

# MINNESOTA'S NEW CANNABIS LAW

## Maximizing Local Authority to Protect Public Health



**This document summarizes core provisions of local regulatory authority under Minnesota's new cannabis law<sup>1</sup> and how local units of government can best protect the public health, safety, and welfare of their residents.**

It is divided into two sections: the first lays out how local government can promote public health by maximizing express authority provided in the state law, and the second presents regulatory options for local government to explore in areas that are not explicitly spelled out or preempted in the law but are, nevertheless, important for safeguarding public health and protecting youth.

### Implementation of the law

Implementation of Minnesota's cannabis law will be phased in over the next several years. Many provisions in the law are subject to interpretation by the Office of Cannabis Management and may be fleshed out through the regulatory rulemaking process. This document is meant to provide a snapshot analysis of what is known and understood about the operation of the law. This document will be updated periodically as more information comes to light through OCM interpretation and implementation.



## Local Regulation: Maximize Explicit Local Authority

**Authority to:** *adopt an interim ordinance to regulate cannabis and lower-potency hemp edible businesses until Jan. 1, 2025*

### Options

- Moratorium on all lower-potency hemp edible and cannabis businesses until Jan. 1, 2025.
- May regulate, restrict, or prohibit the operation of a lower-potency hemp edible and cannabis business until Jan. 1, 2025.

### Public health rationale

- Allows time to pause establishment of lower-potency hemp edible and cannabis businesses, to protect the planning process, and to study time/place/manner restrictions before these businesses are up and running.

**Authority to:** *restrict or prohibit public use*

### Options

- May prohibit all public use of cannabis products, except in the following areas:
  - A private residence, including person’s curtilage or yard
  - Private property not generally accessible by the public, unless prohibited by property owner
  - On the premises of establishment or event licensed for on-site consumption.
- May limit public use of any cannabis products (smoking/vaping/edible/other) similar to prohibitions on public consumption of alcohol
- May limit smoking and vaping in specific areas to avoid secondhand smoke exposure.
- Local government may define what constitutes “public place” (but cannot include as public place the above exceptions). Considerations of “public place” include parks, city/county buildings or property, trails, streets, and sidewalks.

### Public health rationale

- Restricting use in public helps reduce normalization of product use, protects against secondhand smoke exposure, and protects youth from exposure and access to products.

**Authority to:** *limit number of lower-potency hemp edible and cannabis retail business registrations*

**Options**

- May limit number of licensed cannabis retailers and cannabis mezzobusinesses and microbusinesses with retail operations endorsements to no fewer than one registration for every 12,500 residents.
- If a county has one cannabis retailer registration per 12,500 residents, a city or town located in that county is not obligated to register a cannabis retailer.
- Note: these limitations apply to licensed cannabis retailers, cannabis mezzobusinesses and microbusinesses that are endorsed as retailers, not to lower-potency hemp edible<sup>2</sup> retailers.
- Local governments may also restrict the number and location of lower-potency hemp edible businesses.

**Public health rationale**

- Limiting the number and density lower-potency hemp edible and cannabis retail businesses avoids overconcentration of retail outlets, exposure to these businesses which by their very presence and signage act as a marketing tool, and normalization of product use.

**Authority to:** *enact zoning ordinances*

**Options**

- May prohibit the operation of cannabis businesses within:
  - 1,000 feet of a school;
  - 500 feet of a day care facility;
  - 500 feet of a residential treatment facility;
  - 500 feet of a public park attraction regularly used by minors (playgrounds, athletic fields).
- Additional limitations on location and operations of cannabis and hemp businesses may be allowed under local zoning authority.

**Public health rationale**

- Zoning restrictions help ensure that inconsistent property uses, such as residential areas, youth-oriented areas, or places of worship, are not located near one another and play an important role in minimizing youth exposure and access.

**Authority to:** *further restrict retail hours of operation*

**Options**

- May further restrict hours of operation for retail sales of cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products beyond the state minimum restrictions, but hours cannot be reduced beyond these state minimum hours of operation.
- Operating (open) hours may be reduced to 10 a.m. to 9 p.m., seven days a week.

**Public health rationale**

- Restricting hours of operation reduces opportunities for increased use and attendant normalization, access by underage persons, and combined consumption with alcoholic beverages.

**Authority to:** *prohibit or restrict on-site cannabis events*

**Options**

- May approve or deny applications for permits for on-site cannabis events.
- May restrict hours or number of days for events.
- If jurisdiction approves on-site event, it may prohibit the sale and consumption of cannabis flower, cannabis products, lower-potency hemp edibles, hemp-derived consumer products or any combination of products.
- If jurisdiction permits on-site consumption, it may further restrict consumption beyond state-mandated restrictions for these events. (For example, prohibit use of certain types of products, or prohibit all smoking or vaping of products.)

**Public health rationale**

- Prohibiting or restricting cannabis events can minimize attendant normalization of products and youth access and use.
- Prohibiting or restricting cannabis events protects nearby properties from inconsistent uses.
- Prohibiting on-site consumption can best protect individuals from secondhand smoke or involuntary exposure to aerosol or vapor from electronic delivery devices.
- Prohibiting sales of products at these events provides greater control over access to these products, particularly regarding underage access.

**Authority to:** *maximize enforcement authority*

**Options**

- May submit complaints about business violations to the OCM to initiate inspections.
- May conduct additional compliance checks beyond the state-mandated once per calendar year.
- May establish a complaint system that can trigger OCM inspections, as needed.

**Public health rationale**

- Regular and multiple checks ensure retail compliance with age verification requirements, as well as compliance with any local ordinance established under Minn. Stat. § 342.13.
- Establishing a complaint process assists with focusing attention of the local jurisdiction and, in turn, the OCM, on cannabis businesses that may not be following state law.

## Local Regulation: Explore Further Areas for Local Control

A local unit of government cannot prohibit the establishment or operation of a cannabis business or hemp business licensed by the OCM, nor can it prohibit the possession, transportation, or use of cannabis flower, cannabis products, lower-potency hemp edibles or hemp-derived consumer products. Notably, the cannabis law explicitly sets forth limits on the restrictions local government may enact with respect to “cannabis businesses” (i.e., hours of operation, zoning, density limits, and “time, place, and manner” restrictions). Note that there may be more room for more stringent regulation of hemp manufacturers, wholesalers, and retailers (i.e., those selling and manufacturing lower-potency hemp edibles), because these businesses are not included in some of the express limitations for local regulation of “cannabis businesses” under the law.

Absent explicit preemption, the law may allow for additional local regulation under local jurisdictions’ public health authority and police powers.<sup>3</sup> See Minn. Stat. § 145A.05 and Minn. Stat. § 422.221 subd. 22 and subd. 32. Local units of government could explore policies to reduce youth exposure and access and act as a counterweight to industry presence and increased commercialization and consumption. As with any new laws and regulations, the limits of authority and interaction of new laws with existing laws are yet untested in the courts so there is risk that local laws could be challenged or otherwise trigger opposition. As local governments begin to explore options for more stringent local policies, they should always consult with their attorneys to ensure any proposed ordinances are compliant with state and federal law.

Explore authority to: *restrict higher potency cannabis products*

Options

- May be able to restrict higher potency cannabis products that can be harmful to adults and youth.
- Restrictions could include product categories, limitations on servings/package size, or potency limits.

Public health rationale

- Even lower-potency products can have adverse health effects for individuals, especially when combined with alcohol. Additional risks include use during pregnancy, psychosis, unintended poisoning, and other adverse effects.<sup>4</sup>
- Restricting higher potency products in the marketplace will reduce the risks associated with overdosing, combined consumption with alcohol, impaired driving, and other adverse health and safety effects.

Explore authority to: *restrict flavors*

Options

- May be able to restrict flavored products, including electronic smoking devices (vapes), that are appealing to children.
- May be able to prohibit sales of flavored products entirely.

Public health rationale

- Research on flavored commercial tobacco products has demonstrated that they are especially attractive to youth.<sup>5</sup>
- Flavored cannabis and hemp edible products are likewise appealing to youth, especially when edibles are sold as gummy bear figures and other food and candy products that are enticing to children and adolescents.

**Explore authority to:** *restrict advertising and display in stores*

**Options**

- May be able to enact more stringent restrictions on point-of-sale advertising than the state statutory restrictions.
- A local unit of government considering more stringent regulations would want to consult with attorneys to ensure compliance with both state and federal constitutional protections and other applicable laws.
- Restrictions for hemp edibles could include that the products, including beverages, be sold behind the counter to reduce visibility to youth and access to the products.

**Public health rationale**

- Targeting advertising at the point of sale, both inside and outside grocery stores, convenience stores, pharmacies, gas stations and other retail settings, exposes youth to these products and normalizes their use.
- Restrictions on quantity or size of signs can help reduce eye-catching advertising easily visible to the public.
- Requiring all products, including lower-potency hemp beverages, be sold behind the counter removes them from the reach of youth and reduces youth exposure.

**Explore authority to:** *restrict access to and require secure packaging for lower-potency hemp beverages*

**Options**

- The law requires restricted and secured access to cannabis products and food edibles; however, it does not require lower-potency hemp beverages for sale to be kept in a locked shelf or cooler behind the counter or other secure location. May restrict access to lower-potency hemp beverages in retail settings by requiring sale behind the counter.
- The law requires child-resistant packaging for cannabis products and lower-potency hemp edibles, but does not require it for lower-potency hemp beverages. May require the same safer packaging standards for these beverages.

**Public health rationale**

- The presence of lower-potency hemp beverages on grocery, convenience, and gas station store shelves normalizes use of these products. Restricting retail sales to face-to-face transactions and keeping these beverages securely stored will safeguard against youth access.
- Child resistant packaging will help reduce accidental ingestion by children.

Explore authority to: *prohibit price promotions and product discounts*

Options

- May be able to restrict or outright prohibit price promotions and discounts for cannabis products and hemp edible products.

Public health rationale

- In the commercial tobacco field, studies have suggested that the more products cost, the less likely youth are to start or keep using them. The tobacco industry invests billions of dollars in this marketing technique. The regulation of retail value-added promotions and other marketing techniques, especially for flavored products, would play an important role in preventing youth initiation and use.

Explore authority to: *restrict sales of lower-potency hemp edibles or limit availability to 21+ stores*

Options

- May be able to restrict the sale of lower-potency hemp edible products being sold to stores restricted to individuals 21 years of age and older or to cannabis retailers.

Public health rationale

- Limiting the sale of these products to retail settings in which underage persons are prohibited from entering is an important measure to ensure youth are not able to easily access these products.
- Easy availability and display of these products in stores where people under age 21 are allowed access provides an opportunity for point-of-sale advertising and exposure to these products.

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## Endnotes

- 1 MINN. STAT. § 343 (2023), <https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/63>.
- 2 “Lower-potency hemp edible” is defined in MINN. STAT. § 342.01, subd. 50. Several terms have been used synonymously to describe these products, such as Delta-9, THC edibles, hemp edibles, and the like. For purposes of consistency, this document will utilize the statutorily defined term “lower-potency hemp edible” throughout.
- 3 MINN. STAT. §§ 145A.05, 412.221, subds. 22 AND 32.
- 4 *What You Need to Know (And What We’re Working to Find Out) About Products Containing Cannabis or Cannabis-derived Compounds, Including CBD*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis>.
- 5 See, e.g., Andrea C. Villanti et al., *Flavored Tobacco Product Use in Youth and Adults: Findings from the First Wave of the PATH Study* (2013–2014), 53 AM. J. PREV. MED. 139 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28318902>; Shari P. Feirman et al., *Flavored Tobacco Products in the United States: A Systematic Review Assessing Use and Attitudes*, 18 NICOTINE TOBACCO RES. 739 (2015).