

ORDINANCE NO. 2022-55

AN ORDINANCE AMENDING CHAPTER 14 OF THE CITY CODE RELATING TO SALE OF TETRAHYDROCANNABINOL PRODUCTS AND RELATED FEES IN APPENDIX A OF THE CITY CODE

The City Council of the City of Bloomington, Minnesota does hereby ordain:

Section 1. That Chapter 14 of the City Code of Ordinances is amended by adding those words that are underlined and deleting those words struck through and contained in brackets [], to read as follows:

CHAPTER 14: LICENSES AND PERMITS

ARTICLE IV: BUSINESS LICENSES AND REGULATIONS

DIVISION N: ~~RESERVED~~ SALE OF TETRAHYDROCANNABINOL PRODUCTS

§ 14.296 PURPOSE.

The purpose of this Division N is to restrict access by minors and to regulate the sale of any legalized adult-use product that contains tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under Minnesota Statutes, section 151.72, for the following reasons:

- a) Minnesota Statutes, section 151.72 does not prohibit municipalities from adopting and enforcing local ordinances to regulate THC products; and
- b) For adults, approximately 1 in 10 marijuana users will become addicted. For those who start before age 18, the rate of addiction rises to 1 in 6; and
- c) Health concerns related to marijuana use include harm to the brain, especially when starting at a young age, mental health, cardiovascular health, and impaired driving; and
- d) Recent marijuana use in youth and adults has an immediate impact on thinking, attention, memory, coordination, movement, and time perception; and
- e) Marijuana affects brain development. Those at greatest at risk are teenagers, children, and infants. The higher the THC amount, the stronger the effects on the brain; and
- f) Individuals who use marijuana are more likely to develop temporary psychosis and long-lasting mental disorders. This association is stronger in people who start using at an earlier age, use more frequently, and use higher amounts of THC; and
- g) Edible THC products have a greater risk of poisoning from unintended ingestion or acute intoxication. Effects of THC poisoning include: trouble breathing, vomiting, dizziness, anxiety, panic and paranoia, difficulty walking, slurred speech, and rapid heart rate; and

- h) Young kids are the most susceptible to THC poisoning due to biological factors like height and weight, concentration of THC, and appealing flavors and products like candies or gummies. Young children under 10 are most likely to be admitted to the hospital than older children; and
- i) From January 2021 to May 2022, national poison control centers received over 10,000 cases involving only edible THC products. 65% of these cases involved unintentional exposure and of these unintentional exposures, 91% were pediatric patients. 79% of the total cases (intended and unintended) required a health care facility evaluation; and
- j) National Institute on Drug Abuse conducts Monitoring the Future study annually. In 2021, past-year, past-month, and daily marijuana use in young adults reached the highest levels ever recorded since these trends were first monitored in 1988. This is following a significant decrease in past-month use during the pandemic; and
- k) 2019 Minnesota Student Survey data found that 20.6% of 11th graders in Minnesota used marijuana in the last year and 15.5% had used in the last 30 days. In Bloomington the same survey found that 17% of 11th graders used marijuana in the last year and 12% in the last 30 days.

§ 14.297 DEFINITIONS.

The following words and terms when used in this Division N shall have the following meanings unless the context clearly indicates otherwise.

BUSINESS. Refers to any place of business where THC products are available for sale to the general public, including but not limited to grocery stores, tobacco-related products stores, CBD stores, convenience stores, gasoline service stations, bars, and restaurants.

EXCLUSIVE LIQUOR STORE. An establishment that meets the definition of exclusive liquor store in Minnesota Statutes, section 340A.101, subd. 10.

MOVABLE PLACE OF BUSINESS. A business whose physical location is not permanent or is capable of being moved or changed. Movable place of business includes, but is not limited to a kiosk, truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address storefront or other permanent type of structure authorized for retail sales.

PERSON. One or more natural persons; a partnership, including a limited partnership; a corporation, including a foreign, domestic or nonprofit corporation; a trust; a political subdivision of the state; or any other business organization.

RETAIL SALE. Any transfer of goods for money, trade, barter, or other consideration for THC products.

SELF-SERVICE MERCHANDISING. A method of displaying THC products, so that they are accessible to the public without the assistance or intervention of the licensee or licensee's employee. Assistance or intervention means the actual physical exchange of THC products between the customer and the licensee or licensee's employee.

THC PRODUCT. Any product that contains more than trace amounts of tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under Minnesota Statute, section 151.72. THC product does not include medical cannabis as defined in Minnesota Statute, section 152.22, subd. 6.

VENDING MACHINE. Any mechanical, electric, or electronic self-service device that dispenses THC products upon the insertion of money, tokens, or any other form of payment, directly to a person seeking to purchase THC products.

§ 14.298 LICENSE.

- (a) License required. No person shall keep for retail sale, sell at retail, or otherwise dispose of any THC products at any place in the city without first obtaining a license and paying a license fee.
- (b) Application. An application for a license to sell THC products shall be made on a form provided by the issuing authority. The issuing authority shall verify the information on the application form and is empowered to conduct an investigation to verify the information on the application, including ordering a computerized criminal history inquiry and/or driver's license history inquiry on the applicant.
- (c) No person shall be issued an original or renewal license to sell THC products unless that person has implemented a program for instructing all employees in the legal requirements pertaining to the sale of THC products, including, but not limited to, state laws and this Division N, providing information on the risks of using THC products, and requiring employees to request identification from every customer who appears to be under 30 years of age. No license shall be issued to an establishment unless the employer signs a city form stating that the employer has provided training to all employees on the sale of THC products, and such training includes information that the sale of THC products to a person under 21 years of age is illegal, what proof of age is legally acceptable, and that a sale to a person under 21 years of age can subject the employer and the employee to criminal and/or civil liability.
- (d) Revocation or Suspension. Any license issued under this Division N may be revoked or suspended as provided in this division.
- (e) Transfers. All licenses issued under this Division N shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued to. The transfer of any license to another location, business, or person is prohibited.
- (f) Term. All licenses issued under this division shall be effective for one year from the date of approval.
- (g) Renewals. The renewal of a license issued under this division shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.
- (h) Issuance as Privilege and Not a Right. The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.

§ 14.299 LICENSE FEE.

The fee for a license to sell THC products shall be as set forth in City Code Appendix A for such location. The license fee shall cover the administrative and enforcement costs, including the conducting of compliance checks.

§14.300 LICENSE RESTRICTIONS

- a) Mobile Sales. No license shall be issued for the sale of THC products at a movable place of business, unless the movable place of business is operated in an establishment licensed to sell THC products and all mobile sales are conducted within a building and within the licensed premises. Only fixed location businesses in an authorized zoning area shall be eligible to be licensed under this Division N.
- b) Proximity to School. No license shall be issued for a location within 500 feet of any school. The distance shall be measured in a straight line from the proposed lot line to the nearest point of the lot on which the school is located.
- c) Exclusive Liquor Store. No license shall be issued to an exclusive liquor store as defined in Minnesota Statutes, section 340A.101.
- d) Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.
- e) Compliance Checks. As a condition of the license, the issuing authority, the City Police Department, those authorized under § 1.06 of this code to issue citations for a violation of the city code, or any other person designated by the City Council, shall have the right to conduct compliance checks and to enter, inspect, and search the licensed premises without a search and seizure warrant during the hours of operation. The city may conduct regular compliance checks of the licensed premises.
- f) Responsibility. All licensees are responsible for the action of their employees regarding the sale, offer to sell, or furnishing of THC products on the license premises. The sale, offer to sell, or furnishing of THC products by an employee shall be considered an act of the licensee.

§ 14.301 PROHIBITED ACTS.

- a) No person shall sell, offer for sale, or dispense any THC product to any person under the age of 21.
 - (1) Age verification. Licensees must verify by means of government-issued photographic identification that the person is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
 - (2) Signage. Notice of the legal sale age and verification requirement must be always posted prominently and in plain view at each location where THC products are offered for retail sale.

- b) No person shall sell, offer for sale, or dispense any THC product:
 - (1) By means of any type of vending machine.
 - (2) By means of self-service merchandising. All THC products shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the public. This restriction shall not apply to a license holder under this division or a tobacco license holder under 14.437 of this city code who derives at least 90% of their revenue from THC products or tobacco products, prohibits anyone under 21 years of age from entering the licensed premises at all times, and who conspicuously displays a notice prohibiting persons under 21 years of age from entering the licensed premises.
 - (3) That is not in the original packaging with labeling in compliance with the Minnesota Statutes, section 151.72.
- c) Samples Prohibited. No person shall distribute sample of any THC product free of charge or at a nominal cost.
- d) Use of false identification. It shall be a violation of this Division N for any person to attempt to disguise their actual age using a false form of identification.
- e) Unlawful purchase. It shall be unlawful for any person under the age of 21 to purchase any THC product. Persons acting under the direct supervision of the city, law enforcement, or other governmental unit and are actively engaged in compliance checks of the licensed premises are exempt.
- f) No person shall sell or offer for sale any THC product by any other means, to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

§ 14.302 SANCTIONS FOR LICENSE VIOLATIONS.

The imposition of a civil penalty shall be preceded by written notice to the licensee and an opportunity for an administrative hearing under § 1.17 of this code. The notice shall give at least eight calendar days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The civil penalties for violations of this Division N or state laws governing the sale of THC products by the licensee or employee of the licensee are as follows:

- a) For a first violation, the fine as set forth in City Code Appendix A;
- b) For a second violation at the same location within five years of the first violation, the fine set forth in City Code Appendix A;
- c) For a third violation at the same location within five years of the first violation, the City Council shall suspend the licensee's authority to sell THC products at a public hearing for a minimum of seven days and impose a civil penalty set forth in City Code Appendix A; and

- d) For a fourth or subsequent violations at the same location within five years of the first violation, the City Council may at a public hearing revoke a license or suspend a license for up to 60 days, impose a civil penalty as set forth in City Code Appendix A for each additional violation, or impose any combination of these sanctions.

§ 14.303 PENALTY FOR INDIVIDUALS.

A violation of this Division N is a misdemeanor. Nothing in this Division N shall be construed to limit the city’s other available remedies for any violation of law, including without limitation, criminal, civil, and injunctive relief.

§ 14.304 SEVERABILITY.

If any provision of this Division N is for any reason held to be invalid, such decision shall not affect the validity of the remaining provisions of this Division N.

Section 2. That Appendix A of the City Code is amended by adding those words that are underlined, to read as follows:

APPENDIX A: FEE SCHEDULE

This appendix contains the various fees adopted by ordinance in the listed sections of the City Code.

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| <i>Chapter 14: Licenses and Permits</i> | | | |
|---|------------------|--------------------|------------|
| <i>CODE SECTION</i> | <i>CROSS-REF</i> | <i>DESCRIPTION</i> | <i>FEE</i> |

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| <i>Chapter 14: License and Permits</i> | | | |
|--|------------------|--|----------------|
| <i>CODE SECTION</i> | <i>CROSS-REF</i> | <i>DESCRIPTION</i> | <i>FEE</i> |
| § 14.299 | | <u>THC product retail license for each location</u> | <u>\$175</u> |
| <i><u>THC Products Sanctions and Penalties</u></i> | | | |
| § 14.292 | § 14.292 (a) | <u>First violation</u> | <u>\$300</u> |
| | § 14.292 (b) | <u>Second violation at same location within five years of the first violation.</u> | <u>\$600</u> |
| | § 14.292 (c) | <u>Third violation at same location within five years of the first violation.</u> | <u>\$1,000</u> |
| | § 14.292 (d) | <u>Fourth violation at same location within five years of the first violation.</u> | <u>\$1,000</u> |

Section 3. That this ordinance is effective January 1, 2023.

Passed and adopted this 5th day of December, 2022.

/s/ Tim Busse
Mayor

ATTEST:

/s/ Matt Brillhart
Secretary to the Council

APPROVED:

/s/ Melissa J. Manderschied
City Attorney