

ORDINANCE NO. 23-015

**CITY OF MARSHALL
STATE OF MINNESOTA**

**AN INTERIM ORDINANCE PROHIBITING THE COMMERCIAL SALE, TESTING,
MANUFACTURING, COMMERCIAL CULTIVATING, COMMERCIAL GROWING,
TRANSPORTING, DELIVERY, AND DISTRIBUTION OF CANNABINOID
PRODUCTS, WHICH INCLUDES CANNABIS PRODUCTS, LOWER-POTENCY
HEMP EDIBLES, AND HEMP-DERIVED CONSUMER PRODUCTS IN THE CITY OF
MARSHALL**

The Common Council of the City of Marshall do ordain:

SECTION 1. BACKGROUND.

- A. By enacting 2022 Session Law Chapter 98, Article 13, the Minnesota Legislature amended Minnesota Statutes, section 151.72 regulating the sale of edible cannabinoid products and nonintoxicating cannabinoid products that contain certain cannabinoids derived from hemp, including certain amounts of tetrahydrocannabinol (“THC”) derived from hemp (“Minn. Stat. 151.72 Products”). Minnesota Statute 151.72 did not specifically define the term “cannabinoid.”
- B. In July 2022, under Section 3.09 of its Charter, the City of Marshall enacted an emergency ordinance “on the sale of hemp derived THC (tetrahydrocannabinols) food and beverages”, which is set to expire on July 12, 2022.
- C. The 2023 Legislature, through HF100/SF73 (the “Act”) has defined and redefined types of intoxicating and nonintoxicating products derived from hemp plants and the Cannabis plant. The Act defines Cannabinoid as “any of the chemical constituents of hemp plants or cannabis plants that are naturally occurring, biologically active, and act on the cannabinoid receptors of the brain. Cannabinoid includes but is not limited to tetrahydrocannabinol and cannabidiol”. The Act also defines Cannabinoid Product to mean a cannabis product, a hemp-derived consumer product, or a lower-potency hemp edible.
- D. The Act greatly expands the types of legal products and now includes, among other things, Cannabis Products, which it defined as any of the following: (1) cannabis concentrate; (2) a product infused with cannabinoids, including but not limited to tetrahydrocannabinol, extracted or derived from cannabis plants or cannabis flower; or (3) any other product that contains cannabis concentrate.
- E. The Act clarifies that the term Cannabis Product does not include artificially derived cannabinoid, Lower-Potency Hemp Edibles, or Hemp-Derived Consumer Products, and choose, instead, to include those later items as part of the definition of Cannabinoid Products.

- F. The Act further sets up licensing for businesses related to Cannabis Products (“Cannabis Business”) and for the sale and manufacturing of Lower-Potency Hemp Edibles. In its distinction of types of hemp products, the Act licenses Lower-Potency Hemp Edibles (“Lower-Potency Hemp Edibles”) and Hemp-Derived Consumer Products (“Hemp-Derived Consumer Products”) versus hemp derived topical products and hemp derived fiber.
- G. For purposes of this Interim Ordinance, the defined terms in this Section have the same definition as in the Act unless otherwise stated.
- H. The Act establishes a regulatory framework for Cannabis Businesses, as well as the sales and manufacturing of Lower-Potency Hemp Edibles, Hemp-Derived Consumer Products, and Hemp Businesses, and creates a state agency called the Office of Cannabis Management (“OCM”) to oversee this framework.
- I. Section 342.02 et. seq. established by the Act directs the OCM to make rules, establish policy and exercise its regulatory authority over both the cannabis industry, as well as the Lower Potency Hemp Products and the Hemp Consumer Products.
- J. In Chapter 342, the Act authorizes and provides a time frame for the OCM to research and study cannabis flower, cannabis products, artificially derived cannabinoids, Lower-Potency Hemp Edibles, Hemp-Derived Consumer Products, the cannabis industry, and the hemp consumer industry.
- K. Section 342.06 established by the Act requires to OCM to create and approve product categories of cannabis flower, cannabis products, Lower-Potency Hemp Edibles, and Hemp-Derived Consumer Products for retail sale.
- L. Section 342.06 established by the Act requires the OCM to establish limits on the total THC allowed of cannabis flower, in cannabis products, and in Hemp-Derived Consumer Products and prohibits approval of certain forms of cannabis product, Lower-Potency Hemp Edibles, or Hemp-Derived Consumer Products.
- M. Section 342.07 established by the Act requires the OCM to establish certification, testing, and labeling requirements for the methods used to commercially grow new cannabis plants or hemp plants, including but not limited to commercial growth from seed, clone, cutting, or tissue culture.
- N. Section 342.07 established by the Act requires the OCM to establish best practices for: (1) the cultivation and preparation of cannabis plants; and (2) the use of pesticides, fertilizers, soil amendments, and plant amendments in relation to growing cannabis plants.
- O. Section 342.07 established by the Act requires the OCM to regulate businesses that manufacture, process, sell, handle, or store an Edible Cannabis Product or Lower-Potency Hemp Edibles and will require, for most of those businesses to obtain an edible cannabinoid product handler endorsement.

- P. Section 342.08 established by the Act requires the OCM to provide regulations establishing energy standards, disposal of waste and addressing odor.
- Q. The Act also establishes taxes on regulated products; creates grants to assist individuals entering into the legal cannabis market; amends criminal penalties; provides for expungement and resentencing of certain convictions; provides for temporary regulation of Minn. Stat. 151.72 Products; reschedules marijuana; and appropriates money.
- R. Section 342.13 established by the Act allows cities to enact certain, limited, time place and manner restrictions on the establishment of Cannabis Businesses and allows cities to limit the maximum number of licenses issued to retail Cannabis Businesses within the City, but does not allow the City to completely prohibit Cannabis Businesses. The Act also mandates the City perform certain compliance checks and inspections of businesses licensed by the OCM.
- S. Other than Section 342.42 of the Act not allowing a complete prohibition by the city of a license holder from purchasing or selling Lower Potency Hemp Edibles, the local control provision in the Act does not specifically address Lower Potency Hemp Products or Hemp Consumer Products and preserves local control over Lower Potency Hemp Products and Hemp Consumer Products.
- T. The Act amends Minnesota Statutes §340A.412, subd. 14 to allow, effective the day after the final enactment of the bill (the governor's signature), exclusive liquor stores to sell edible cannabinoid products as that term is defined in current statute, 151.72, subd. 1.
- U. The OCM is created effective July 1, 2023, and has expedited rulemaking. The City anticipates a complicated and challenging rollout of the new regulations – including the statutorily directed drafting by the OCM of a model ordinance for cities to establish certain limited regulations related to Cannabis Products, as well as the interplay between regulations related to Hemp Businesses and Minn. Stat. 151.72 Products.
- V. Based on the above, the City will benefit from understanding the OCM's regulations and rules and also in reviewing and also will benefit in analyzing the model ordinance before making any decisions related to Cannabis and Lower Potency Hemp products and Hemp Consumer Products within the City.
- W. Section 342.13 established by the Act contains a provision that allows for a City Council that plans to conduct studies, or that is considering adoption or amendment of reasonable restrictions on the time, place, and manner of the operation of a cannabis business, to hold a hearing on and adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety, and welfare of its citizens until January 1, 2025. This provision only relates to the Cannabis Businesses, which does not include having the ability to study the Lower Potency Hemp Business or Hemp Consumer Products, even though the newly created OCM will be issuing licenses related to the Lower-Potency Hemp Products, as well as

engaging in rule making related to both the Lower-Potency Hemp Products and the Hemp Consumer Products.

- X. In the alternative, a City Council is also authorized , under state law, to adopt an interim ordinance “to regulate, restrict, or prohibit any use . . . within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective.” Minnesota Statutes, section 462.355, subdivision 4(a). Specifically, the City is authorized to enact a moratorium ordinance to allow it to undertake a study to determine whether to adopt any regulations or restrictions, including siting and location of uses, related to the sales, testing, manufacturing, cultivating, growing, transporting, delivery and distribution of Cannabis Products by Cannabis Businesses and Lower-Potency Hemp Edibles and Hemp-Derived Consumer Products.
- Y. Additionally, pursuant to the City of Marshall’s City Charter, Section 1.02, and Minnesota Statutes, Section 412.221, subd. 32, the Council “the council shall have power to provide for the government and good order of the city, . . . the protection of public and private property, the benefit of residence, trade, and commerce, and the promotion of health, safety, order, convenience, and the general welfare by such ordinances”. Specifically, the City may enact an interim ordinance to allow the City Council time to study and consider adoption or amendment of reasonable restrictions on the commercial or retail operation of Cannabis Businesses, and Lower-Potency Hemp Businesses to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety, and welfare
- Z. Pursuant to Chapter 462, Chapter 412.221 and the City’s Charter, the City may enact and enforce these regulations or restrictions on Cannabis Businesses, Lower-Potency Hemp Edible Businesses, and Consumer-Derived Hemp Edible Businesses within the City to protect the public safety, health, and welfare, including restrictions and a moratorium on the commercial sales, testing, manufacturing, commercial cultivating, commercial growing, transporting, and delivery, during the pendency of a study to determine the need for police power regulations, including but not necessarily limited to any additional licensing and permitting that may be allowed, if any, by the State.
- AA. There are both business registration and zoning issues associated with the sale of Cannabis Products, Lower-Potency Hemp Edibles, and Hemp-Derived Consumer Products, and the City Council determines it needs time to study to consider the development and adoption of appropriate local regulations in collaboration with the OCM and its ultimate guidance regarding these products and businesses. In order to protect the planning process and the health, safety, and welfare of the residents while the City conducts its study and the City Council engages in policy discussions regarding possible regulations, the City Council determines it is in the best interests of the City to impose a temporary moratorium on the sale of Cannabis Products, Lower-Potency Hemp Edibles, and Hemp-Derived Consumer Products as well as a moratorium on the establishment or operation of a Cannabis Business or Lower-Potency Hemp Retailer or Manufacturer.

- BB. Based on the immediate effective date of exclusive liquor stores being allowed to offer edible cannabinoid products as defined in section 151.72 for sale, this interim ordinance does not apply to sales of such products in exclusive liquor stores.
- CC. Based on the exclusion of hemp derived topical products and hemp derived fiber products from the definition of Cannabinoid Product, this moratorium does not apply to those hemp topical and hemp fiber products.
- DD. Pursuant to the language of the Act, as soon as the Act becomes effective, the City may have authority to adopt an interim ordinance to prohibit a Cannabis Business from being established or operating until January 1, 2025, to conduct studies or consider adopting or amending allowed restrictions on the operation of a Cannabis Business. After the expiration of this Interim Ordinance, if the City needs more time to complete its study and analysis, the City Council can take additional action to extend this interim ordinance to January 1, 2025 since the bill will be in effect by then.

SECTION 2. FINDINGS.

- A. The City Council finds there is a need to study commercial activities related to (i) Cannabinoid Products, which includes Cannabis Products, Lower-Potency Hemp Edibles, and Hemp-Derived Consumer Products, (ii) Cannabis Businesses and Lower Potency Hemp Retailers and Manufacturers, and (iii) the impact of those products and businesses, as related to allowed land uses and zoning, in order to assess the necessity for and efficacy of regulation and restrictions relating to the retail sales, wholesale sales, testing, commercial growing, commercial cultivating, manufacturing, transporting, delivery of or commercial distribution of any of the products referenced herein, including through zoning ordinances or registration/licensing, if allowed, in order to protect the public health, safety, and welfares of its residents.
- B. The study will allow the City Council to determine the appropriate changes, if any, that it should make to the Marshall City Code, including any necessary zoning changes.
- C. The time will allow for any state agency to rule make regarding licensing Cannabis Businesses and Lower Potency Hemp Businesses; to create its model ordinances which will further aid the Council in studying and considering restrictions on the operation of Cannabis Businesses and Lower Potency Hemp Businesses.
- D. The City Council therefore finds that there is a need to adopt a city-wide moratorium on the retail sale, wholesale sale, testing, commercial growing, commercial cultivating, manufacturing, transporting, delivery of, and commercial distribution of Cannabinoid Products, which includes Cannabis Products, Lower-Potency Hemp Edibles, and Hemp-Derived Consumer Products, including the establishment or approval of Cannabis Businesses and Lower Potency Hemp Businesses within the City while City staff studies the issue.

SECTION 3. MORATORIUM.

- A. A moratorium is hereby imposed to prohibit any business, person, or entity from offering for retail sale, wholesale, testing, commercial growing, commercial cultivating, manufacturing, transporting, delivering or commercial distribution of Cannabinoid Products, including Cannabis Products, Lower-Potency Hemp Edibles, or Hemp-Derived Consumer Products, including the establishment or operation as a Cannabis Business or Lower Potency Hemp Business within the jurisdictional boundaries of the City of the City of Marshall. The City shall not process, or act on any application, site plan, building permit, or other zoning approval for a business, person, or entity proposing to engage in the sale of any Cannabinoid Products, including Cannabis Products, Lower-Potency Hemp Edibles, or Hemp-Derived Consumer Products. This moratorium does not relate to the retail sale of Hemp Derived Topical Products, or Hemp Derived Fiber Products. The moratorium also does not relate to the sale of edible cannabinoid products as that term is defined in current statute, 151.72, subd. 1, in exclusive liquor stores.
- B. The Council acknowledges that the Act, once effective on July 1, 2023, will allow the City to enact a limited, longer moratorium on the establishment and operation of Cannabis Businesses that may prohibit the establishment and operation of a Cannabis Business until January 1, 2025.
- C. This moratorium does not apply to the selling, testing, manufacturing, or distributing of products related to the Medical Cannabis Program as administered by the Minnesota Department of Health, provided that such activity is done in accordance with the regulations and laws of Minnesota regarding Medical Cannabis.

SECTION 4. STUDY. The City Council directs City staff to study the need for local regulation regarding the retail sale, wholesale sale, testing, commercial growing, commercial cultivating, manufacturing, transporting, delivery or commercial distribution of Cannabinoid Products, which includes Cannabis Products, Lower-Potency Hemp Edibles, and Hemp-Derived Consumer Products within the City of Marshall. Staff must also study the need for creating or amending zoning ordinances and registration/licensing ordinances as allowed by the state, or any other ordinances, as allowed and not preempted by the state, to protect the citizens of Marshall from any potential negative impacts of Cannabis Businesses and Lower Potency Hemp Derived Businesses. Upon completion of the study, the City Council, together with such commission as the City Council deems appropriate or, as may be required by law, will consider the advisability of adopting new ordinances or amending its current ordinances.

SECTION 5. ENFORCEMENT. The City may enforce this Ordinance by mandamus, injunctive relief, or other appropriate civil remedy in any court of competent jurisdiction. The City Council hereby authorizes the City Administrator, in consultation with the City Attorney, to initiate any legal action deemed necessary to secure compliance with this Ordinance. A violation of this Ordinance is also subject to the City's general penalty in City Code.

SECTION 6. TERM. Unless earlier rescinded by the City Council, the moratorium established under this Ordinance shall remain in effect until twelve (12) months from its effective date, at which point, it will either automatically expire or be extended pursuant to other statutory authority until January 1, 2025.

SECTION 7. EFFECTIVE DATE. This ordinance shall become effective on the first day of publication after adoption.

Passed this 13th day of June, 2023.

Robert Byrnes, Mayor

ATTEST

Steven Anderson, City Clerk