

**CITY OF LEXINGTON
WORKSHOP AGENDA
Thursday, May 18, 2023
Immediately following Council meeting
City Hall**

1. Call to Order: Mayor Grote

2. Roll Call: DeVries – Harris – Winge - Benson

3. Discussion Items:

A. Discuss

- Council conduct and decorum
- Cannabinoids Ordinance

**Councilmember Harris
Councilmember Harris pp. 1-10**

4. Staff Input

5. Council Input

6. Adjourn

**THE CITY OF LEXINGTON
ANOKA COUNTY, MINNESOTA**

ORDINANCE NO. 22-04

AN ORDINANCE REGULATING CANNABINOID PRODUCTS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LEXINGTON, MINNESOTA, HEREBY ORDAINS AS FOLLOWS:

SECTION 1: CHAPTER 6 SHALL BE AMENDED AS FOLLOWS:

SECTION 6.43. – CANNABINOID PRODUCTS

Subd. 1. - Purpose.

The purpose of this ordinance is to establish licensing, sale and possession regulations for the sale and possession of cannabinoid products derived from hemp as provided in Minn. Stat. § 151.72.

Subd. 2. - Findings of City Council.

The City Council makes the following findings regarding the need to regulate, license, and inspect establishments that sell certain cannabinoid products and regulate possession of cannabinoid products by minors:

- (1) By enacting 2022 Session Law Chapter 98, Article 13, the Minnesota Legislature amended Minn. Stat. § 151.72 to allow for the sale of certain cannabinoid products.
- (2) This new law does not prohibit municipalities from licensing the sale of cannabinoid products derived from hemp locally.
- (3) The Minnesota Legislature recognized the danger of cannabis use among youth by prohibiting the sale of any product containing cannabinoid or tetrahydrocannabinol (THC) extracted or otherwise derived from hemp to those under the age of 21 and requiring that edible cannabinoid products be packaged without appeal to children and in child-resistant packaging or containers.
- (4) Due to the passage of this new law by the Minnesota Legislature, the City Council believes the following rules, regulations, and standards for licensing the sale of cannabinoid products, and possession of cannabinoid products by minors, are necessary to promote and protect the public health, safety, and general welfare of the residents of Lexington.

Subd. 3. - Definitions.

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cannabinoid product means any product containing nonintoxicating cannabinoids extracted from hemp, including an edible cannabinoid product, that is sold for human or animal consumption.

Certified hemp means the definition for the same provided in Minn. Stat. § 151.72, Subd. 1(b), as may be amended.

Compliance checks means the system the city uses to investigate and ensure that those authorized to sell cannabinoid products are following and complying with the requirements of this ordinance and state laws. Compliance checks involve the use of compliance check minors, as authorized by this section, who purchase or attempt to purchase cannabinoid products. Compliance checks may also be conducted by the City or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to cannabinoid products.

Compliance check minors means any person at least 17 years of age, but under the age of 21 years.

Delivery sale means the sale of any cannabinoid products to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. Delivery sale includes, but is not limited to, the sale of any cannabinoid products when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.

Edible cannabinoid product means any product that is intended to be eaten or consumed as a beverage by humans, contains a cannabinoid in connection with food ingredients, and is not a drug.

Hemp or Industrial Hemp means the definition for the same provided in Minn. Stat. § 18K.02, Subd. 3, as may be amended.

Label means the definition for the same provided in Minn. Stat. § 151.01, Subd. 18, as may be amended.

Labeling means the definition for the same provided in Minn. Stat. § 151.72, Subd. 1(f), as may be amended.

Matrix barcode means the definition for the same provided in Minn. Stat. § 151.72, Subd. 1(g), as may be amended.

Minor means any person under the age of 21 years.

Moveable place of business means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

Nonintoxicating cannabinoid means substances extracted from certified hemp plants that do not produce intoxicating effects when consumed by any route of administration.

Operator means the person in legal possession and control of a location by reason of ownership, lease, contract or agreement, for the sale of cannabinoid products at retail.

Retail establishment means any fixed place of business where cannabinoid products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants. Retail establishment for purposes of this ordinance does not include residences or residential zoning districts.

Sale means any transfer of goods for money, trade, barter or other consideration.

Self-service merchandising means open displays of cannabinoid products in any manner where any person shall have access to the cannabinoid products without the assistance or intervention of the licensee or the licensee's employee.

Vending machine means any mechanical, electrical or electronic or other type of device which dispenses cannabinoid products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase cannabinoid products.

Subd. 4. - Retail license.

- (a) No person shall directly or indirectly keep for retail sale or sell at retail any cannabinoid product in the city unless a license therefore shall first have been obtained specifically for this purpose, and then only after obtaining an annual license for intoxicating beverages under Code Section 5.212 or a license for the sale of tobacco under Code Section 6.33.
- (b) An application for a license to sell cannabinoid products shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, the location of the building and the part intended to be used by the applicant under such license, the kind or nature of business, and any additional information the city deems necessary. Upon the filing of such application with the city clerk, it shall be presented to the city council for consideration, and if granted by the city council, a license shall be issued by the city clerk upon payment of the required fee.
- (c) The fees for licenses under this section shall be determined by the city council. Each such license shall expire on December 31 next after its issuance. Licenses shall not be transferable from one person or entity to another, nor shall they be transferable from one premises to another premises.

- (d) Every license issued under this section shall be kept conspicuously posted about the place for which the license is issued and shall be exhibited to any person upon request.
- (e) The renewal of a license issued under this section shall be made 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.
- (f) No license will be approved unless the premises proposed to be licensed complies with all applicable zoning requirements.
- (g) If a license is mistakenly issued or renewed to a person, the City will revoke the license upon the discovery that the person was ineligible for the license under this ordinance. The City will provide the license holder with notice of the revocation, along with information on the right to appeal.
- (h) The following shall be grounds for denying the issuance or renewal of a license under this section:
 - (1) The applicant is under the age of 21 years;
 - (2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to cannabinoid products;
 - (3) The applicant has had a license to sell cannabinoid products suspended or revoked within the preceding 24 months of the date of application;
 - (4) The applicant fails to provide any information required on the application, or provides false or misleading information;
 - (5) The applicant is prohibited by federal, state, or other local law, ordinance, or regulation from holding such a license;
 - (6) The business for which the license is requested is a moveable place of business. Only fixed-location retail establishments that are not excluded under the definition for retail establishments in this ordinance are eligible to be licensed.
 - (7) The applicant has failed to pay any required application or licensing fees to the city.

Subd. 5. - Responsibility of licensee.

All licensees under this section shall be responsible for the actions of their employees in regard to the sale of cannabinoid products on the licensed premises, and the sale of such item by an

employee shall be considered a sale by the license holder. All licensees shall comply with the provisions of this section and all state and federal laws and regulations.

Subd. 6. - Sales of Cannabinoids Derived from Hemp.

In accordance with Minn. Stat. § 151.72, Subd.3, as may be amended:

- (a) A product containing nonintoxicating cannabinoids, including an edible cannabinoid product, may be sold for human or animal consumption only if all of the requirements of this section are met, provided that a product sold for human or animal consumption does not contain more than 0.3 percent of any tetrahydrocannabinol and an edible cannabinoid product does not contain more than five milligrams of any tetrahydrocannabinol in a single serving, or more than a total of 50 milligrams of any tetrahydrocannabinol per package.
- (b) No other substance extracted or otherwise derived from hemp may be sold for human consumption if the substance is intended:
 - (1) For external or internal use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; or
 - (2) To affect the structure or any function of the bodies of humans or other animals.
- (c) No product containing any cannabinoid or tetrahydrocannabinol extracted or otherwise derived from hemp may be sold to any individual who is under the age of 21.
- (d) Products that meet the requirements of this section are not controlled substances under Minn. Stat. § 152.02.

Subd. 7. - Testing Requirements.

All testing must comply with the requirements set forth in Minn. Stat. § 151.72, Subd. 4, as may be amended.

Subd. 8. - Labeling Requirements.

All labeling must comply with the requirements set forth in Minn. Stat. § 151.72, Subd. 5, as may be amended.

Subd. 9. - Additional Requirements for Edible Cannabinoid Products.

In accordance with Minn. Stat. § 151.72, Subd. 5a, as may be amended:

- (a) An edible cannabinoid product must not:

- (1) Bear the likeness or contain cartoon-like characteristics of a real or fictional person, animal, or fruit that appeals to children;
 - (2) Be modeled after a brand of products primarily consumed by or marketed to children;
 - (3) Be made by applying an extracted or concentrated hemp-derived cannabinoid to a commercially available candy or snack food item;
 - (4) Contain an ingredient, other than a hemp-derived cannabinoid, that is not approved by the United States Food and Drug Administration for use in food;
 - (5) Be packaged in a way that resembles the trademarked, characteristic, or product-specialized packaging of any commercially available food product; or
 - (6) Be packaged in a container that includes a statement, artwork, or design that could reasonably mislead any person to believe that the package contains anything other than an edible cannabinoid product.
- (b) An edible cannabinoid product must be prepackaged in packaging or a container that is child-resistant, tamper-evident, and opaque or placed in packaging or a container that is child-resistant, tamper-evident, and opaque at the final point of sale to a customer. The requirement that packaging be child-resistant does not apply to an edible cannabinoid product that is intended to be consumed as a beverage and which contains no more than a trace amount of any tetrahydrocannabinol.
- (c) If an edible cannabinoid product is intended for more than a single use or contains multiple servings, each serving must be indicated by scoring, wrapping, or other indicators designating the individual serving size.
- (d) A label containing at least the following information must be affixed to the packaging or container of all edible cannabinoid products sold to consumers:
- (1) The serving size;
 - (2) The cannabinoid profile per serving and in total;
 - (3) A list of ingredients, including identification of any major food allergens declared by name; and
 - (4) The following statement: “Keep this product out of reach of children.”
- (e) An edible cannabinoid product must not contain more than five milligrams of any tetrahydrocannabinol in a single serving, or more than a total of 50 milligrams of any tetrahydrocannabinol per package.

Subd. 10. - Prohibited Sales.

- (a) *Samples Prohibited.* Sampling of cannabinoid products within any retail establishment licensed under this ordinance is prohibited. No person shall distribute

samples of any cannabinoid products free of charge or at a nominal cost. The distribution of cannabinoid products as a free donation is prohibited.

- (b) *Coupon and Price Promotion.* No person shall accept or redeem any coupon, price promotion, or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any cannabinoid products to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.
- (c) *Self-service Displays.* All cannabinoid products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public. No person shall allow the sale of cannabinoid products in open displays that are accessible to the public without the intervention of a store employee. This section does not apply to a retail establishment, as defined in this ordinance, that is continuously staffed by an employee from which persons under 21 years of age are prohibited from entering the store.
- (d) *Prohibition Against Retail Sales of Cannabinoid Products by Vending Machines.* No person will sell or dispense cannabinoid products through use of a vending machine.
- (e) *Delivery Sales.* All sales of cannabinoid products must be conducted in person, in a licensed retail establishment under this ordinance, in over-the-counter sales transactions.

Subd. 11. - Adulterated or Misbranded Products.

A cannabinoid product shall be considered adulterated or misbranded under the provisions set forth in Minn. Stat. §151.72, Subd. 6, as may be amended.

Subd. 12. - Signage.

At each location where cannabinoid products are sold, the licensee shall display a sign in plain view to provide public notice that selling any of these products to any person under the age of 21 is illegal and subject to penalties. The notice shall be placed in a conspicuous location in the licensed establishment and shall be readily visible to any person who is purchasing or attempting to purchase these products. The sign shall provide notice that all persons responsible for selling these products must verify, by means of photographic identification containing the bearer's date of birth, the age of any person under 30 years of age.

Subd. 13. - Age Verification.

At each location where edible cannabinoid products are sold, the licensee shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser or person attempting to make the purchase is at least 21 years of age. Verification is not required if the purchaser or person attempting to make the purchase is 30

years of age or older. It shall not constitute a defense to a violation of this Section that the person appeared to be 30 years of age or older.

Subd. 14. - Hours of Sales.

No sales of cannabinoid products will be allowed at the licensed premises after 10:00 p.m. and before 8:00 a.m. daily.

Subd. 15. - Compliance checks and inspections.

All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, compliance check minors to enter the licensed premise to attempt to purchase cannabinoid products. Compliance check minors used for the purpose of compliance checks shall be supervised by city law enforcement officers. Compliance check minors used for compliance checks shall not be guilty of unlawful possession of cannabinoid products when such items are obtained as a part of the compliance check. No compliance check minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all compliance check minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his/her employee and shall produce any identification, if any exists, for which he/she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law or regulation.

Subd. 16. - Penalties; revocation or suspension of license.

A violation of any provision of this section shall constitute a misdemeanor, unless otherwise specified by other federal or state laws or regulations. Violation of any provision of this section shall also be cause for consideration of immediate revocation or suspension of the license by the city council. Any fee paid to the city for a license shall be forfeited upon revocation or suspension of the license. Other administrative fees may be charged for violations of this section.

Subd. 17. - Administrative penalties.

- (a) *Notice.* Upon discovery of a suspected violation of any of the provisions of the section, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his/her right to be heard on the charges.
- (b) *Hearings.* If a person accused of violating this section so requests, a hearing shall be scheduled, the time and place of which shall be provided to the accused violator.
- (c) *Hearing officer.* The city administrator or his designee shall serve as the hearing officer.

- (d) *Decision.* If the hearing officer determines that a violation of this section has occurred, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.
- (e) *Appeals.* Appeals of any decision made by the hearing officer shall be filed with the clerk of the county district court.
- (f) *Misdemeanor prosecution.* Nothing in this section prohibits the city from seeking criminal prosecution for any alleged violation of this section.
- (g) *Continuing violations.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
- (h) *Penalties.* Any licensee found to have violated this section, or whose employee shall have violated this section, may be charged an administrative fee of \$75.00 for a first violation of this ordinance; \$200.00 for a second offense at the same licensed premises within a 24-month period; and \$250.00 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven days.
- (i) *Other individuals.* Other individuals may be charged an administrative fee of \$50.00.

Subd. 18. - Underage persons.

- (a) *Illegal sales.* It shall be a violation of this section for any person to sell or otherwise provide any cannabinoid products to any minor.
- (b) *Illegal possession.* It shall be a violation of this section for any minor to have in his/her possession any cannabinoid product. This subdivision shall not apply to compliance check minors lawfully involved in a compliance check.
- (c) *Illegal procurement.* It shall be a violation of this section for any minor to purchase or attempt to purchase or otherwise obtain any cannabinoid product, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any cannabinoid product. This subdivision shall not apply to compliance check minors lawfully involved in a compliance check.
- (e) *Use of false identification.* It shall be a violation of this section for any minor to attempt to disguise his/her true age by the use of a false form of identification, whether

the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

SECTION 2: INITIAL FEES. Upon effect of this Ordinance, permit fees shall cost \$100, annually, and background fees and other costs are set forth elsewhere in this chapter.

SECTION 3: SUMMARY PUBLICATION. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

“The City will be undergoing a study regarding medical facilities, clinics, and other businesses which provide medical treatments or counseling, including dispensing pharmaceutical drugs to determine if regulations surrounding zoning and licensing are appropriate. No new use may be established, and no existing use may be expanded until the City adopts regulations regarding these uses, or determines no regulations are necessary and rescinds the interim ordinance or for a period of one year, whichever occurs first.”

SECTION 4: EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after its passage and publication.

ADOPTED by the City Council of the City of Lexington this 3rd day of November, 2022.

First Reading October 22, 2022
Second Reading November 3, 2022

Michael Murphy, Mayor

ATTEST:

Bill Petracek, City Administrator

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