (B) If a registration is mistakenly issued or renewed to any person, it will be revoked upon the discovery of ineligibility for registration under this ordinance or state or other local law, ordinance, or other regulation. If a registration is mistakenly issued or renewed to any person, it will be revoked upon the discovery of ineligibility for registration under this ordinance or state or other local law, ordinance, or other regulation. Any revocation will comply with the requirements of Minn. Stat. § 342.22, subd. 5, as amended from time to time.

Section 7. Prohibited Sales and Other Restrictions.

Note

The county version has two options:

- (1) If the county intends for these provisions to apply to all jurisdictions within the county, it would include this sentence here:

The provisions in this section apply to all jurisdictions and registered retail establishments throughout [____] County under the County's public health authority pursuant to Minn. Stat. § 145A.

Or

- (2) If the county intends these provisions to apply to only the jurisdictions where it has authority to register, then it would include this sentence:

The provisions in this section apply to lower-potency hemp edible retailers and retail establishments operating in the unincorporated areas within the county and jurisdictions that have deferred registration to the county.

County Authority

If the county chooses to apply only some of the provisions in this section to apply countywide and some provisions to apply only to those businesses registered by the county, then the county will need to specify which provisions apply countywide and which apply only to those businesses registered by the county.

- (A) **In general.** In addition to the prohibitions and restrictions set forth under Minn. Stat. § 342.46, subd. 7, no registered lower-potency hemp edible retailer shall sell or offer to sell any lower-potency hemp edible product:

 **Provision that exceeds state law**

- (1) **By means of any type of vending machine.**

 **Provision that strictly conforms to the state law**

- (2) **By means of self-service display.** All lower-potency hemp edible products, including beverages, must be stored in a locked case behind the sales counter, in a storage unit, or another area not accessible by the public.

Self-Service Display Prohibition

Minn. Stat. § 342.46, subd. 4 requires lower-potency hemp edible retailers to “ensure that all lower-potency hemp edibles, other than lower-potency hemp edibles that are intended to be consumed as a beverage, are displayed behind a checkout counter where the public is not permitted or in a locked case. All lower-potency hemp edibles that are not displayed must be stored in a secure area.” Cities and counties, therefore, may wish to regulate beverages more stringently in the same manner as non-beverage edibles, such that beverages, too, must be displayed behind a checkout counter where the public is not permitted or in a locked case. Additionally, cities/counties could require the products always be stored in a locked case, whether behind the counter or in another area of the store.

 **Provision that strictly conforms to the state law**

- (3) **At a moveable place of business.** Only fixed location businesses may sell lower-potency hemp edible products.

Provision that exceeds state law

- (4) **That does not comply with the packaging and labeling requirements** under Minn. Stat. §§ 342.62 and 342.63 as may be amended from time to time, except that:

Provisions that strictly conform to the state law

- (a) No lower-potency hemp edible beverage may be sold outside of its original packaging; and,
- (b) No lower-potency hemp edible product may be sold that does not indicate a single serving by scoring or use of another indicator that appears on the product.
- (c) If it is not possible to include a single serving by scoring or use of another indicator that appears on the product, the lower-potency hemp edible may not be packaged in a manner that includes more than a single serving in each container.
- (5) **By means of delivery sales.** All sales of lower-potency hemp edible products must be conducted in person, in a registered retail establishment, in over-the-counter sales transactions.

Delivery Sales Prohibition

State law allows for licensed delivery services to transport and deliver cannabis flower, cannabis products, lower-potency hemp edibles, and hemp-derived consumable products to customers. (Minn. Stat. § 342.41) However, cities and counties may be interested in prohibiting delivery sales as an effective means of curtailing underage access to approved products. This approach recognizes the challenges inherent in trying to effectively monitor online retailers and prevent underage access to the vast market of hemp-derived THC products found online, acknowledging that age verification processes do not prevent underage persons from obtaining these and similar products online.

- (6) **By any other means, to any other person, or in any other manner or form prohibited** by state or other local law, ordinance provision, or other regulation.

 Provision that exceeds state law

- (B) **Legal Age.** No person shall sell any lower-potency hemp edible product to any person under the age of 21.

Minimum Legal Sales Age Higher than Age 21

State law sets a minimum legal sales age for lower-potency hemp edibles at age 21. There is nothing in the law that prohibits a local jurisdiction from setting a higher minimum legal sales age. Evidence supports a higher minimum legal sales age of 25.

For instance, frequent cannabis use between the ages of 14 and 21 is associated with lower high school completion and college graduation and subsequent lower income levels at age 25 (reference provided below). If the minimum legal sales age of 25 is enacted, then other provisions should also be adjusted, such as minimum clerk age and store ownership.

Silins, E., Horwood, L. J., Patton, G. C., Fergusson, D. M., Olsson, C. A., Hutchinson, D. M., Spry, E., Toumbourou, J. W., Degenhardt, L., Swift, W., Cofey, C., Tait, R. J., Letcher, P., Copeland, J., & Mattick, R. P. (2014). Young adult sequelae of adolescent cannabis use: An integrative analysis. *The Lancet Psychiatry*, 1(4), 286-293. [https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(14\)70307-4/abstract](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(14)70307-4/abstract); Fergusson, D. M., & Boden, J. M. (2008). Cannabis use and later life outcomes. *Addiction*, 103(6), 969-976. <https://onlinelibrary.wiley.com/doi/10.1111/j.1360-0443.2008.02221.x>.

 Provision that exceeds state law

- (C) **Age verification.** Before any sale of lower-potency hemp edibles, the registered retail establishment must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age.

 Provision that strictly conforms to the state law

- (D) **Signage.** Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must at all times be posted prominently and in plain view at each location where lower-potency hemp edible products are offered for sale. The required signage, which will be provided to the retail establishment by the [city/county], must be posted in a manner that is clearly visible to anyone who is, or is considering, making a purchase.

✓ Provision that strictly conforms to the state law

- (E) **Instructional program.** Registered retail establishments must ensure that all salesclerks complete a training program on the legal requirements related to the sale of lower-potency hemp edible products and the possible consequences of registration or license violations. Registered retail establishments must maintain documentation demonstrating their compliance and must provide this documentation to the [city/county] at the time of renewal, or whenever requested to do so during the registration term.
- (F) **Minimum clerk age.** Individuals employed by a registered retail establishment must be at least 21 years of age to sell lower-potency hemp edible products.

Minimum Age for Clerks

Cities and counties may be interested in establishing a minimum age for employees to sell lower-potency hemp edibles at registered retail establishments. In the commercial tobacco control context, the tobacco industry has acknowledged that peer pressure facing young clerks from their underage peers seeking to purchase products at the counter plays a role in youth access. Establishing a minimum clerk age addresses the peer pressure issue and youth access. This sample language allows individuals under minimum clerk age to work for a lower-potency hemp edible retailer but not engage in sales of those products. For example, a 20-year-old clerk employed at a grocery store may sell potato chips and soda to a customer, but not lower-potency hemp edibles (including beverages) that are also offered for sale at the same retail establishment.

[(G) Choose one of the options to require where lower-potency hemp edible products may be sold.]

✓ Provision that strictly conforms to the state law

No admittance of any person under age 21. No person shall sell or offer for sale any lower-potency hemp edible products, except in registered retail establishments that prohibit at all times entry of persons under the age of 21.

Or

Limit sale of lower-potency hemp edibles to registered cannabis retailers. Lower-potency hemp edibles must only be sold at registered cannabis retail businesses.

Comment

Cannabis retailers are very limited in the products they are allowed to sell under state law. (Minn. Stat. § 342.27, subd. 3). Limiting the availability of and exposure to lower-potency hemp edibles to cannabis retailers would reduce youth access and would reduce exposure and marketing of the products at the point of sale.

✔ Provisions that strictly conform to the state law

- (H) **Proximity to youth-oriented facilities.** No new or renewed lower-potency hemp edible retailer registration will be granted to any person for a retail establishment location that is within [1,000] feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a youth-oriented facility.
- (I) **Proximity to other registered retail establishments.** No new registration will be granted to any person for a lower-potency hemp edible retail location that is within [2,000] feet of any other existing registered retail establishment
- (J) **Samples prohibited.** No samples of any lower-potency hemp edible products may be distributed free of charge or at a nominal cost. The distribution of lower-potency hemp edible products as a free donation is prohibited.

Prohibiting the Sampling of Lower-Potency Hemp Edible Products in Retail Settings

Under Minn. Stat. § 342.46, subd. 7, lower-potency hemp edible retailers are prohibited from distributing or allowing free samples of lower-potency hemp edibles, except when the business is licensed to permit on-site consumption and samples are consumed within its licensed premises. A provision prohibiting all samples would be more protective of public health than state law.

✔ Provision that strictly conforms to the state law

- (K) **On-site consumption prohibited.** No registered lower-potency hemp edible retailer may allow on-site consumption of lower-potency hemp edible products on the premises.

Provisions that exceed state law

- (L) **Advertising restrictions.** Registered retail establishments must follow all advertisement restrictions pursuant to Minn. Stat. § 342.64, as amended from time to time.
- (M) **Child-resistant packaging.** All sales of any lower-potency hemp edible products must be packaged in child-resistant packaging. Upon request by [city/county], a registered retail establishment must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.
- (N) **Products that are attractive to underage persons.** No person shall sell or offer for sale any lower-potency hemp edibles or beverages that are attractive to underage persons.

Products that are Attractive to Underage Persons

Prohibiting products that are intentionally designed and marketed to attract youth has strong potential to subvert youth initiation and use of these products. State law prohibits products that resemble commercially available food products or are “designed to appeal to persons under age 21.” (Minn. Stat. § 342.62, subd. 3). The law specifically prohibits the Office of Cannabis Management from approving products that are or appear to be a lollipop or ice cream; bear the likeness or contain characteristics of a real or fictional person, animal, or fruit; are modeled after a type or brand of products primarily consumed by or marketed to children; are similar to certain food products; or are added to a finished food product that does not contain cannabinoids. (Minn. Stat. § 342.06 (d)) Given that many edible products are marketed as gummies and other food products attractive to youth, it is important to ensure these products do not portray images containing cartoons, toys, robots, real or fictional animate creatures, or any likenesses to images, characters, or phrases commonly used to advertise to youth. This includes products that imitate packaging or labeling for candy, cereals, sweets, chips or other foods typically marketed to youth.

- (O) **Coupon and price promotion.** No registered retail establishment may accept or redeem any coupon, price promotion, or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any lower-potency hemp edible products to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.

Product Discounts

The price of these lower-potency hemp edible products, like any product promotion strategy, directly affects consumption levels, particularly among price-sensitive consumers, such as people with lower incomes, including youth and young adults. For example, the commercial tobacco industry devotes billions of dollars per year to innovative pricing strategies designed to entice new customers to purchase their products and to discourage current users from quitting. Jurisdictions, in turn, can prohibit the redemption of such price promotions and coupons to negate industry discount marketing strategies, which has been shown in the commercial tobacco control space to be an effective point-of-sale regulation in curbing youth initiation and use.

Provision that exceeds state law

- (P) **Potency and amount per sale transaction.** Lower-potency hemp edible retailers may sell or offer for sale lower-potency hemp edible products that comply with potency limits in accordance with Minn. Stat. § 342.46, subd. 6, as amended from time to time.

Section 8. Compliance Checks and Inspections.

Provisions that exceed state law

- (A) All registered retailer establishments must be open to inspection by authorized [city/county] officials or their designees during regular business hours.
- (B) In accordance with Minn. Stat. § 342.22, subd. 4, [city/county] will conduct compliance checks of every retail establishment with a retail registration issued by [city/county]. The checks will assess compliance with age verification requirements and all provisions of this ordinance.

Provision that strictly conforms to the state law

- (C) From time to time, but at least [twice] per year, [city/county] must conduct compliance checks to ensure compliance with all provisions of this ordinance.

✓ Provision that strictly conforms to the state law

- (D) In accordance with state law, [city/county] will conduct at least two annual compliance checks that involve participation of a person at least 17 years of age, but under the age of 21 to enter the registered retail establishment to attempt to purchase lower-potency hemp edible products under the supervision of a law enforcement officer or an employee of [city/county]. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check.

Compliance Checks

State law requires municipalities to conduct age verification compliance checks of both registered cannabis retail businesses and lower-potency hemp edible retailers at least once each calendar year. Cities and counties may, however, require additional compliance checks. For retailer education purposes, and to identify and cite repeat offending retailers, the model language above requires at least two compliance checks per year.

Along with the state minimum requirements for underage compliance checks, the [city/county] should adopt inspection and compliance check procedures that test for retailer compliance with all provisions of the ordinance. For example, if a city or county requires lower-potency hemp edible beverages offered for sale to be stored behind the sales counter, in a locked case or unit not freely accessible to the public, the city or county should inspect each retailer to ensure compliance with that provision.

Section 9. Responsibility.

All registered lower-potency hemp edible retailers are responsible for the actions of their employees regarding the sale, offer to sell, and furnishing of lower-potency hemp edible products on the licensed and registered premises. The sale, offer to sell, or furnishing of any lower-potency hemp edible product by an employee will be considered an act of the registrant.

Section 10. Defense.

It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

Penalizing Underage Purchase, Use, and Possession and the Use of False Identification

This model ordinance does not include penalties for underage penalizing underage Purchase, Use, and Possession (PUP) or penalties for the use of false IDs for the following reasons. At its core, a point-of-sale ordinance is intended to regulate the behavior of retailers. Penalizing underage persons detracts from the focus of the retailer regulations and siphons enforcement resources away from the retailers to young consumers, many of whom may struggle with addiction, substance abuse, and mental health issues. There is no strong evidence to support an assertion that PUP penalties are effective in significantly reducing youth use of these products. And while the cannabis and consumer hemp industries are fairly new — especially in Minnesota — PUP laws were historically lobbied for by the commercial tobacco industry to punish youth users while the industry simultaneously targeted, and continues to target, youth to replace an older, sicker, and dying customer base and maintain profits.

Section 11. Violations, Penalties, and Administrative Hearings.

(A) Violations.

- (1) **Notice.** A person violating this ordinance may be issued, either personally or by mail, an administrative citation from the [city/county] that sets forth the alleged violation and informs the alleged violator of their right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.
- (2) **Hearings.**
 - (a) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to [city/county] administrator or other designated [city/county] officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.
 - (b) The [city/county] administrator or other designated [city/county] officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.

- (3) **Hearing officer.** The [city council/county board] will designate a hearing officer. The hearing officer will be an impartial employee of the [city/county] or an impartial person retained by the [city/county] to conduct the hearing.
 - (4) **Decision.** A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the [city/county] and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the [city/county] and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in Section 11(A)(6) of this ordinance.
 - (5) **Costs.** If the citation is upheld by the hearing officer, the [city's/county's] actual expenses in holding the hearing up to a maximum of [\$1,000] must be paid by the person requesting the hearing.
 - (6) **Appeals.** Appeals of any decision made by the hearing officer must be filed in [____] County district court within 10 business days of the date of the decision.
 - (7) **Continued violation.** Each violation, and every day in which a violation occurs or continues, will constitute a separate offense.
- (B) **Administrative Penalties.**
- (1) **Registrants.** Any registrant or other retail establishment cited for violating this ordinance, or whose employee has violated this ordinance, will be charged an administrative fine of [\$300] for a first violation; [\$600] for a second offense at the same registered premises within a 36-month period; and [\$1,000] for a third or subsequent offense at the same location within a 36-month period from the first violation. The registration will be suspended for a period of not less than [30] consecutive days for any violation of this ordinance and may be revoked. Upon a fourth violation within a 36-month period from the first violation, the registration will be revoked.
 - (2) **Registration suspension.** In accordance with Minn. Stat. § 342.22, subd. 5, the [city/county] will suspend the retail registration of the lower-potency hemp edible retailer or registered cannabis retail business for 30 days for violations of this ordinance or if the operation of the business poses an immediate threat to the health or safety of the public.

- (3) **Retail establishment operating without registration.** Pursuant to Minn. Stat. § 342.22, subd. 5(e), any retail establishment found to be making or attempting to make any sales to a customer or patient enrolled in the medical cannabis registry program without a valid retail registration will be charged a civil penalty of \$2,000 for each violation.
- (C) **Tobacco retail licensees.** In accordance with Minn. Stat. § 461.12, subd. 2a, the tobacco retail license will be suspended for no less than seven (7) days and may be revoked for certain cannabis-related violations by the licensed tobacco retailer on the licensed premises.
- (D) **Statutory penalties.** If the administrative penalties for violations by lower-potency hemp edible retailers authorized to be imposed by Minn. Stat. Chapter 342, as amended from time to time, differ from those established in this ordinance, then the higher penalty will prevail.
- (E) **Complaints submitted to the Office of Cannabis Management.** In accordance with Minn. Stat. § 342.13 (h), any violations of this ordinance will be submitted as complaints to the Office of Cannabis Management.

Section 12. Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Section 13. Effective Date.

[For cities]

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as amended from time to time.

[For counties]

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 375.51, subd. 3, as amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.