



CITY OF MARSHALL AGENDA ITEM REPORT

Presenter:	Pamela Whitmore
Meeting Date:	Tuesday, October 31, 2023
Category:	OLD BUSINESS
Type:	ACTION
Subject:	Public Use of Cannabinoid Products; and/or Prohibition on Smoking in City Parks
Background Information:	<p>At the August Legislative & Ordinance Committee meeting (“L&O”), the Committee discussed the use of Cannabinoid Products in public spaces in the City of Marshall. The City Attorney provided a general overview of the various “categories” of regulations which have arisen from the passage of HF100 in the 2023 legislative session. As a reminder, that is the Bill which legalized Cannabis Products and set up a state licensing system for all Cannabinoid Product businesses. The main categories of regulations for cities to discuss as a result of this Bill include:</p> <ol style="list-style-type: none"> 1. Use in public of cannabinoid products; 2. City registration of cannabinoid product businesses, including the appetite of the city to limit the number of retail licensed cannabinoid product businesses; 3. Additional zoning considerations, such as location of cannabinoid product businesses and hours of operation; and 4. Impact on city employment policies. <p>With respect to #4, the city attorney and the L&O Committee did not spend time on this item as the City works with a separate employment attorney who, assumedly, is addressing this matter.</p> <p>With respect to items #1-#3, the City Attorney provided a general overview to the L&O Committee about the types of products generally, the new law and the transition from the pre-existing state law regarding legal edible cannabinoids to the more extensive new law now also legalizing Cannabis Products. The group determined that items #2 and #3 listed above would be more appropriate for a later conversation after the Office of Cannabis Management provides additional information regarding its model ordinance, clarifications on the law and guidance related to reasonable zoning.</p> <p>The L&O Committee then had a robust discussion about #1 – use in public spaces. The Committee primarily focused on use in parks. All committee members seemed to share similar concerns about smoking in general of tobacco products, in addition to Cannabinoid products. The L&O Committee and staff also discussed how enforcement could be challenging for products consumed in an edible fashion, with the Committee hearing from Public Safety how officers would still appreciate having an ordinance regulating these products even though enforcement may pose some challenges. The L&O Committee expanded its discussion to general use of products outside of parks, such as on sidewalks or at other public spaces. The general consensus was to align regulation of use of cannabinoid products outside of parks in the same or similar manner as the City regulates use of beer or liquor in public places.</p> <p>NOTE: After drafting the ordinances attached, the Lyon County Board of Commissioners held a public hearing on the proposed cannabis ordinance restricting use of cannabis in public places on September 5, 2023. After hearing public comment, Commissioner Andries moved and Commissioner Draper seconded a motion to adopt Ordinance No. 24. The motion was duly adopted on a unanimous roll call vote. The Lyon County Ordinance prohibits the following:</p>

	<p>1. No person shall use cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products in a public place or a place of public accommodation unless the premises is an establishment or event licensed to permit on-site consumption of adult-use cannabis flower and adult use cannabis products.</p> <p>2. No person shall vaporize or smoke cannabis flower, cannabis products, artificially derived cannabinoids, or hemp-derived consumer products in any location where the smoke, aerosol, or vapor would be inhaled by a minor.</p> <p>I have attached the ordinance in full so that the Committee can see how public place and place of public accommodation are defined. I talked to County Attorney, Abby Wikelius and the County is taking the position that under Minn. Stat. 145A.05, the County has preemptive right to regulate public use of cannabinoid products. Section 145A.05 has been interpreted by the state to permit “[a] county board to adopt various ordinances public health and the Department of Health takes the positions that cities and towns may adopt ordinances relating to public health, but they must not conflict with or be less restrictive than those adopted by the county board”. I confirmed with Abby that Lyon County agreed with that position, and she replied the County did. In fact, Abby’s email to me stated that “[t]he Lyon County Sheriff’s Office intends to enforce the county ordinance within the entirety of its jurisdiction including within city limits consistent with the 145A.05.”</p> <p>As a result, as we discuss the attached for the L&O Committee’s consideration, the committee may want to keep Lyon County’s position in mind.</p> <p>I look forward to the discussion and attached for the Committee’s review are the following:</p> <p>1. A new ordinance amending the City Code of Ordinances, Chapter 46, Parks and Recreation, Article 4-II Public Conduct, to add a new Section 46-29 which prohibits the (OPTION FOR COMMITTEE) the use of or the smoking or vaping of tobacco products, cannabinoid products and hemp products in city parks. The City Attorney drafted the ordinance in a way to facilitate additional discussion and decisions for council recommendation with alternatives included in the draft. If questions arise before the meeting regarding the options in the draft or how the document is drafted, please reach out to the City Attorney.</p> <p>2. An amendment to existing Section 10-22, Requirements For Owner, Operator Or Manager Of Public Dancing Place, to accommodate for cannabinoid products.</p> <p>3. An amendment to existing Section 42-112, Consumption Of Beer Or Liquor On Streets And Public Property to include Cannabinoid Products (or, as another option, just Cannabis Products). This amendment is drafted to provide the L&O Committee with options to discuss for its recommendation to council. As stated above, if questions arise before the meeting regarding the options in the draft or how the document is drafted, please reach out to the City Attorney.</p>
Fiscal Impact:	None
Alternative/ Variations:	See attached.
Recommendations:	The L&O Committee have additional discussions based on the drafts of the attached ordinances to provide staff and the City Attorney further direction for recommendations to Council.