

## **A COUNTY OF BENTON ORDINANCE LIMITING THE USE OF CANNABIS IN PUBLIC PLACES**

### **ORDINANCE NO. 489**

Be it ordained by the Benton County Board of Commissioners, Benton County, Minnesota:

#### **I**

#### **STATUTORY AUTHORIZATION**

This ordinance is adopted pursuant to the authorization contained in Minn. Stat. Ch. 342 or successor statute chapter, Minn. Stat. §§ 145A.04 and 145A.05 or successor statute, Minn. Stat. § 144.414 or successor statute, and Minn. Stat. § 152.0263 or successor statute, that allows County Boards to limit the use of cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products in a public place.

#### **II**

#### **INTENT**

- A. It is the purpose of the Board of County Commissioners of Benton County, Minnesota, to regulate the use of cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products in a public place in order that the health, safety and welfare of all persons in Benton County, residents and visitors alike, may be protected.
- B. Benton County recognizes the risks of cannabis use especially for youth. According to the Mayo Clinic, “marijuana use among adolescents and young adults can affect normal brain development, leading to problems learning, memory, coordination, reaction time and judgment.” In addition to use by youth, “excessive and frequent use of marijuana is associated with hallucinations, paranoia, and a range of emotional problems.”<sup>1</sup>

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<sup>1</sup> <https://www.mayoclinichealthsystem.org/hometown-health/speaking-of-health/how-teen-marijuana-use-impacts-brain-development#:~:text=Marijuana%20use%20among%20adolescents%20and,a%20range%20of%20emotional%20problems>.

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- C. According to the CDC, “secondhand marijuana smoke contains many of the same toxic and cancer-causing chemicals found in tobacco smoke and contains some of those chemicals in higher amounts.” “Those chemicals associated with secondhand tobacco smoke are associated with risks to hearts and lungs.” “Secondhand marijuana smoke also contains tetrahydrocannabinol (THC), the compound responsible for most of marijuana’s psychoactive effects (or the “high”). THC can be passed to infants and children through secondhand smoke, and people exposed to secondhand smoke can experience psychoactive effects, such as feeling high.”<sup>2</sup>
- D. The Benton County Community Health Board has the duty to promote healthy communities and healthy behavior, to promote positive health and prevent adverse health, to protect against environmental health hazards, and to reduce exposure to environmental health risks and promote healthy environments.
- E. It is the County’s goal to be consistent with Minnesota Statute. Pursuant to Minn. Stat. § 342.09, an individual may not:
  - (1) Vaporize or smoke cannabis flower, cannabis products, artificially derived cannabinoids, or hemp-derived consumer products in any location where the smoke, aerosol or vapor would be inhaled by a minor, or
  - (2) In a manner that involves the inhalation of smoke, aerosol, or vapor at any location where smoking is prohibited under section 144.414, the Clean Indoor Air Act.
- F. State legislation authorizes enforcement of local government ordinances which are more stringent than state law in protecting individuals from secondhand smoke or from involuntary exposure to aerosol or vapor from electronic delivery devices, including in areas outside of restaurants and bars. See Minn. Stat. 144.417, subd. 4.
- G. Pursuant to Minn. Stat. 145A.05, subd.1, a county board may adopt ordinances for all or part of its jurisdiction to regulate actual or potential threats to public health. Pursuant to Minn. Stat. 152.0236, local units of government are authorized to adopt ordinances regulating the use of cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products in public places. Cities in Benton County have adopted public use ordinances or are in the process of adopting ordinances and/or resolutions addressing public use in their own jurisdictions. As a result, Benton County chooses at this time, to limit the jurisdiction of this ordinance to the unincorporated areas of the County, County leased and owned property, and County parks.
- H. It is the intent of this Board that all sections and provisions of this ordinance have an independent existence; and, should any section or provision be declared invalid or unconstitutional by a court of competent jurisdiction, it is the intent of this Board that any

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<sup>2</sup> <https://www.cdc.gov/marijuana/health-effects/second-hand-smoke.html>

section or provision so declared shall be severable from and shall not affect the validity of the remainder of the ordinance.

### III

#### COORDINATION WITH CITY AND TOWN ORDINANCES

This ordinance shall regulate the unincorporated areas of the County. This ordinance will also regulate any Benton County owned or leased property and Benton County parks regardless of any local government adopted ordinance in a city or town. A town that is subject to this ordinance may adopt its own ordinance, but it must not be in conflict with or be less restrictive than this ordinance.

### IV

#### DEFINITIONS

A. As used in this ordinance:

1. "Board" means the Benton County Board of Commissioners.
2. "County" means the County of Benton.
3. "Person" means any individual natural human being, partnership, corporation, firm, company, association, society, or group.
4. "Cannabis Flower" shall have the same meaning as defined in Minn. Stat. §342.01, subd. 16, or successor statute
5. "Cannabis Products" shall have the same meaning as defined in Minn. Stat. §342.01, subd. 20, or successor statute.
6. "Hemp-derived consumer products" shall have the same meaning as defined in Minn. Stat. §342.01, subd. 37, or successor statute.
7. "Lower-potency hemp edibles" shall have the same meaning as defined in Minn. Stat. §342.01, subd. 50, or successor statute.
8. "Park" shall mean:
  - (a) any park, parkway, zoological or horticultural garden, recreation open space, lake or other waters, golf course, swimming pool, athletic field, trails and pathways, or
  - (b) any other area owned, improved, maintained, operated or otherwise controlled by the County of Benton for recreation and natural resource preservation purposes.
9. "Place of Public Accommodation" means a business or a refreshment, entertainment, recreation or transportation facility of any kind, whose goods, services, facilities,

privileges, advantages, or accommodations are extended, offered, sold or otherwise made available to the public.

10. “Public Place” means:

- (a) Any outdoor area or indoor area, whether privately or publicly owned, to which the public have access by right of invitation, expressed or implied. This includes but is not limited to theaters, restaurants, bars, food establishments and their decks, places licensed to sell intoxicating liquor, wine, or malt beverages, retail businesses, gyms, common areas in buildings, public shopping areas, auditoriums, arenas, or other places of public accommodation.
- (b) Any Park or Public Recreation Area,
- (c) Any County owned or leased property.
- (d) A “Public Place” does not include the following:
  - (1) a private residence, including the person's curtilage or yard;
  - (2) private property not generally accessible by the public, unless the person is explicitly prohibited from consuming regulated products on the property by the owner of the property; or
  - (3) the premises of an establishment or event licensed to permit on-site consumption.

11. “Regulated Products” means cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products.

12. Smoking. “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated product containing cannabis flower, cannabis products, artificially derived cannabinoids, or hemp-derived consumer products. Smoking includes carrying or using an activated electronic delivery device for human consumption through inhalation of aerosol or vapor from the product.

V

#### **RESTRICTION OF USE OF REGULATED PRODUCTS**

- A. A Person shall not use regulated products in a Public Place.
- B. A Person shall not vaporize or smoke cannabis flower, cannabis products, artificially derived cannabinoids, or hemp-derived consumer products in any location where the smoke, aerosol or vapor would be inhaled by a minor.

VI

## CRIMINAL PENALTY

Violation of this Ordinance shall be a petty misdemeanor. A fine of \$300.00 shall be imposed.

VII

## **SEVERABILITY**

The provision of this ordinance shall be severable and should any court of competent jurisdiction adjudge any provision of this ordinance to be invalid, such judgement shall not affect any other provisions of this ordinance not specifically included in said judgement.

Approved and adopted by the Benton County Board of Commissioners this

3rd day of October in the year of 2023.

This ordinance shall be in full force and effect from and after its passage and publications as required by law. *✓*

  
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Scott Johnson, Chair  
Benton County Board of Commissioners

ATTEST:

Montgomery Headley  
Montgomery Headley  
Benton County Administrator