

Regular City Council Meeting
Mountain Lake City Hall
Tuesday, September 6, 2022
6:30 p.m.

AGENDA

1. Meeting Called to Order *Additional information on agenda item is attached or at City Hall
2. Approval of Agenda and Consent Agenda
 - a. Bills: Checks # 26373-26456, 818E-821E (1-11)
 - b. Payroll: Checks #66876 – 66893
 - c. Approve August 11 Utilities Commission Minutes (12-13)
 - d. Approve August 15 City Council Minutes (14-15)
 - e. Approve August Street Department Report (16)
3. Public – A total of ten (10) minutes is allotted for individuals to briefly discuss a topic of concern or provide comments to the Council.
4. Planning & Zoning
 - a. Discussion/Action – Resolution 15-22 - Daron Friesen Variance Request (17)
5. Active Living Committee
 - a. Discussion/Action – Community Garden & Policies (18-20)
6. 2023 Budget
 - a. Discussion/Action – Resolution 16-22 - 2023 Preliminary Levy (21-22)
 - b. Discussion/Action – 2023 – 2025 Non-Union Wages & Salaries
7. City Attorney
8. City Administrator
 - a. Moratorium (2nd Reading) (23-31)
 - b. Discussion/Action – Resolution 17-22 Decertification TIF 1 (32-34)
9. Adjourn

Mountain Lake Utilities Commission Meeting
Mountain Lake City Hall
Thursday, August 11, 2022
7 AM

Members Present: Todd Johnson, Mark Langland, Sue Garloff, Brian Janzen, David Savage,
 City Council Liaison Dean Janzen

Members Absent:

Staff Present: Michael Mueller; Clerk/Administrator; Jill Falk; Utilities Office Manager,
 Dave Watkins; Electric Superintendent; Lane Anderson; Lineman; Steve
 Peters; Lineman; Taylor Nesmoe; Water/Wastewater Superintendent;
 Scott Pankratz; Water/Wastewater Worker

Others Present:

Call to Order

The meeting was called to order at 7 AM.

Approval of Minutes and Bills

Motion by Garloff seconded by Johnson to approve the July 21st Minutes, and Check
 Numbers 21883-21929 (406e-409e). Motion carried.

Electric Department

Watkins has been meeting with the Engineering team regarding the purchase of the new generator. It was mentioned that asbestos has been found in the exhaust of the #5 engine. However, it is not on the ceiling. With the new generator, the engineers would like to increase the height of the smoke stake to approximately 50 to 55 feet. This would increase the current height of the building by an additional 25 to 30 feet and will allow for better emissions. He is going to be meeting with them again today with hopes of setting up a timeline for purchase and believes they are getting close to finding an option.

The Service Upgrade Policy was updated in 2020. Per the policy, existing customers will not be charged for expansion or additional services. Nickel Construction is looking to add a new service to a new building which means that per the policy, the utilities will cover the service expansion costs.

Water/Wastewater Department

Nesmoe informed the commission that they have begun the treatment process for pond #3. This process will take approximately two years and then they will request to have the sonar

boat be brought back out to check the sludge levels. The new ponds are almost completed and Nesmoe will be meeting with Graupman and Mathiowetz to go over the final punch list.

Nesmoe stated that both he and Pankratz have completed two classes recently. One was a Wastewater course and the other was for hydrants. They will also be attending a class in September and then taking the exam for the Class C license. Langland mentioned that the culvert leading to the ponds is beginning to wash out. Nesmoe is aware of the issue and there are some options, but at this time nothing will be done.

City Administrator

Mueller will be attending a conference for MMUA in a few weeks. He stated that delegates will need to be appointed and MMUA had listed Michael Schulte and Ron Melson. A motion was made by Garloff to update the MMUA delegates to remove Schulte and Melson and add Mueller and Watkins. The motion was seconded by Savage.

It was mentioned that the brickwork around the streetlight posts is starting to deteriorate. Repairs need to be completed not only for presentation but for safety as well. The discussion was then brought up questioning if the repairs would fall on the Utilities or the Street Department. The brick was used to allow easier access to the pole if repairs are needed. On a different occasion, the utilities covered the cost to replace a sidewalk that was damaged due to light post repairs. Watkins will reach out to Nickel Construction for quotes to repair the brick or replace it with concrete. Once the quotes are received, it will then be determined if the issue needs to be taken to the council to determine which department will cover the costs.

Adjourn

The meeting was adjourned at 7:27 a.m.

ATTEST:

Jill Falk, Utilities Office Manager

**City of Mountain Lake
Regular City Council Meeting
Mountain Lake City Hall – 930 Third Ave
Monday, August 15, 2022
6:30 p.m.**

Members Present: Dean Janzen, Dana Kass, Darla Kruser, Andrew Ysker

Members Absent: Mike Nelson

City Staff Present: Michael Mueller City Administrator, Daron Friesen Street Superintendent

Others Present: Doug Regehr, Kevin Oeltjenbruns

Call to Order

The meeting was called to order by Andrew Ysker at 6:30 p.m.

Approval of Agenda & Consent Agenda

Motion by Kass, seconded by Janzen to approve the agenda and consent agenda as presented.

Motion carried 4– 0.

Bills: Checks # 26355-26372, 814E-817E

Payroll: Checks # 66844-66875

Approve July 21 Utilities Commission Minutes

Approve August 1 Special City Council Minutes

Approve August 1 City Council Minutes

Hiring of Wyatt Wall – Volunteer Firefighter effective July 1, 2022

Hiring of Lacy Freitaq – EMT effective August 15, 2022

Approve Purchase for Defibrillator, Ambulance, \$25,874.83

Approve the Den Street Closure Request

Public

No comments

Planning & Zoning

A public hearing was held regarding Daron Friesen's variance request. Kevin Oeltjenbruns spoke on the behalf of Martha Oeltjenbruns, there was concern about the property line, as well as her view being blocked. No other comments or concerns from the public. The request was tabled for later discussion, City Council wanted to view the property in person before making a final decision.

Active Living Committee

Community Garden & Policies were tabled.

2023 Budget

Update – League of Minnesota Cities Budget Guide for Cities

Update – 2023 LGA

Update – 2023 Capital Improvement Plan

Discussion – 2023 Budget

Motion by Janzen, seconded by Kass to approve the 2023 Capital Improvement Plan. Motion carried 4–0.

City Attorney

No update.

City Administrator

Discussion – Cottonwood County Approved \$20,000 Grant Application for Weed Harvester

Discussion/Action – Mountain Lake Trail Boardwalk

Discussion/Action – Campground Policy

Discussion/Action – Purchasing Policy

Discussion/Action – Moratorium (1st Reading)

The City was awarded \$20,000 from the grant application from Cottonwood County for the weed harvester replacement. Motion by Kass, seconded by Janzen to approve the campground policy. Motion carried 4–0. Motion by Janzen, seconded by Kass to approve the purchasing policy. Motion carried 4–0. Michael Mueller, City Administrator read a proposed moratorium on the sale of THC (tetrahydrocannabinols) products and the issuance of regulations and licenses.

Adjourn

The meeting was adjourned at 7:28 p.m.

ATTEST:

Michael Mueller, Administrator/Clerk

STREET DEPT AUGUST Report

- Seal Coat STREETS, 2nd AVE, 11th ST, 9th ST, 6th ST, 7th AVE
- Round up, Cemetery Rds, Plunge Pool Shop Area
Parks Grounds, library
- Spray 24D 1st AVE Ditch from 7th ST to County Rd 1
- Mow Cemetery @ All City Grounds
- WEED whip Cemetery
- Oil Change #20
- Wash Trucks, EQ, mowers
- Haul Cars to Mankato 8-11-22
- Dile @ close 2 Graves
- Install Signs 4th AVE By Elementary School
- Cold Patch, S-Klien, Bokelder, 10th ST S, 6th AVE, 8th ST, Basinger Rd
- Restripe Park Stalls, Crosswalks, Chip Seal Areas
- Round up Camp Ground
- Build Camp Ground Parking lot SE Corner
- Clean Beach Install New SAND
- TREE Dump Maint, Mow

RESOLUTION #15-22

**A RESOLUTION TO APPROVE A VARIANCE FROM RESIDENTIAL SIDE YARD
SETBACKS (SECTION 9.11 SUBDIVISION 5)
CITY OF MOUNTAIN LAKE, MINNESOTA**

WHEREAS, the Planning and Zoning Commission of the City of Mountain Lake considered a request for a variance from Residential District (R) Accessory Structure Standards and for Parcel Identification Number (PIN) 22.711.0020, described as Lots 1, 2 & 3, Siemen's Addition, in the City of Mountain Lake, and

WHEREAS, the Planning and Zoning Commission reviewed the application and accompanying documents at a scheduled meeting on August 15, 2022 and passed a motion recommending the granting of the variance with no further conditions; and

WHEREAS, the City Council acting as the Board of Adjustment shall always act with due consideration to promote the public health, safety, convenience, and welfare, and the assurance that the proposal is consistent with the intent and purpose of Chapter 9 of City Code; and

WHEREAS, the City Council acting as the Board of Adjustment has reviewed and accepted the findings of fact and conditions for the variance from accessory structure standards on PIN 22.711.0020

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain Lake, Minnesota that the variance from Residential District (R) Side Yard Setbacks for Parcel Identification Number (PIN) 22.711.0020, described as Lots 1, 2 & 3, Siemen's Addition, in the City of Mountain Lake is hereby approved with no further conditions and the Mayor and City Administrator/Clerk are authorized to sign.

Adopted this 6th day of September, 2022.

Mike Nelson, Mayor

ATTEST:

Michael Mueller, Clerk/Administrator

Community Garden Liability Waiver

****Required****

I wish to utilize the community garden provided by the City of Mountain Lake. I state and affirm that:

1. My use of the community garden is voluntary.
2. I acknowledge that a community garden is not an essential service provided by the city
3. I understand and acknowledge that the gardening activities that I voluntarily engage in have certain risks. I understand that these risks, known or unknown, anticipated or unanticipated, may result in injury, death, illness, disease or damage to myself or my property, or to other persons and their property.
4. **In consideration of being allowed to use the community garden, I hereby personally assume all risks in connection with such usage and I hereby agree to hold the city, it's officials, employees, agents and contractors harmless and I waive my right to make claims or bring lawsuits against the city or anyone working or volunteering on behalf of the city for any injuries or damages related to the alleged negligence of the City.**

This waiver does not apply to any injuries or damages that are a result of any willful, wanton, or intentional misconduct by the city or anyone acting on behalf of the city.

I understand that entering into and signing this agreement affects my legal rights and result in my giving up or waiving certain legal rights and I accept this and sign this agreement of my own free will.

The terms of this agreement shall bind the members of my family, if I am alive and my heirs, assigns and personal representatives if I am deceased.

My signature indicates that I have read this entire document, understand it completely, acknowledge that it cannot be modified or changed in any way by oral representations and agree to be bound by its terms.

Name _____ **Date** _____

Address _____

City _____

Signature _____

Garden Etiquette

- ❖ Introduce yourself and build a stronger community, know as many adjoining plot holders as possible
- ❖ If planting tall crops, do so where they won't shade other garden plots
- ❖ **Weed and maintain your garden and pathways around your garden regularly as weed seeds quickly spread.**
- ❖ Remove pests and diseased plants often
- ❖ Never borrow tools from another gardener without permission
- ❖ **Do not pick any planting from another plot even if you think that the plot has been abandoned or neglected. Items grown in any plot belong to that plot holder only.**
- ❖ Please walk with care and do not trample surrounding plants
- ❖ Do not remove plot markers.
- ❖ Children are welcome at the community garden, however please monitor their activities.

Planting Rules and Responsibilities

- ❖ I plan to attend the work days when announced.
- ❖ **I will plant my garden promptly by June 15. I will harvest and clean out my plot by November 15th.**
- ❖ I will prepare my plot for ground cover and carry out all garbage
- ❖ I will maintain my garden plot including weeding & removal of weeds from garden area
- ❖ I will maintain the aisles around my garden by keeping it free of weeds
- ❖ I will not plant trees or shrubs
- ❖ I will only use organic pesticides and natural fertilizers
- ❖ I will keep walkways free of tools and planting equipment
- ❖ I will not plant invasive species
- ❖ I will remove refuse when a particular crop has finished producing
- ❖ I will remove stones and other foreign material from my plots. Nothing will be piled against the fences or left in the aisles.

- ❖ No heavy duty equipment that is wider than garden aisles will be permitted in the garden
- ❖ No pets allowed in garden
- ❖ No mulch in the walk ways

Gardens must be maintained on a weekly basis or as needed to minimize weeds

Having a community garden plot and letting it go to weeds is not acceptable. The Garden Committee reserves the right to mow the garden down if not maintained in accordance with this agreement. You must maintain your garden on a weekly basis; mulching, weeding, harvesting and disposal.

Mountain Lake Community Garden Committee will not be responsible for any accidents, injuries, or damages, nor will the garden committee be responsible for any theft, damage to, loss of, or replacement of any belongings, equipment, materials, tools or plantings. There is no security for personal possessions.

Please read this contract, garden rules and garden information. Make sure you agree and understand the regulations. This contract, along with the city required "Hold Harmless Waiver" must be signed. This agreement, along with the waiver, must be **returned by mail to P.O. Box C, Mountain Lake, MN, 56159 or drop off at City Hall.**

Fees for 2023: Full Plot 20 x 20 \$30.00

All funds collected are on deposit in a local financial institution. Funds are used for paying water bills and other expenses for the garden plots. Treasurer's report to plot holders are available upon request.

Gardener Signature: _____

Name: _____

Address _____

Telephone _____

Email Address _____

**IF YOU WOULD LIKE TO MAKE DONATION TO THE COMMUNITY GARDEN IT WOULD BE APPRECIATED
AND WILL BE PUT TO USE WHEN MORE SUPPLIES ARE NEEDED.**

**City of Mountain Lake
Mountain Lake City Council
Resolution #16-22**

Resolution Adopting Proposed Preliminary Property Tax Levy

Be it resolved by the Council of the City of Mountain Lake, County of Cottonwood, Minnesota, that the following sum of money be levied for the current year, collectible in 2023, upon taxable property in the City of Mountain Lake:

Total levy: \$975,526.69

The Administrator/Clerk is hereby instructed to transmit a certified copy of this resolution to the county auditor of Cottonwood County, Minnesota.

And setting the date for the Truth in Taxation Hearing for December 6, 2022, at 6:30 pm at City Hall, 903 3rd Avenue.

Motion by Member:
Seconded by Member:
Voting Aye:
Voting Nay:
Absent:

Whereupon, said Resolution is hereby declared passed.

Adopted by the City Council on September 6, 2022

Mayor Mike Nelson

ATTEST:

Michael Mueller, City Administrator/Clerk

STATE OF MINNESOTA
COUNTY OF COTTONWOOD
CITY OF MOUNTAIN LAKE

I, the undersigned, being the duly qualified and acting Administrator-Clerk of the City of Mountain Lake, Minnesota, DO HEREBY CERTIFY that I have compared the attached and foregoing extract of minutes with the original thereof on file in my office, and that the same is a full, true and complete transcript of the minutes of a meeting of the City Council, duly called and held on the date therein indicated, insofar as such minutes relate to adopting a maximum amount to be levied in 2023.

WITNESS my hand on September 6, 2022

Administrator-Clerk

ORDINANCE #4-22

AN ORDINANCE OF THE CITY OF MOUNTAIN LAKE, MINNESOTA, PROVIDING FOR A MORATORIUM ON THE SALE OF THC (tetrahydrocannabinols) PRODUCTS AND THE ISSUANCE OF REGULATIONS AND LICENSES

THE CITY COUNCIL OF THE CITY OF MOUNTAIN LAKE, MINNESOTA, ORDAINS:

Findings and Purpose

This Ordinance hereby establishes a moratorium on the sale of hemp derived THC (tetrahydrocannabinols) food and beverages in order to allow the city time to study the issue and consider licensing, rules, and sales management controls for the sale of hemp derived THC food and beverages, similar to tobacco sales and products, behind the sales counter, checking identifications (ID's), enforcement, compliance and license fees.

The City Council is concerned about the impacts of new THC products that may be permitted as passed by the Minnesota Legislature Chapter 98, Article 13 which made changes to M.S. Section 151. 72 regarding the sale of THC products. The City Council is concerned about the proliferation and expansion of THC products through new THC shops or existing sales outlets and possible hazards to public health, access by minors and lack of State regulation.

As a result of the important licensing issues cited above, the city will consider possible amendments to its official controls, possibly including the zoning code, and related policy and process improvements. The City Council finds that this Ordinance should be adopted to protect the planning process, public health, safety, neighboring properties, economic viability, public assets and general welfare of the city.

Study and Licensing

The City Administrator's Office, Police Department and City Attorney's office in cooperation with other applicable City Departments, is hereby authorized to study to evaluate the impact of THC product sales and to propose such amendments to the city's official controls and other regulatory devices that they deem necessary and advisable.

The City Administrator's Office shall return to the City Council to present an ordinance for regulation of THC products in one year from enactment of this ordinance.

Restrictions

For a period of one (1) year from the date of introduction of this ordinance on August 15, 2022, throughout the City of Mountain Lake:

Prohibition on sales of THC products. No business or establishment shall sell THC products to the public containing more than one milligram of THC. No license shall be allowed or granted

by any city department to authorize or license the sale of THC products containing more than one milligram of THC within any shop or retail establishment within city limits.

In anticipation of completion of State regulations prior to the one (1) year expiration of this ordinance, the City Council may elect to act to conclude this ordinance prior to its scheduled expiration.

Penalty

Any person selling THC products containing more than one milligram within city limits during this moratorium shall be guilty of a misdemeanor.

EFFECTIVE DATE OF ORDINANCE. This Ordinance becomes effective immediately upon its passage.

Adopted by the City Council of the City of Mountain Lake, Minnesota, this 6th day of September, 2022.

Mike Nelson, Mayor

Attest: _____
Michael Mueller, City Administrator



MEMORANDUM

TO: City Council
FROM: City Administrator
DATE: August 15, 2022
RE: Possible Options – THC Regulation

The Minnesota Legislature passed a bill that went into effect to legalize the sale of THC (tetrahydrocannabinols). This legislation was not widely publicized or regulated. Regulatory actions have largely been left to local units of government.

The League of Minnesota Cities is working with partners such as the Minnesota Police Chiefs Association, member cities and others on crafting guidance on THC sales. Attached is a list of Frequently Asked Questions (FAQs) the League has published which provides additional information.

If we were to regulate at this time, we need to establish rules and follow similar licensing and permitting as tobacco and/or liquor sales. Other communities may also use land use as a mechanism for controlling sales of these products. Staff is anticipating some type of standard regulation on licensing and permitting to be completed by the League of Minnesota or by the State Legislature during their next session.

To have adequate time to develop rules (licensing and permitting) or awaiting State regulations, I am recommending enacting a one-year moratorium on the sale of THC products within the City of Mountain Lake containing more than one milligram (trace amount). Current products such as CBD oils are already permitted and sold in Minnesota which contain this trace amount of THC would be exempt. This moratorium could be enacted by the City Council and the ordinance is adopted by a vote of the majority of the members of the Council.

Other possible options are as follows:

- Take no action, leaving the State law, that primarily focuses on the production of hemp-based THC products, as the only applicable restriction(s); thus, allowing any retailers to carry and sell the product to people at least 21 years of age.
- Without a moratorium, draft and adopt land use or licensing regulations as to the points of THC product sales within the community. These would regulate future points of sale and have no effect until codified.

Cities and Regulation of Edible Cannabinoid Products

Published: July 15, 2022

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

(Updated July 15, 2022)

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

General information

- [Q1. What does the new law do?](#)
- [Q2. Under the new law, where are edible cannabinoids allowed to be sold?](#)
- [Q3. Could my city's municipal liquor store sell the edible cannabinoid products?](#)
- [Q4. What regulations are in place for packaging for edible cannabinoids?](#)
- [Q5. Are these products legal under federal regulations?](#)
- [Q6. Where do the edible cannabinoid products come from?](#)
- [Q7. How are the new products taxed?](#)

Enforcement and public safety

- [Q8. How is the new law enforced?](#)
- [Q9. What are penalties for someone who violates?](#)
- [Q10. How do our officers determine if a driver is under the influence of these new products?](#)
- [Q11. Could cities prohibit the sale of edible cannabinoids entirely?](#)
- [Q12. Is our city required to adopt regulations under the new law?](#)

City Licensing

- [Q13. What authority do cities have regarding licensing the sale of edible cannabinoids?](#)
- [Q14. What types of restrictions should we consider in regulating cannabinoids?](#)
- [Q15. Can a city add edible cannabinoid products to its existing tobacco licensing program?](#)
- [Q16. If our city licenses edible cannabinoid products, how much can we charge as a license fee?](#)

Zoning

- [Q17. What authority do cities have regarding zoning for where the products could be sold?](#)
- [Q18. Could cities adopt a moratorium prohibiting the sale, manufacturing or, distribution of cannabinoids so it can study the issue?](#)

City employment and personnel issues

- [Q19. Does the new Minnesota legal cannabinoid law change anything about how we do drug testing for CDL holders?](#)
- [Q20. Does the new law change anything related to employees who carry a firearm?](#)
- [Q21. Are there now "acceptable" limits of cannabinoids for non-CDL employees for purposes of drug testing at work \(i.e., those we test under state drug and alcohol testing law\)?](#)
- [Q22. Can we still prohibit employees from being under the influence of cannabinoids while at work? Does the League have a model policy with updated language?](#)
- [Q23. Can employees be in possession of edibles or other cannabinoid products while at work?](#)
- [Q24. Do we need to change anything in our collective bargaining agreement with regard to discipline of employees who use cannabinoid products?](#)
- [Q25. Can employees use cannabinoid products off-duty?](#)
- [Q26. How does this impact the requirements of the Drug-Free Workplace Act?](#)
- [Q27. Should my city still continue to include marijuana as a pre-employment panel screen for my Non-DOT employees?](#)

General information

Q1. What does the new law do?

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

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

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

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

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

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

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

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

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

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

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

Q5. Are these products legal under federal regulations?

A5. The 2018 Farm Bill made several changes to federal law related to hemp. Under the law, hemp was removed from the controlled substance act, including derivatives, extracts, and cannabinoids, provided those substances contained less than 0.3% THC concentration. Pursuant to the Farm Bill, Minnesota has legalized the production of hemp through its industrial hemp program.

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

Q6. Where do the edible cannabinoid products come from?

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

Q7. How are the new products taxed?

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

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Enforcement and public safety

Q8. How is the new law enforced?

A8. The Minnesota Board of Pharmacy has regulatory authority over drug products that are implicitly or explicitly intended for human or animal consumption. This includes products regulated in the new law. If a product does not meet all the requirements of the new law, the product may be considered **misbranded** or **adulterated**. The sale of a misbranded or adulterated product is a **misdemeanor-level crime** which is to be prosecuted by the **county attorney** where the offense took place. Questions regarding whether a specific product deviates from the requirements of the new law should be forwarded to the **Minnesota Board of Pharmacy**.

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

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

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

Q9. What are penalties for someone who violates?

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

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

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

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

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

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

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

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

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

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City licensing

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

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

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

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

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

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

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

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

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

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

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Zoning

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

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

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

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

A18. A moratorium is a tool cities use to pause specific uses in order that the city may study the issue in anticipation of future regulations. A moratorium is limited to a period of one year. To adopt a moratorium, a city must follow the procedures in Minnesota Statute, section 462.352, subd. 4. The statute specifies the specific instances where a city may adopt a moratorium. If a city were to adopt a moratorium prohibiting the sale or manufacturing of edible cannabinoid products, it should work with its city attorney to clearly state the legal justification for the moratorium.

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

City employment and personnel issues

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

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

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

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

A20. No. **Public safety employees who carry a firearm cannot lawfully use cannabis under federal law.** Federal law prohibits cities from providing firearms or ammunition to an employee it knows or has reason to think is using cannabis.

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

A21. There isn't a clear answer, since THC can remain in the body for several weeks after usage (and long after any intoxicating or impairing effects have since disappeared), so positive test results may not indicate any wrongdoing on the employee's part and may just be evidence of an employee's lawful actions done outside of work. **The League of Minnesota Cities recommends that employers thoroughly document any suspicions of an employee being under the influence and to work closely with their city attorney(s) before taking any action against the employee.** With this new area of law, a city may want to avoid relying on the results of traditional tests that detect metabolites remaining in a person's body (for many days or weeks after using marijuana) and instead focus on implementing **reasonable-suspicion drug-testing protocols to detect marijuana intoxication based on behavioral observations. Keep in mind, employers may prohibit all employees from being under the influence while the employee is working.** That would include employees who operate vehicles. Employers may want to revise their policies to clarify that employees still may not be under the influence of cannabis, legal or otherwise, while at work.

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

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

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

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

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

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

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

Q24. Do we need to change anything in our collective bargaining agreement with regard to discipline of

employees who use cannabinoid products?

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

Q25. Can employees use cannabinoid products off-duty?

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

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

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

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

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

A27. That is for each city to decide for itself. Because currently there are no devices or blood tests available that measure marijuana impairment, and because a best practice approach for Non-DOT marijuana drug testing is to base testing on behavioral observations, some employers are excluding marijuana from their pre-employment Non-DOT drug screens. Some states even prohibit an employer from refusing to hire an applicant simply because of a positive drug test, but Minnesota is currently not one of these states at this time. Any city which chooses to continue to test for cannabinoids for Non-DOT positions must be aware of the fact that these substances may remain in an individual's system for weeks after the impairing effect of the drug has worn off. Thus, it will be difficult, if not impossible, to determine whether the positive test indicates usage in violation of the city's drug-free workplace policy or indicates lawful usage during an employee's time-off from work. Cities should consult with their city attorneys prior to taking any action based upon a positive drug test for cannabinoids.

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EXTRACT OF MINUTES OF A MEETING OF THE
CITY COUNCIL OF THE CITY OF
MOUNTAIN LAKE, MINNESOTA
HELD: SEPTEMBER 6, 2022

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Mountain Lake, Cottonwood County, Minnesota, was duly held at the Mountain Lake City Hall on the 6th day of September, 2022 at 6:30 p.m.

The following members of the Council were present:

and the following were absent:

Member _____ introduced the following resolution and moved its adoption:

RESOLUTION NO. 17-22
A RESOLUTION DECERTIFYING
TAX INCREMENT FINANCING HOUSING DISTRICT NO. 1
OF THE CITY OF MOUNTAIN LAKE

WHEREAS, on April 15, 1996, the City of Mountain Lake (the "City") established its Tax Increment Financing Housing District No. 1, (the "District"); and

WHEREAS, Minnesota Statutes, Section 469.174 to 469.1794 (the "TIF Act") authorizes the City Council to decertify a tax increment financing district on any date after all bonds and other obligations have been satisfied; and

WHEREAS, as of the date hereof there no outstanding obligations to which tax increment from the District have been pledged; and

WHEREAS, the City desires by this resolution to decertify the District effective December 31, 2022, by which all taxing jurisdictions will benefit from an increased tax base effective for taxes payable in 2023; and

WHEREAS, the City Council acknowledges such action will be taken by Cottonwood County to decertify the District as a tax increment district and to no longer remit tax increment from the District to the City after December 31, 2022.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain Lake that:

1. The City Administrator is authorized and directed to provide Cottonwood County with documents related to decertification of the District, to submit the Confirmation of Decertified TIF District form to the Office of the State Auditor and take any other steps required for decertification by December 31, 2022.
2. The City Administrator is authorized and directed to determine the amount of excess tax increment in the account for the District and to return all excess tax increment to Cottonwood County for redistribution to other taxing jurisdictions.

The motion for the adoption of the foregoing resolution was duly seconded by member _____ and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

Whereupon said resolution was declared duly passed and adopted.

Mayor Mike Nelson

ATTEST:

Michael Mueller, City Administrator/Clerk

STATE OF MINNESOTA
COUNTY OF COTTONWOOD
CITY OF MOUNTAIN LAKE

I, the undersigned, being the duly qualified and acting Administrator- Clerk of the City of Mountain Lake, Minnesota, DO HEREBY CERTIFY that the attached resolution is a true and correct copy of an extract of minutes of a meeting of the City Council of the City of Mountain Lake, Minnesota duly called and held, as such minutes relate to the decertification of Tax Increment Financing Housing District No. 1.

WITNESS my hand this 6th day of September, 2022.

Administrator- Clerk