

## ORDINANCE 22 - 25

### An Ordinance Regulating the Licensing of Businesses Selling Cannabinoid Products in the City of Elk River

#### THE CITY COUNCIL OF THE CITY OF ELK RIVER DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION I. AMENDMENT.** The City Code of Elk River, Minnesota, Chapter 26 is hereby amended to add the following Article IV as follows:

#### ARTICLE IV. - SALE OF CANNABINOID PRODUCTS; LICENSING

##### DIVISION 1. – GENERALLY

##### Sec. 26-110. - Purpose of Article.

The City Council finds that the rapid introduction of Cannabinoid Products, including products containing THC, presents a significant potential threat to the public health, safety, and welfare of the general public and can interfere with brain development in youth and adolescents according to the U.S. Surgeon General.

The City Council finds that a local regulatory system for Cannabinoid Product retailers is appropriate and not unduly burdensome to ensure that retailers comply with the laws and business standards of the city to protect the health, safety, and welfare of our youth, visitors, and all residents.

##### Sec. 26-111. - Definitions.

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

*Cannabinoid* means chemical compound derived from the cannabis plant or synthetically derived from the cannabis plant.

*Cannabinoid Product* means any edible cannabinoid product or nonedible cannabinoid product authorized for sale in Minnesota Statute and intended for human consumption whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means.

*HHC* means the intoxicating cannabinoid hexahydrocannabinol.

*Licensed Premises* means the premises described in the approved license application.

*Movable Place of Business* means a business whose physical location is not permanent or is capable of being moved or changed including, but not limited to, motorized vehicles, mobile sales kiosks, or trailers.

*Person* means 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.

*School* means a building used for the purpose of elementary or secondary education, which meets all the requirements of compulsory education laws of the State of Minnesota, and not providing residential accommodations.

*Self-Service Merchandising* means a method of displaying Cannabinoid Products so that they are accessible to the public without the intervention of an applicant, licensee or their agents or employees.

*THC* means the chemical compound tetrahydrocannabinol whether derived naturally or synthetically from the cannabis plant.

*Underage Person* means a person who is under the age of 21.

*Vending Machine* means any mechanical, electric, or electronic, self- service device which, upon insertion of money, tokens, or any other form of payment, dispenses Cannabinoid Products and including vending machines equipped with manual, electric or electronic locking devices.

## DIVISION 2. - LICENSE

### Sec. 26-112. - Required.

No person shall sell or offer to sell any Cannabinoid Products without first having obtained a license to do so from the city.

### Sec. 26-113. - Licensing Procedure.

- (a) *Application.* An application for a license to sell Cannabinoid Products shall be made on a form provided by the city. The application shall include, but is not limited to, requiring the full name of the applicant, the applicant's residential and business address and telephone numbers, the name of the proposed licensee, and the business location for which the license is sought. The application and investigation fees shall be paid at the time of application.

All license applications under this division shall be made to the Office of the City Clerk and referred to the chief of police and such other municipal departments or offices as the city clerk deems necessary for verification and investigation of the facts set forth in the application. The chief of police and other department directors or officers consulted shall submit their reports and recommendations to the city administrator or designee.

If the city administrator or designee determines that an application is incomplete, he or she shall return the application to the applicant with notice of the deficiencies.

- (b) *Action.* The city administrator or designee may either approve or deny the license, or may delay action for such reasonable period of time to permit the city to complete any investigation of the application or the applicant deemed necessary. If the city administrator or designee approves the license, a license shall be issued to the applicant. If the city administrator or designee denies the application, a notice of denial shall be sent to the applicant at the business address provided in the application along with the reasons for the denial, and information regarding the appeal process set forth in chapter 38, article II of this Code.
- (c) *Background Checks.* Applicants must submit to background checks as provided in section 38-39.
- (d) *Mistake.* If a license is mistakenly issued or renewed to an applicant or licensee, it shall be revoked by the city administrator or designee upon the discovery that the person, applicant, or licensee was ineligible for the license under this section.
- (e) *Term.* All licenses are issued for a period of one year. All licenses shall expire on December 31.
- (f) *Transfers.* All licenses issued under this section shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid. Relocation or sale of the business shall require the approval and issuance of a new license

Transfer of 25 percent or more of the ownership interest of a business entity, or of a controlling interest of it, whichever is less, will be deemed a sale of the business. If the licensee is a business entity that is wholly owned by another entity, the same provisions about the transfer of ownership or a controlling interest will apply to the parent entity and any second parent entity that wholly owns the parent entity.

A sale of the business as defined in this section without the approval and issuance of a new license shall result in the unlicensed sale of Cannabinoid Products. Transfer of this amount of ownership interest without prior approval by the city administrator or designee is a ground for revocation or suspension of the license. In addition, each day the licensee operates under the license after a transfer has taken place without obtaining approval from the city administrator or designee will be a separate violation of this article.

- (g) *Renewals.* The renewal of a license under this section shall be handled in the same manner as the original application. The request for renewal shall be made at least thirty (30) days but no more than sixty (60) days before the expiration of the current license. The issuance of a license under this chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the licensee to an automatic renewal of the license. If the city administrator or designee denies the renewal, a notice of denial shall be sent to the applicant at the business address provided on the application along with the reasons for the denial, and information regarding the appeal process set forth in chapter 38, article II of this Code.

(h) *Exemptions:*

- (1) This chapter does not apply to medical cannabis products dispensed by a registered medical cannabis dispensaries pursuant to Minn. Stat. §§ 152.22 to 152.37. Medical cannabis dispensaries that sell non-medical cannabis products which are also Cannabinoid Products are not exempt.
- (2) This chapter does not apply to Cannabinoid Products wherein the only cannabinoids present are non-intoxicating cannabinoids, such as Cannabidiol (“CBD”) or Cannabinol (“CBN”).

Sec. 26-114. - Denials.

(a) The following will be grounds for denying the issuance or renewal of a license:

- (1) The applicant or licensee is an underage person.
- (2) The applicant or licensee who, within five years of the license application, has been convicted of a controlled substance-related felony.
- (3) The applicant or licensee has had a license to sell Cannabinoid Products denied, suspended, or revoked within the preceding twelve (12) months of the date of application.
- (4) The applicant or licensee fails to provide any information required on the city license application, or provides false or misleading information.
- (5) The applicant or licensee has outstanding fines, penalties, or property taxes owed to the city.
- (6) The applicant or licensee is prohibited by state, or other local law, ordinance, or other regulation from holding a license under this chapter.
- (7) The proposed premises is a moveable place of business.
- (8) The proposed premise is within 500 feet of a school property as measured from the property line to property line at the nearest point or from property line to the nearest point of the leased premises if the Cannabinoid Products shop is located in a multi-tenant facility.
- (9) Any taxes or utility bills for the premises for which the license will be issued are delinquent.
- (10) Failure to pay the yearly application fee.
- (11) Failure of any person to comply with any of the ordinances of the city or laws of the state, or any conditions/restrictions conditions imposed on a license.

(b) The City shall have the discretion to consider denying a license upon any reasonable facts or circumstances relating to public health, safety, and welfare.

## DIVISION 3. - RULES AND REGULATIONS

### Sec. 26-115. – General Requirements.

- (a) *Prohibited Sales.* No person shall sell, offer for sale, give away, furnish, or otherwise deliver any Cannabinoid Products:
- (1) To any underage person.
  - (2) By means of any type of vending machine.
  - (3) By means of self-service merchandising.
  - (4) Containing any chemical compound or drug that is a controlled substance under Minnesota law.
  - (5) That contain any amount of HHC.
  - (6) By any other means, or to any other person, prohibited by state or local laws.
  - (7) That fails to meet the labelling requirements as established in Minn. Stat. §151.72 subds. 5 and 5a.
  - (8) That fails to meet the testing requirements as established in Minn. Stat. §151.72 subd. 4.
- (b) *Sampling of Cannabinoid Products.* Sampling of Cannabinoid Products on a licensed premises is prohibited.
- (c) *On-site Consumption.* Any Cannabinoid Products sold may not be consumed and must remain sealed while on the licensed premises. Exceptions to this regulation include on premise consumption of Cannabinoid Products at a food and beverage establishment that is licensed by the Minnesota Department of Health and licensed under this chapter. Food and beverage establishments selling Cannabinoid Products must provide such product to consumers in original packaging, complete with labeling. Such establishments must abide by all other state and county laws regarding on-premises consumption and sales, including the Minnesota Clean Indoor Air Act (Minn. Stat. §§144.411 to 144.417).
- (d) *Employees.* All employees selling Cannabinoid Products must be 21 years of age or older. All licensees under this Chapter shall be responsible for the actions of their employees in regard to the sale of Cannabinoid Products, and the sale of such products by an employee shall be considered a sale by the licensee. Nothing in this section shall be construed as prohibiting the city from also subjecting the employee to whatever penalties are appropriate under this article, state law, or other applicable laws and regulations.
- (e) *Display.* Every license shall be posted and displayed in plain view of the general public on the licensed premises.
- (f) *Signage.* 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 Cannabinoid Products.

- (g) *Delivery.* All sales of Cannabinoid Products must be completed on the licensed premises. Delivery by the licensee or a third party to the consumer is prohibited.
- (h) *Testing Requirements.* All Cannabinoid Products offered for sale must be compliant with the testing requirements in Minn. Stat. § 151.72, subd. 4.
- (i) *Labeling Requirements.* All Cannabinoid Products offered for sale must comply with the labelling requirements set forth in Minn. Stat. § 151.72, subd. 5, 5a, and 6.
- (j) *Responsibility for Conduct on Premises.* Except as provided in this chapter, every licensee under this chapter shall be responsible for the conduct of his place of business and shall maintain conditions of sobriety and order therein.
- (k) *Other Regulations.* Except as otherwise provided in this chapter, licenses under this Chapter shall be governed by the requirements and procedures set forth in chapter 38, article II of this Code.

#### Sec. 26-116. - Compliance checks and inspections.

All licensed premises shall be open to inspection by authorized city officials during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks. Such compliance checks may involve, but are not limited to, inspection of Cannabinoid Products offered for sale and engaging underage persons to enter the licensed premises to attempt to purchase Cannabinoid Products.

#### DIVISION 4. - ENFORCEMENT; PENALTIES

#### Sec. 26-117. - Penalty.

- (a) *Generally.* Any violation of this chapter shall be grounds to revoke or suspend a license. Failure of any person to comply with any of the ordinances of the city or laws of the state, or any conditions/restrictions conditions imposed on a license, shall be grounds for suspension or revocation of a license granted under this chapter. The city shall have the discretion to consider suspending or revoking a license, upon any reasonable facts or circumstances relating to public health, safety, and welfare.
- (b) *Enforcement Generally.* The city may seek to enforce this chapter through criminal prosecution, administrative penalties, and/or civil relief. Nothing in this article shall prohibit the city from seeking misdemeanor prosecution, administrative penalties, or both, and does not affect the city's right to suspend or revoke the license of a licensee as the city council deems appropriate. No administrative penalty or license suspension or revocation may take effect until the licensee or other individual has received notice, served personally by mail, of the alleged violation and of the opportunity for a hearing pursuant to chapter 38, article II.

- (c) *Prosecution of violation as misdemeanor.* Unless otherwise noted, any person violating any provision of this article or any person violating any provisions of Minn. Stat. § 151.72 shall be guilty of a misdemeanor, and upon conviction shall be subject to the penalties for a misdemeanor as prescribed by state law. Each day a violation continues shall be considered a separate misdemeanor offense punishable by a separate misdemeanor penalty.
- (d) *Administrative penalties.* Certain administrative penalties are presumed to be appropriate and shall apply to all premises licensed under this chapter. The council may deviate from the presumptive penalty where the council finds that there exist substantial reasons meriting deviation. When deviating from these standards, the council will provide written findings that support the penalty selected. The following are presumed penalties for violations:

<b>Type Of Violation</b>	<b>1st Violation</b>	<b>2nd Violation</b>	<b>3rd Violation</b>	<b>4th Violation</b>
Sale of cannabinoid products while license is under suspension.	Revocation.	N/A	N/A	N/A
Sale of cannabinoid products to underage person.	\$750.00	\$1,000.00 and 3 days	\$1,500.00 and 6 days	Revocation
Other violations of Minn. Stat. §151.72 or this chapter.	\$250.00	\$500.00 and 3 days	\$1,000.00 and 6 days	Revocation

\*The number of days listed in the table reflect the length of time a license will be suspended.

- (e) *Computation of Violations.* Any violation which occurred within two (2) years of the current violation will be counted. Number of days indicate consecutive days' suspension.
- (f) *Administrative Penalties Process.* The licensee shall be responsible for the conduct of its agents or employees while on the licensed premises. Any violation of this chapter shall be considered an act of the licensee for purposes of imposing an administrative penalty, license suspension, or revocation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

No administrative penalty may take effect until the licensee or other individual has received notice, served personally by mail, of the alleged violation and of the opportunity for a hearing as provided for suspension and revocation pursuant to chapter 38, article II.

- (g) *Alternative penalties for use of false identification; persons under age 21.* Persons under 21 years of age who use or attempt to use false identification to purchase Cannabinoid Products may be subject to cannabinoid-related education classes, diversion programs, community service, or other penalty that the city believes will be appropriate or effective.
- (h) *Summary Action.* The city administrator or designee may undertake summary action as permitted by section 38-35(e).

Sec. 26-118. - Severability.

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

**SECTION 2. EFFECTIVE DATE.** This ordinance shall take effect on January 1, 2023.

Passed and adopted by the City Council of the City of Elk River this 7<sup>th</sup> day of November, 2022.

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John J. Dietz, Mayor

ATTEST:

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Tina Allard, City Clerk