

**CITY OF FALCON HEIGHTS**  
City Council Workshop  
City Hall  
2077 West Larpenteur Avenue

**AGENDA**  
September 7, 2022  
6:30 P.M.

- A. CALL TO ORDER:
  
- B. ROLL CALL: ANDREWS \_\_\_ GUSTAFSON\_\_\_ LEEHY\_\_\_  
MEYER \_\_\_ WEHYEE\_\_\_  
  
STAFF PRESENT: LINEHAN\_\_\_ SORENSEN\_\_\_
  
- C. PRESENTATIONS:
  
- D. POLICY ITEMS:
  - 1. Proposed 2023 Levy and Budget\*
    - a. General Fund Updates
    - b. Preliminary Levy and Revenue
    - c. Utility Fees
  - 2. 2023 Recycling Contract Renewal
  - 3. Police Consultant RFP Review\*
  - 4. Commercial Real Estate Broker RFP Review\*
  - 5. Discussion on THC/CBD
  
- E. INFORMATION/ANNOUNCEMENTS:
  
- F. ADJOURNMENT:

*DISCLAIMER: City Council Workshops are held monthly as an opportunity for Council Members to discuss policy topics in greater detail prior to a formal meeting where a public hearing may be held and/or action may be taken. Members of the public that would like to make a comment or ask questions about an item on the agenda for an upcoming workshop should send them to [mail@falconheights.org](mailto:mail@falconheights.org) prior to the meeting. Alternatively, time is regularly allotted for public comment during Regular City Council Meetings (typically 2nd and 4th Wednesdays) during the Community Forum.*

*\*Materials will be available at the meeting.*

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## REQUEST FOR CITY COUNCIL ACTION



<b>Meeting Date</b>	September 7, 2022
<b>Agenda Item</b>	Policy D1
<b>Attachment</b>	<i>To be distributed at meeting</i>
<b>Submitted By</b>	Jack Linehan, City Administrator

<b>Item</b>	Budget Workshop #2: General Fund Expenditure Update, Proposed Revenue / Preliminary Levy, Utility Use Fees
<b>Description</b>	<p>Staff will present the preliminary proposed 2023 budget as part of our second budget workshop. We will discuss updates to the general fund since our first workshop based on council feedback, the projected revenues and proposed preliminary levy amount, and a discussion on utility use fees.</p> <p><b>1. <u>General Fund Expenditure Updates</u></b>          Since the previous workshop, the following changes were made to the proposed 2023 general fund budget:</p> <ul style="list-style-type: none"> <li>• Expenditure Account 112 – Administrative Expenses             <ul style="list-style-type: none"> <li>○ 89000 – Miscellaneous                 <ul style="list-style-type: none"> <li>▪ Increased from \$5,000 to \$15,000 for Sister Cities request</li> </ul> </li> <li>○ 97000 – Transfers to Capital / Special Revenue                 <ul style="list-style-type: none"> <li>▪ Reduced from \$100,000 to \$86,000 to balance increases</li> </ul> </li> </ul> </li> <li>• Expenditure Account 116 – Communications             <ul style="list-style-type: none"> <li>○ 83010 – Special Events                 <ul style="list-style-type: none"> <li>▪ Increased from \$3,000 to \$7,000 for an expanded Ice Cream Social</li> </ul> </li> </ul> </li> </ul> <p><b>2. <u>General Fund Revenue / Proposed Levy</u></b>          Staff will review the projected revenue in the general fund, including the proposed tax levy for 2023 and seek guidance from the City Council. As these numbers are still being calculated, the revenue worksheets will be handed out in-person at the workshop.</p> <p><b>3. <u>Utility Use Fees</u></b>          As discussed at the previous workshop, staff will review the proposed user fees for the following utilities:</p> <ul style="list-style-type: none"> <li>• Sanitary Sewer</li> <li>• Storm Drainage</li> <li>• Recycling</li> </ul>
<b>Budget Impact</b>	N/A
<b>Attachment(s)</b>	<i>To be distributed at meeting</i>
<b>Action(s) Requested</b>	No action required at this time.

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## ITEM FOR DISCUSSION

<b>Meeting Date</b>	September 7, 2022
<b>Agenda Item</b>	Policy D2
<b>Attachment</b>	Foth Analysis, Draft Agreement, Original Contract
<b>Submitted By</b>	Paul Moretto, Community Development Coordinator

<b>Item</b>	Extend Recycling Contract with Tennis Sanitation, LLC
<b>Description</b>	<p>As of January 15, 2016, the City and the Contractor executed a three-year City-Wide residential recycling collection contract. Tennis Sanitation, LLC and the City agreed to two (2) two (2) year extensions of the existing service ending December 31, 2022. Tennis Sanitation, LLC would like to provide service to the City for a two (2) year extension with the option for an additional two (2) year extension.</p> <p>If the City of Falcon Heights and Tennis Sanitation, LLC agree to extend contracted services, it will begin immediately upon the expiration of the current contract time period which ends on December 31, 2022. The current contract price is \$3.50 per unit per month.</p> <p>The parties desire to amend the contract to include pricing for 2023 and 2024 with 2025 &amp; 2026 to be negotiated in 2024. The cost of the Contract shall be \$4.25 per unit per month from January 1, 2023 to December 31<sup>st</sup>, 2023 and \$4.75 per unit per month from January 1, 2024 to December 31<sup>st</sup>, 2024.</p> <p>This extension binds and benefits both parties and any successors. This document, including the original contract, is the entire agreement between the City of Falcon Heights and Tennis Sanitation, LLC.</p> <p>On May 9<sup>th</sup> of 2022 the Environment Commission reviewed the proposed contract and the analysis from Foth. The Commission approved of the contract and requested staff to ask Tennis to reduce the 2023 increase from \$4.50 per unit per month. Staff requested this of Tennis and they agreed to a reduced rate in 2023 of \$4.25.</p> <p>As noted in the attached analysis by Foth, a contractor of Ramsey County, Falcon Heights residents currently enjoy the lowest cost recycling in the region – even with the proposed contract increase.</p>

<b>Budget Impact</b>	
<b>Attachment(s)</b>	Foth Analysis 5-5-2022, 2023-2024 FH Extension Letter, Original Contract
<b>Action(s) Requested</b>	Staff is seeking direction on the next steps in the negotiation process. Staff is also seeking feedback on user fees passed on to residents.

## Memorandum

8550 Hudson Boulevard North  
Eagle Point Office Center II, Suite 105  
Lake Elmo, MN 55042  
(651) 288-8550  
foth.com

May 5, 2022

**TO:** Paul Moretto, Community Development Coordinator / City Planner, City of Falcon Heights  
Filsan Ibrahim, Jennifer Nguyen Moore, Ramsey County

**CC:** Cami Van Abel, Foth Infrastructure & Environment, LLC (Foth)

**FR:** Dan Krivit, Foth

**RE:** Analysis of the Tennis Recycling Contract Extension Proposal as Submitted to the  
City of Falcon Heights

### Introduction

Tennis Sanitation, LLC (Tennis) is the current recycling collection services contractor for the City of Falcon Heights (City). The services include weekly, single-stream, curbside collection of traditional recyclables at single unit and multi-unit dwellings, and collections of recyclables and trash at City Hall. The contract is scheduled to end on December 31, 2022. This service does not include trash collection. The City has an “open hauling” system for trash collection, whereby residents contract directly with a licensed hauler.

The original contract was issued after a competitive request for proposals (RFP) procurement process conducted in 2015. Tennis began collections effective January 1, 2016. The recycling contract was extended in 2018 for a four-year period from January 1, 2019 through December 31, 2022.

On November 1, 2021, Tennis submitted a proposal to the City for a second, four-year extension for the period beginning January 1, 2023 through December 31, 2026.<sup>1</sup> The City is considering options including to negotiate with Tennis based on their proposed extension or initiate a new RFP process.

On April 19, 2022, City staff met with Ramsey County and Foth staff to discuss the Tennis proposal for a contract extension and the option to go out for RFP. County and City staff requested Foth conduct an analysis of the Tennis proposal for recycling collection services, including price comparisons to other comparable Ramsey County cities’ recycling contract prices. Foth’s consultant services are being provided to the City through the Ramsey County Technical Assistance Program (TAP).

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<sup>1</sup> Tennis Sanitation letter of proposed “Contract Extension Agreement between the City of Falcon Heights and Tennis Sanitation, LLC” (November 1, 2021).

## Findings About Recycling Service Standards

City staff report the recycling collection services provided by Tennis during the past six+ years have been satisfactory. In 2018, the City approved a contract extension of recycling collection services by Tennis for an additional four years (2019 through 2022).

Based on information of the local recycling collection industry, Tennis provides a high level of recycling services including the following standards:

- ◆ Single-stream collection of all traditional recyclables (such as paper, cans, glass and plastic) collected in commingled format in one curbside recycling cart (equipped with wheels and a lid). Tennis also includes collection of textiles.
- ◆ Tennis provides weekly curbside recycling service. Some cities elect to contract for every-other-week recycling collection to help save on recycling prices.
- ◆ Both trash and recyclables collection occur on Fridays each week. This “same day” collection schedule is generally more convenient for residents and helps them remember their trash/recyclable collection day.
- ◆ Tennis utilizes fully automated side-loading recycling trucks that pick up and tips the cart using a robotic arm. This improves collection efficiency and is safer for the Contractor’s collection crew compared to manual or semi-automated cart lifting systems.
- ◆ Tennis owns and manages the recycling carts. This approach avoids City ownership of carts which requires some form of City financing. (Note: If the City elects to own the recycling carts, Ramsey County has a grant program that may fund up to 50% of the recycling carts to help offset some of these costs.)
- ◆ Tennis provides recyclables processing at their materials recovery facility (MRF) located in St. Paul Park. There is no “risk/revenue sharing” provision in the contract; Tennis takes on all of the market risk during periods of low recyclables prices, but also does not provide a financial share back to City during periods of high recyclables prices.
- ◆ Tennis takes a pro-active approach in implementing most public education services such as the City-specific annual recycling brochure for Falcon Heights.<sup>2</sup>
- ◆ Resident inquiries, missed pick-ups, and cart repairs/placement are managed by Tennis. Residents are instructed to call Tennis directly for these and other customer service issues.
- ◆ Tennis provides a comprehensive annual recycling report that summarizes recyclables tonnages, resident participation rates, important program changes, recycling market conditions, environmental impacts, and other information.<sup>3</sup>
- ◆ Tennis provides recyclables and trash collection services for City Hall at no additional charge to the City.

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<sup>2</sup> Tennis Sanitation [“2022 Recycling Brochure”](#) for Falcon Heights

<sup>3</sup> Tennis Sanitation [“2021 Year End Recycling Report”](#) for Falcon Heights



## Price Analysis

Below is a detailed analysis of Tennis’ proposed recycling contract extension pricing and how the proposed price compares to the current contract and to selected other comparable Ramsey County cities with recycling contracts.

### Tennis’ Proposed Prices

Table 1 lists the historical, current, and proposed recycling prices as charged by Tennis to the City in \$ per household (HH) per month for weekly collection. Over the past seven years, the recycling contract included two price changes: +\$0.25/HH/month each for 2019 and for 2021. This equates to an eight percent increase from 2018 to 2019 and 2020 to 2021.

**Table 1**  
**Falcon Heights Recycling Contract Prices – Weekly Service**  
 (Prices are in \$ per household per month)

Contract Period:	Original Contract Period			First Extension				Proposed Second Extension				
	Year Number:	1	2	3	4	5	6	7	8	9	10	11
Year:	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	
Price (\$/HH/Month)	\$3.00	\$3.00	\$3.00	\$3.25	\$3.25	\$3.25	\$3.50	\$4.50	\$4.75	\$5.25	—	
Percent Increase		0%	0%	8%	0%	8%	0%	29%	6%	11%	—	

Note: --- = Data not provided in proposed extension.

Sources: Tennis Sanitation original contract (2016 – 2018), first Extension (2019 – 2022), and Tennis-proposed 2023 – 2026 Contract Extension (as submitted on November 1, 2021)

Prepared by: DFK  
 Checked by: CAV

The Tennis-proposed, second Contract Extension shows an annual average increase of 15% from the current 2022 price \$3.50 per household per month for the three years (years 8 to 10).

There is no price difference in the Tennis recycling contract for single family vs. multi-unit dwellings.

The Saint Paul Regional Water Services administers utility and recycling billing for the City.

### Comparison of Prices to Other Ramsey County Cities

Comparing recycling prices between cities is challenged by many variables that affect both cost of operations and competitive pricing in the marketplace. The goal of any such price analysis should be to attempt to portray a fair, transparent, and repeatable “apples to apples” comparison to the extent possible.

The following four variables should be kept in mind when reviewing rate comparisons:

- ◆ Weekly vs. every-other-week recyclables collection frequency.
- ◆ Contractor owned vs. city owned recycling carts.
- ◆ “Bundled” trash + recycling contract vs. recycling only contract. Generally, bundled trash + recycling contracts have higher recycling prices due to a common industry practice adjusting rates for recycling prices to save on the state and county taxes.

- ◆ Is there a “risk/revenue sharing” provision for recyclables in the contract? Or, does the contractor take on all of the risk and not share any revenue from sale of recyclables depending on the state of the recycling market?

## Comparison to Other Cities

The City of Maplewood also has a 5.5-year recycling contract with Tennis for weekly service. Tennis owns the carts. Recycling is a separate contract from the city’s trash contract with another company. Table 2 displays the City of Maplewood’s curbside recycling contract prices. Table 2 prices were proposed by Tennis in response to the City of Maplewood’s RFP released in 2019. Residential pickup includes single unit dwellings and multi-unit dwellings. There is no risk/revenue sharing provision in the contract. The average annual increase in price over the six-year period is 5.6 percent.

**Table 2**  
**Maplewood’s Recycling Contract Price – Weekly Service**

(Prices are in \$ per household per month)

<b>Year Number:</b>	1	2	3	4	5	6
<b>Year:</b>	2020	2021	2022	2023	2024	2025 (1 <sup>st</sup> half)
<b>Price (\$/HH/Month)</b>	\$4.00	\$4.25	\$4.50	\$4.75	\$5.00	\$5.25
<b>Percent Increase</b>		6.3%	5.9%	5.6%	5.3%	5.0%

Source: Foth Price Analysis for the City of Maplewood (June 18, 2019, unpublished)

Prepared by: DFK  
Checked by: CAV

The City of Roseville has a 3.5-year recycling contract with Eureka Recycling for every-other-week service. Eureka owns the carts. The City has an open trash hauling system. Table 3 displays the City of Roseville’s current recycling contract prices. Residential pickup includes single unit dwellings and multi-unit dwellings. There is no risk/revenue sharing provision in the contract. The average annual increase in price over the six-year period is 3.5 percent. It is important to note that Roseville elected to purchase every other week service. In response to the City’s 2021 RFP, Eureka proposed comparable weekly prices that were 31% higher than their every other week price shown in Table 3.

**Table 3**  
**Roseville’s Recycling Contract Price – Every Other Week Service**

(Prices are in \$ per household per month)

<b>Year Number:</b>	1	2	3	4
<b>Year:</b>	2022	2023	2024	2025 (1 <sup>st</sup> half)
<b>Price (\$/HH/Month)</b>	\$3.98	\$4.12	\$4.26	\$4.41
<b>Percent Increase</b>		3.5%	3.4%	3.5%

Source: City of Roseville’s recycling contract with Eureka (Executed July 26, 2021)

Prepared by: DFK  
Checked by: CAV

The City of Lauderdale has a 5-year recycling contract with Eureka Recycling for weekly service. The City owns the carts. The City has an open trash hauling system. Table 4 displays the City of Lauderdale’s recycling contract prices. Residential pickup includes single unit dwellings and multi-unit dwellings. There is no risk/revenue sharing provision in the contract. The average annual increase in price over the six-year period is 1.9 percent.

**Table 4**  
**Lauderdale’s Recycling Contract Price – Weekly Service**  
 (Prices are in \$ per household per month)

<b>Year Number:</b>	1	2	3	4	5
<b>Year:</b>	2019	2020	2021	2022	2023
<b>Price (\$/HH/Month)</b>	\$5.65	\$5.76	\$5.87	5.98	6.09
<b>Percent Increase</b>		1.9%	1.9	1.9	1.8

Source: City of Lauderdale’s recycling contract with Eureka (Executed December 2018)

Prepared by: DFK  
 Checked by: CAV

## Conclusions and Observations

Several conclusions and observations can be drawn from this analysis.

1. The original Falcon Heights recycling contract with Tennis became effective January 1, 2016.
2. Falcon Heights negotiated one, four-year extension to its original recycling contract with Tennis. The current term of the Falcon Heights - Tennis contract is scheduled to expire on December 31, 2022.
3. The City and its residents have received a high level of recycling service from Tennis when compared to current industry standards in the Twin Cities Metropolitan Area and Ramsey County in particular.
4. Tennis submitted a written proposal for a four-year contract extension on November 1, 2021. The City may wish to ask Tennis additional questions to clarify their proposal (e.g., proposed prices for 2025 and 2026).
5. Comparisons to three other cities’ residential solid waste and recycling prices were conducted in this memorandum. The Tennis proposed prices for 2023 to 2026 appear to be very competitive.

# TENNIS

SANITATION L.L.C. - ROLL OFF L.L.C.

## 651-459-1887



ST. PAUL PARK, MN

GREG & WILLIE TENNIS



July 6th, 2022

City of Falcon Heights  
2077 Larpenteur Ave W  
Falcon Heights, MN 55113

Contract Extension Agreement between City of Falcon Heights and Tennis Sanitation L.L.C.

Dear Falcon Heights,

Tennis Sanitation L.L.C. is requesting that the term of the Original Contract agreement be extended for the period of January 1st, 2023 through December 31, 2024. With an option for an additional 2 year extension upon mutual agreement for the years of 2025 and 2026. If Falcon Heights and Tennis Sanitation agree to extend the Original Contract, it will begin immediately upon the expiration of the 1<sup>st</sup> extension period which ends on December 31st, 2022.

This extension binds and benefits both parties and any successors, this document, including the Original Contract, is the entire agreement between Falcon Heights and Tennis Sanitation L.L.C.

**Rates increases**

2023 \$4.25

2024 \$4.75

Tennis Sanitation, LLC

City of Falcon Heights

BY \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SINGLE STREAM RECYCLING  
COLLECTION AGREEMENT**

AGREEMENT dated Dec. 28, 2015, by and between the CITY OF FALCON HEIGHTS, a Minnesota municipal corporation ("City"), and Tennis Sanitation, LLC, a Minnesota Limited Liability Company (the "Contractor").

**RECITALS**

- A. The Contractor desires to provide single stream recycling collection to the residents of the City of Falcon Heights.
- B. The City desires to provide these services for the health, safety, and welfare of its residents.

**NOW, THEREFORE, IN CONSIDERATION OF THEIR MUTUAL COVENANTS,  
THE PARTIES AGREE AS FOLLOWS:**

- 1. **CONTRACT DOCUMENTS.** The following documents shall be referred to as the "Contract Documents," all of which shall be taken together as a whole as the contract between the parties as if they were verbatim and in full herein:
  - A. This Agreement
  - B. Request for Proposals (RFP) for Recycling Services **August 3, 2015**
  - C. **TENNIS SANITATION, LLC** Proposal for the **City of Falcon Heights, MN** for Recycling Collection Services including Appendix A-K, inclusive.

In the event of a conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts with Contract Document "A" having the first priority and Contract Document "C" having the last priority.

- 2. **OBLIGATIONS OF THE CONTRACTOR.** The Contractor shall provide the goods, services, and perform the work in accordance with the Contract Documents.
- 3. **DEFINITIONS.**
  - A. City Facility Means City Hall.

B. Missed Collection: Means the failure of the Contractor to provide recycling collection service to a RDU, MUD, the City Facility, or designated Community Event during collection hours on the scheduled collection day.

C. Multi-Unit Dwelling (MUD): Means a building containing more than four (4) dwelling units.

D. Recycling Materials or Recyclables: Means all items of refuse designated by the Ramsey County Environmental Services to be part of an authorized recycling program and which are intended for transportation, processing, and re-manufacturing or reuse and include the following:

**Textiles:**

- Clothes
- Shoes and Boots

**Paper and Corrugate:**

- Egg cartons, Milk cartons
- Corrugated Cardboard – (No collapsing of cardboards will be required)
- News and Office Papers
- Magazines, Junk Mail, and Paper Food Boxes
- Coated Magazines and Catalogs
- Phone Books, Paper Backs, TV Guides, Comic Books, Readers Digest Covers, Flyers and Brown Paper
- The 4 C's: Cereal, Cake Mix, Chip and Cracker Boxes
- Pop, Beer, and Tissue Boxes

**Plastic #1 through #7:**

**Glass:**

- All Food, Beverage, and Jam Glass Bottles (Clear, Brown, and Green)

**Metals:**

- Scrap Metal in Household quantities (Silverware, Hangers, Pots, Pans, Etc.)
- All Food and Beverage cans and other cans that are Steel (Tin, Aluminum, Bi-metal)

**Other:**

- Other materials agreed upon by the City and Contractor

E. Residential Dwelling Unit (RDU): A building containing up to four (4) dwelling units.

F. Single Stream Recycling Collection Service: Residents will be instructed to commingle all recyclable materials in one container that will be picked up weekly by Contractor. Contractor will pick up all recyclable material placed in and next to recycling containers.

**4. CONTRACTOR'S COLLECTION REQUIREMENTS.**

A. Recycling Collection Program. The Contractor shall collect recyclable materials from all residential dwelling units, multi-unit dwellings, and the City Facility weekly, using a single stream collection service.

B. Multi-Unit Dwelling (MUD) Collection Requirements. In addition to the other requirements set forth herein applicable to all recycling, the following additional collection requirements are for MUD Recycling Services only and do not pertain to residential dwelling unit Collection services.

1. MUD Recycling Stations. MUD Recycling Stations will be specified with agreement of the MUD building owner and the Contractor on a case-by-case basis. MUD Recycling Stations will likely be a cluster of recycling carts and/or recycling dumpsters. The number and location of MUD Recycling Stations shall be adequate and to be reasonably convenient and accessible to all MUD residents. MUD Recycling Stations shall be located on the MUD premises which permits access to the MUD Recycling Containers for Collection purposes, but which does not obstruct pedestrian or vehicular traffic and shall comply with the City's zoning and other ordinances.

2. MUD Services Standards. MUD recyclables Collection services shall be available on the premises and shall be provided on a regularly scheduled basis of at least once per week. The Collection schedule and recycling containers' capacity shall provide for regular removal of the recyclables such that there is adequate storage capacity available in the recycling containers to avoid overflowing containers.

3. MUD Recycling Container Requirements. The recycling shall be:

- a. Sufficient in number and size to meet the demands for recycling services created by the occupants.
- b. Equipped with hinged lids.
- c. Equipped with standardized labels identifying the type of recyclable material to be deposited in each container including graphical examples.
- d. Colored differently from other containers used for garbage Collection.
- e. Maintained in proper operating condition and reasonably clean and sanitary.
- f. Repaired or replaced on a reasonable schedule if stolen or broken.

C. Recycling and Trash Collection at City Hall. The Contractor will provide dumpster service for trash and recycling at City Hall located at 2077 W. Larpenteur, Falcon Heights, MN 55113.

D. Collection Hours and Days. Collections must begin no sooner than 7 a.m. and shall be complete by 7 p.m. on scheduled collection days. The Contractor may request City authorization of exceptions to these time restrictions. The Contractor must request

such exception from the City's Designated Contact Person via telephone or email, prior to the requested Collection event and specify the date, time and reason for the exception.

E. Holidays. Collection of recycling materials is prohibited on holidays. Holidays refers to any of the following: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and any other holidays mutually agreed to by the City and Contractor. In no instance will there be more than one holiday during a Collection week. When the scheduled collection day falls on a holiday, collection for that day will be collected one day later. The Contractor shall publish a yearly calendar including alternate Collection days, with assistance from the City.

F. Weighing of Loads and Reporting Requirements. The Contractor will keep accurate records consisting of an approved weight slip with the date, time, collection route, driver's identification, vehicle number, rate and gross weight, net weight and number of route stops for each loaded vehicle. A detailed monthly report shall be provided to the City that identifies total tonnage activity by commodity. This report should include all curbside and municipal recycling activity.

G. Recycle Cart Purchase and Delivery. The Contractor agrees to, at its expense to deliver, service, repair, and maintain sufficient cart inventory to meet supply and demand needs for the City of Falcon Heights recycling.

1. The Contractor shall initially deliver one 65-gallon wheeled cart to each residential dwelling and have a sufficient inventory of 30-gallon and 90-gallon carts available for delivery and switch-out with the 65-gallon carts per resident/customer request. The standard 65-gallon cart shall be approximately 26" X 26" X 41" in dimension, and be smooth for ease in cleaning. The cart shall be uniform and consistent in color and approved instruction label imbedded into each lid, so as to be easily identified by the resident/customer and the Contractor driver as the container for recyclable materials.

2. The Contractor shall provide for use for multiple family dwellings (MUD) and the City Facility, suitable carts, bins, dumpsters or other receptacle for temporary storage and aggregation of designated recyclables. Such recycling containers must be separate, explicitly labeled as to recyclables included, and colored differently from other containers for mixed solid waste or trash.

H. Recycling Cart Maintenance/Replacement. The driver is required to report to the Contractor the location of any cart that is damaged. The Contractor is required to notify the Recycling Coordinator by fax/email of any driver report of cart damage. The Recycling Coordinator will notify the Contractor by fax/email of any cart damage or request for change of cart size that is reported/requested by customers/residents. Any damaged cart or cart request will be repaired or replaced by the Contractor within two (2) weeks of the report.

I. Point of Collection. Most residential recycling collection will occur at the same location from where the regular refuse is collected, generally the alleys where they exist



and street curbside in other areas. Carts shall be placed with the handle toward the house and lid opening toward the street or alley. The driver is required to place the emptied cart back/down in the same location as set by resident.

J. Ownership of Recyclable Materials. All recyclable materials for collection shall remain the responsibility and in the ownership of the occupant of the resident or municipal location until handled for collection by the Contractor. At the point of collection the recyclable materials become the property of the Contractor. Any person or persons taking recyclable materials from a curbside container without explicit permission of the resident or municipality will be in violation of local ordinance and subject to penalty. The Contractor shall report to the Recycling Coordinator any instances of suspected scavenging or unauthorized removal of recyclable materials from any collection container.

K. Route Management and Customer Service. The Contractor shall, at all times, provide the City's Recycling Coordinator with a lead route/driver supervisor who is accessible to the Contractor dispatch department via two way communications and to the Recycling Coordinator to handle route and collection issues in a timely fashion. The Contractor shall have on duty Monday through Friday from 8:00a.m. to 4:30p.m. A dispatch customer service representative to receive customer calls and route issues. The Contractor shall provide a 24 hour answering service line or device to receive customer calls. The Route Supervisor and all collection vehicles must be equipped with 2-way communication devices.

L. Procedure for Unacceptable Materials, Materials Outside Cart and Unreachable Carts. If the Contractor determines that a resident has set out unacceptable recyclable materials, left recyclable materials outside of the cart, or has positioned the cart so that it is unreachable with the mechanical arm, the Contractor shall use the following procedures:

1. The Contractor shall collect all the recyclable materials and leave an "education tag" provided by the Contractor attached to the handle of the recycling container indicating acceptable materials, the proper method of preparation and the proper placement of the cart.
2. The driver shall record the address and report the addresses to the Contractor dispatcher, who will notify the City's Recycling Coordinator of the addresses no later than noon the following day.

M. Procedure for Complaints-Questions-Missed Collections. A complaint of service or missed collection is a complaint received by the Contractor from either the customer or the Administration Office. If the report is for a missed stop and is received by the Contractor before 11:00 a.m. on a scheduled working day, the Contractor is required to return to the complaint address and complete the collection. If the report is registered after 11:00 a.m. on a scheduled working day, the Contractor is required to return to the complaint address by 12:00 noon the following working day.

N. Clean up Responsibilities. The Contractor shall adequately clean up any recyclable material spilled or blown during the course of collection and/or hauling operations. All collection vehicles shall be equipped with at least one broom and one shovel for use in cleaning up material spillage. The Contractor shall have no responsibility to remove or clean up any items which are not recyclable materials.

O. Non-Completion of Collection and Extension of Collection Hours. The Contractor shall inform the City of the areas not completed, the reason for non-completion, and the expected time of completion.

P. Vehicle Requirements:

1. The Contractor must obtain all pertinent licenses from the Federal, State and County and City governments. An annual report/update on licensing shall be submitted. The Contractor shall provide proof of current licensing and current MnDOT vehicle inspection reports upon request by the City, and on an annual basis.

2. All vehicles must be maintained in proper working condition and available for inspection by the City or County. The Contractor shall supply the City with copies of annual inspections on all vehicles per MnDOT requirements.

3. Vehicles should be equipped with a two-way radio or phone, warning flashers and signs, backup alarms, a first aid kit and a broom and shovel for spills, and the contractor's name and phone number prominently displayed on both sides of the vehicle.

4. Recycling vehicles must be designated for recyclables collection only. All such vehicles must be clearly signed on both sides as recycling collection vehicles.

5. Vehicles must be kept in good operating condition, comply with all State inspection requirements, and be kept neat in appearance. Generally this shall mean washed and painted regularly.

6. In the event that a vehicle other than the type specified in the proposal is to be used, the contractor is required to notify the City as soon as possible prior to collection.

Q. Collection Vehicle Equipment Requirements. Each collection vehicle shall be equipped with the following:

1. A two way communication system.
2. A first aid kit.
3. An approved 2A10BC dry chemical fire extinguisher.
4. Warning flashers.
5. Overhead strobe light.
6. "Reverse" audio warning alarm to indicate movement in reverse.

7. Signs on the rear of the vehicle which state "This Vehicle Makes Frequent Stops."
8. A rear mounted video camera and cab monitor/screen to view operations occurring at the rear of the vehicle.
9. Hazard flares and cones.
10. A broom and a shovel for cleaning up spills.
11. "Absorb" pillows or dry product adequate to absorb/contain any oil/liquid spill from collection vehicle.

All required equipment must be in proper working order at all times. All vehicles must be maintained in proper working order and be clean and free from odor as much as possible. All collection vehicles shall be uniformly painted and the paint shall be in good condition. The Contractor's name shall be clearly visible from all sides of the vehicle, along with the Contractor's phone number, the Recycling symbol, and the vehicle ID number.

R. Driver Duties and Responsibilities. The Contractor shall be responsible for ensuring that there is sufficient personnel and equipment to fulfill the requirements and specifications of this contract, and that all personnel are trained both in program operations and in customer service and insure that all personnel maintain a positive attitude with the public and in the work place and shall:

1. Conduct themselves at all times in a courteous manner and use no abusive or foul language.
2. Be clean and presentable in appearance, as so far as possible.
3. Wear a uniform and employee identification badge or name tag.
4. Drive in a safe and considerate manner.
5. Manage carts in a careful manner, setting them back in place so as to avoid spillage and littering or damage to container.
6. Perform their work in a neat and quiet manner, monitor for any spillage and be responsible for cleaning up any litter or breakage spilled in collection and hauling operations.
7. Record all addresses that could not be collected and reasons, turn list into dispatch at end of each collection day and copies sent to Recycling Coordinator.
8. Collect and transport recyclable materials according to all existing laws and ordinances, and future amendments thereto, of the State of Minnesota and local governing bodies.
9. Report all damage to property.

**5. CONTRACT LENGTH.** This contract shall commence January 1, 2016 and shall be for three (3) years ending December 31, 2018. By mutual written agreement of the Parties this Agreement may be extended for a period not to exceed two (2), two (2) year extensions to be negotiated at the end of the second year, subject to such amendments as the parties may agree upon.

**6. RATE.** The City will pay the Contractor and the Contractor will accept as payment for all services and goods rendered under the Contract Documents \$3.00 per residential dwelling unit and multi-unit dwelling unit per month. There shall be no charge for the City Facility collection. The rate is not subject to annual adjustments.

**7. PAYMENT.** The City will pay the contractor within thirty (30) of receipts of a properly itemized invoice.

**8. PROMPT PAYMENT TO SUBCONTRACTORS.** Pursuant to Minn. Stat. § 471.25, Subd. 4a, the Contractor must pay any subcontractor within ten (10) days of the Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. The Contractor must pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For any unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor.

**9. PENALTY CLAUSE.** The City shall impose a \$100.00 per day penalty for violations in the terms of the agreement. The City shall inform the Contractor of the violation and allow the Contractor one working day to correct the violation. If the violation is not resolved to the satisfaction of the City, the penalty shall be subtracted from the City's monthly payment.

**10. DEFAULT.** Any of the following occurrences, conditions, or acts shall be deemed a "Default" under this Agreement:

**A.** If either party fails to observe or perform its obligations under this Agreement and does not cure such failure within ten (10) days from its receipt of written notice of breach without, however, limiting any other rights available to parties pursuant to any other provisions of this Agreement.

**B.** Except as expressly limited hereby, City and Contractor shall have such remedies for the default of the other party hereto as may be provided at law or equity following written notice of such default and failure to cure the same within ten (10) days.

**11. TERMINATION.** Except as otherwise provided herein, this Agreement may be terminated without any penalty or further liability as follows:

- A.** Upon ten (10) days written notice in the event of a default (as defined above);
- B.** Upon ninety (90) days written notice by Contractor, if Contractor is unable to obtain or maintain any license, permit or other governmental approval necessary to the operation of the Contractor's business;
- C.** Upon ninety (90) days written notice by City if it determines that Contractor has failed to comply with applicable ordinances, or state or federal law, or any conditions attached to governmental approvals granted thereunder, after a public hearing before the City's Council.

**12. TAXES.** Contractor shall pay any taxes, of any nature, due, owing or levied in association with its services pursuant to this Agreement.

**13. INSURANCE.** Insurance secured by the Contractor shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The Contractor shall maintain insurance in the amounts shown below during the entire term of the project. The City shall be named as an additional insured on the comprehensive general liability policy and certificates of said insurance shall be provided to the City before any work on this project may commence. The Contractor shall not allow any subcontractor to commence work until all insurance has been obtained and copies have been filed and accepted by the City. All policies shall provide that the coverage may not be terminated or changed by the insurer except upon 30 days written notice to the City Administrator.

None of the insurance policies shall contain any provisions for exclusions from liability other than those provisions for exclusion from liability which form part of the standard basic unamended and unendorsed form of a policy, except that no exclusion shall be permitted if it conflicts with a coverage expressly required in this Agreement, and in addition, no policy shall contain any exclusion from bodily injury to, or sickness, disease, or death of any coverage under the contractual liability endorsement of the liability of the Contractor under this Agreement.

The Contractor and its sub-contractors shall secure and maintain the following insurance:

**Workers Compensation Insurance**

Workers Compensation insurance shall meet the statutory obligations with Coverage B- Employers Liability limits of at least \$100,000 each accident, \$500,000 disease - policy limit and \$100,000 disease each employee.

**Commercial General Liability Insurance**

Commercial General Liability insurance shall be at the limits of at least \$2,000,000 general aggregate, \$2,000,000 personal and advertising injury, \$2,000,000 each

occurrence, \$50,000 fire damage and \$1,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured. This insurance shall include up to \$10,000 expenses to extract pollutants from land or water at the "premises" if the discharge, dispersal, seepage, migration, release, escape or emission of the pollutants is caused by or results from a covered cause of loss.

**Commercial Automobile Liability Insurance**

Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of at least \$1,000,000 per accident. This insurance shall include a cause of loss where there is a spill of fuels and lubricants used in the vehicle for its operation.

**Environmental Liability Insurance**

The Contractor agrees that they shall obtain and maintain environmental liability insurance in compliance with local, state and federal regulations for all matters related to in this recycling services agreement. Contractor shall add the City as an additional insured under said insurance policy(s). The policy coverage shall include Environmental Impairment Liability. Contractor shall provide the City with appropriate documentation of said environmental liability insurance for verification upon written request from the City. The Contractor further indemnifies the City, its employees, agents and licensees from all liability related to hazardous contamination/pollution resulting from the acts of the Contractor, its employees or agents.

**14. PERFORMANCE AND PAYMENT BOND.** Within fifteen (15) calendar days after the execution of this agreement and before any work or services are rendered, the Contractor shall furnish the City a performance bond and a payment bond, pursuant to Minnesota Statutes §574.26, each in the amount of \$40,000.

**15. INDEMNIFICATION.** Contractor agrees to defend, indemnify and hold harmless City and its elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by City or for which City may be liable in the performance of this Agreement, except those which arise solely from the negligence, willful misconduct, or other fault of City. Contractor shall defend the City against all claims arising out of the performance of this Agreement.

**16. NOTICES.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to City, to:                   City of Falcon Heights  
2077 W. Larpenteur Avenue  
Falcon Heights, MN 55113  
(651) 792-7600

If to Contractor, to:       Tennis Sanitation, LLC  
720 4<sup>th</sup> Street  
St. Louis Park, MN 55071

**17. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

**18. MISCELLANEOUS.**

**A.** If the City is a prevailing party in any litigation arising hereunder the City shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

**B.** The Agreement constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations, and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both parties.

**C.** This Agreement shall be construed in accordance with the laws of the State of Minnesota. Venue of any action shall be in the Ramsey County.

**D.** If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall remain in full force and effect.

**E.** Nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the Contractor as the agent, representative or employee of the City for any purpose or in any manner whatsoever. The Contractor is to be and shall remain an independent contractor with respect to all services performed under this contract. Any and all personnel of the Contractor or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the Contractor, its officers, agents, contractors or employees shall in no way be the responsibility of the City; and the Contractor shall defend, indemnify and hold the City, its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights

or benefits of any kind whatsoever from the City, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Compensation, disability, severance pay and PERA.

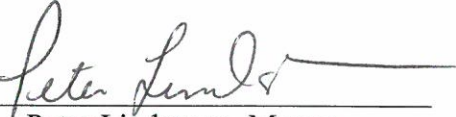
**F.** Neither party shall assign the executed contract, or any interest arising therein, without the written consent of the other party.

**G.** No claim for services furnished by the Contractor not specifically provided for herein shall be honored by the City. This includes but is not limited to the cost to transfer materials collected to a disposal site.


**H.** Data Practices. Contractor their officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA), and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, and as any of the same may be amended. If Contractor creates, collects, receives, stores, use, maintains or disseminates data because it performs functions of the City pursuant to this Agreement, then Contractor must comply with the requirements of the MGDPA as if it was a government entity, and may be held liable under the MGDPA for noncompliance. Contractor agrees to defend, indemnify and hold harmless the City, its officials, officers, agents, employees, and volunteers from any claims resulting from Contractor's officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of such protected data, or other noncompliance with the requirements of this section. Contractor agrees to promptly notify the City if it becomes aware of any potential claims, or facts giving rise to such, under the MGDPA. The terms of this section shall survive the cancellation or termination of this Agreement.


**SIGNED BY THE PARTIES ON THE EXECUTION DATE SPECIFIED ON PAGE 1.**

**CITY:**  
**CITY OF FALCON HEIGHTS**

BY:   
Peter Lindstrom, Mayor

**CONTRACTOR:**  
**TENNIS SANITATION, LLC**

BY:   
Its: GM

AND   
Sack Thongvanh, City Administrator



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**The City That Soars!**

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	September 7, 2022
<b>Agenda Item</b>	Policy D3
<b>Attachment(s)</b>	<i>To be distributed at meeting</i>
<b>Submitted By</b>	Jack Linehan, City Administrator

<b>Item</b>	Police Contract Analysis and Consulting Services RFP Responses
<b>Description</b>	<p>Staff released an RFP for Police Contract Analysis and Consulting Services on July 15, 2022. The RFP closed on August 15, 2022. The RFP was marketed widely online and staff reached out to local and national firms that specialize in this service.</p> <p>The city received interest from three qualified bidders. One bidder declined to submit, citing workload / staffing constraints as they were starting up their firm. In total, the city received two proposals from consultants: one from a local retired law enforcement executive, and one from a national police consulting firm.</p> <p>The City Council will review the proposals from the two firms and determine the next steps for moving forward.</p>
<b>Budget Impact</b>	Funds have been included in the 2023 proposed budget to assist in paying for the consulting services. There are funds available in the 2022 budget, including General Fund 112 – Administrative Expenditures – Consultant, and Special Revenue Fund 210 – Community Inclusion – Personnel/Contract Svcs that can be utilized for the initial payments.
<b>Attachment(s)</b>	<i>To be distributed at meeting</i>
<b>Action(s) Requested</b>	Provide staff direction on the preferred response for a police consultant and provide direction for the next steps in engagement.

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**The City That Soars!**

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	September 7, 2022
<b>Agenda Item</b>	Policy D4
<b>Attachments</b>	<i>To be distributed at meeting</i>
<b>Submitted By</b>	Jack Linehan, City Administrator

<b>Item</b>	Commercial Real Estate Broker RFP
<b>Description</b>	<p>The City of Falcon Heights leases the Community Park land from the University of Minnesota and the current lease agreement is set to expire at the end of 2024. Both parties have expressed interest in the City purchasing the land from the University, and both have completed a commercial appraisal of the property. Due to the scale of this land acquisition, the Council have determined it's within the City's best interest to obtain commercial real estate brokerage services.</p> <p>Staff issued a Request for Proposal (RFP) on August 17<sup>th</sup> for a commercial real estate broker. It was advertised widely online and directly sent to over a dozen firms in the Twin Cities area. The bid closes at noon on September 2<sup>nd</sup> – the short time frame reflecting the basic submittal requirements for the RFP. As of September 1<sup>st</sup>, the City has received one response from a qualified broker.</p> <p>Staff will review the received proposals with the City Council and discuss the next steps in the process.</p>
<b>Budget Impact</b>	
<b>Attachment(s)</b>	<i>To be distributed at meeting</i>
<b>Action(s) Requested</b>	Provide staff direction on the preferred proposal from commercial brokers and provide guidance on the next steps in the process.

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## REQUEST FOR CITY COUNCIL ACTION



<b>Meeting Date</b>	September 7, 2022
<b>Agenda Item</b>	Policy D5
<b>Attachment</b>	LMC CBD-THC FAQ
<b>Submitted By</b>	Jack Linehan, City Administrator

<b>Item</b>	Discussion on CBD and THC products
<b>Description</b>	<p>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. The changes took effect on July 1.</p> <p>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.</p> <p>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.</p> <p>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, including establishments that primarily sell liquor. Nothing in the new law limits a city’s zoning authority related to CBD and THC products. Falcon Heights’ city code does not address THC or CBD sales. As such, the majority of retail establishments could sell THC/CBD products within the state threshold. The most common locations for THC/CBD sales are gas stations, tobacco stores, and specialty CBD retailers. The city does not have any tobacco stores, but does have two gas stations that currently sell tobacco products.</p> <p>City staff have been approached by a CBD establishment interested in potentially opening a CBD/THC store in Falcon Heights. This establishment has existing stores in White Bear Lake, St. Paul, Forest Lake and other locations in the Twin Cities and Florida.</p> <p>The city has two primary options relating to CBD/THC sales: 1) allow State law to be the prevailing guidance for sales, which would allow sales in Falcon Heights or, 2) approve a moratorium on sales for up to one year to study the issue further and consider zoning regulations.</p> <p>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. For example, a few cities such as Roseville, Arden Hills, Shoreview and Lauderdale have</p>

	recently enacted a moratorium on CBD and THC products.
<b>Budget Impact</b>	N/A
<b>Attachment(s)</b>	LMC CBD-THC FAQ
<b>Action(s) Requested</b>	Provide staff direction on the sale of CBD and THC products in the City of Falcon Heights.

# League of Minnesota Cities

## FAQ on Cities and Regulation of Edible Cannabinoid Products

### 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. In addition, AGE has informed LMC that a liquor store's ability to sell food pursuant to [Minnesota Statute, section 340A.412, subd. 14 \(b\)](#), does not include edible cannabinoid products.

#### 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. In addition, AGE has informed LMC that a liquor store's ability to sell food pursuant to [Minnesota Statute, section 340A.412, subd. 14 \(b\)](#), does not include edible cannabinoid products. 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. If a product contains more than 0.3% THC it is considered marijuana and not hemp. 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 as to whether the products would be subject to a local food and beverage tax.

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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](#). The Board of Pharmacy has provided a [form to file complaints against licensed or unlicensed cannabis businesses \(pdf\)](#) and an [inspection checklist to assist law enforcement \(pdf\)](#).

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 cannabinoid 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 cannabis 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 cannabinoid 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 zoning regulations related to cannabinoid products 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 462.355, 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](#).

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## 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.

Although there is a legal difference between marijuana and hemp, [DOT warns](#) CDL drivers the hemp products could lead to a positive marijuana test; therefore CDL holders are ultimately responsible if those products lead to a positive marijuana test.

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 marijuana under federal law. [Federal law](#) prohibits cities from providing firearms or ammunition to an employee it knows or has reason to think is using marijuana. Although there is a legal difference between marijuana products and hemp products, it is the understanding of LMC that it may not be possible to differentiate the products in a drug test. Officers should be mindful of any substance they ingest because they are ultimately responsible if those products lead to a positive marijuana test.

**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 that chooses to continue to test for THC 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 THC.



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