

Ordinance No. 2023-01

An Ordinance establishing licensing requirement for sale or disposal of edible products containing tetrahydrocannabinol (THC); authorizing criminal background checks; establishing license fees; amending the Minnetonka City Code by adding a new Section 620 and amending sections 700.040, subd. 2 and 710.005, by adding a new paragraph 40

The City of Minnetonka Ordains:

Section 1. Chapter 6 of the Minnetonka City Code is amended by adding a new section 620 as follows:

Section 620. Edible THC Products

Section 620.05. Purpose and findings. The Minnetonka city council finds that, based on the most reliable and up-to-date scientific evidence, the rapid introduction of newly legalized edible THC products presents a potential threat to the public health, safety, and welfare of the residents of the city, and particularly to youth. Edible THC products have become increasingly common and are available in a variety of flavors and forms that appeal to children and young adults and may lead to negative health consequences. The city desires to enact this licensing requirement in an effort to prevent children and young adults from purchasing and using edible THC products. The intent of this section is to require a license for the sale of those edible THC products that may be legally sold under Minnesota law.

Section 620.10. Definitions. When used in this section, the following terms have the following meanings:

1. "Cannabinoid product" means any product containing nonintoxicating cannabinoids extracted from hemp, including an edible cannabinoid product that is sold for human or animal consumption.
2. "Certified hemp" has the same meaning as provided in Minn. Stat. § 151.72, Subd. 1(b), as may be amended.
3. "Edible THC product" means any product that contains more than trace amounts of THC and that meets the requirements to be sold for human or animal consumption under Minn. Stat. § 151.72, as may be amended. Edible THC product does not include medical cannabis as defined in Minn. Stat. section 152.22, subd. 6, as may be amended.
4. "Hemp" or "industrial hemp" has the meaning given to "industrial hemp" in Minn. Stat. § 18K.02, Subd. 3, as may be amended.

The ~~stricken~~ language is deleted; the underlined language is inserted.

5. “Labeling” has the meaning as provided in Minn. Stat. § 151.72, Subd. 1(f), as may be amended.
6. “Movable place of business” means any form of business that is operated out of a kiosk, other transportable structure or shelter, or a motorized or nonmotorized vehicle.
7. “Nonintoxicating cannabinoid” has the means as provided in Minn. Stat. § 151.72, subd. 1(h) as may be amended.
8. “Sale” means any transfer of goods for money, trade, barter or other consideration.
9. THC means tetrahydrocannabinol.
10. “Vending machine” means any mechanical, electrical or electronic, or other type of device which, upon the insertion of money, tokens, or other form of payment into or onto the device, dispenses edible THC products and includes vending machines equipped with manual, electric or electronic locking devices.

Section 620.15. License Required. No person may keep for sale, sell or offer to sell, or otherwise dispose of any edible THC product at any place in the City without first obtaining a license from the City.

Section 620.20. Exceptions. Reserved.

Section 620.25. Persons ineligible. No license will be issued under this section to:

1. A person under twenty-one (21) years of age.
2. A person who has been convicted within the past five (5) years of any violation of a federal, state, or local law, ordinance provision or other regulation governing the manufacture, sale, distribution or possession for sale or distribution of any drug, as defined in Minn. Stat. § 151.01, subd. 5, or products containing THC.
3. A person who is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.
4. A person who is not the real party in interest or beneficial owner of the business operated under the license.
5. An applicant whose manager or agent does not satisfy the residency requirements of section 620.35 of this code.

6. As further described in this subdivision, the applicant or related person has had an interest in a license that was suspended or revoked within the five (5) years preceding the application; provided that the applicant or related person had an interest in the premises at the time of the revocation or suspension, or at the time of the violation that led to the revocation or suspension. For purposes of this subdivision: (a) the license must have been a license for the manufacture or sale of any product containing THC or a nonintoxicating cannabinoid or for the sale of a tobacco product, issued by the city or another jurisdiction; (b) a related person includes any person investing in the business, building, premises, fixtures, furniture or equipment of the proposed licensee; (c) the applicant or related person may have held their interest in the license as an individual or as part of a firm, association, partnership, corporation, limited liability company, or joint venture.

Section 620.30. Places ineligible.

1. No license may be issued for any movable place of business.
2. No license may be issued for a business located within an exclusive liquor store as defined in Minn. Stat. sec. 340A.101, subd. 10.
3. No license may be issued for operation on any premises on which taxes, assessments or other financial claims of the city are delinquent and unpaid. If an action has been commenced pursuant to the provisions of Minnesota Statutes, Chapter 278, questioning the amount or validity of taxes, the Council may, on application by the licensee, waive strict compliance with this provision; no waiver may be granted, however, for taxes, or any portion thereof, which remain unpaid for a period exceeding one year after becoming due unless such one-year period is extended through no fault of the licensee.

Section 620.35. License application procedure.

1. Application. Application for a new license or license renewal must be filed with the community development director on forms supplied by the city. Applicants must answer fully and completely all questions asked and supply information required by the application forms.
2. Fees. Except as modified by this subdivision, applications must be accompanied by payment of the fee as established in Section 710 of this code, to cover the city's costs in processing the application, the investigation and administering the provisions of this section. The application fee is nonrefundable. If the applicant holds a liquor license or massage license, no charge will be made for the license under this section. If the applicant holds a tobacco license, the only fee charged will be a fee to cover the additional cost of the background investigation required by this section.
3. Manager or Agent. If the applicant is a firm, association, partnership, corporation,

limited liability company, or joint venture, the application must include the name of the natural person who will serve as the manager or agent of the licensed premises. Such manager or agent must, by the terms of their written consent, (1) take full responsibility for the conduct of the licensed premises, and (2) serve as agent for service of notices and other process relating to the license. The manager or agent must reside within 75 miles of city hall. The required residency must be established by the time the license is issued and must be maintained throughout the existence of the license and all renewals. The time for establishing residency may be extended, for good cause, by the city council. A licensee must notify the city in writing within 15 days of any change in such manager or agent indicating the name and address of the new manager or agent and the effective date of such change.

4. Investigation. The city is empowered to conduct any and all investigations to verify the information on applications and renewal applications submitted under this section, including but not limited to ordering a criminal history check pursuant to Minn. Stat. § 299C.72 and conducting an inspection of any premises proposed to be licensed. The city must conduct a background check on all new applications. The investigation shall consider all facts and information bearing on the question of the applicant's fitness to receive the license and to perform the duties imposed by this ordinance. The city may conduct a background check on an application for a renewal of a license if it is in the public interest to do so. Failure of an applicant to allow an inspection is grounds for denial of the license. The results of any investigation must be submitted to the city council.
5. License decision. The city council may grant or deny the application. The following are grounds for denial or nonrenewal of a license:
 - a. The applicant or location fails to meet the eligibility requirements of this section.
 - b. The applicant failed to provide information required by the application or provided false or misleading information.

620.40. License term; renewal; transfer.

1. Term. Each license will expire on December 31st of the year in which it is issued; except that licenses issued under this section to any person or entity that also holds a massage license will have the same license term as the massage license.
2. Renewal. An application for renewal must be made at least 90 days prior to the expiration of the current license.
3. Issuance as privilege and not a right. The issuance of a license issued under this section is a privilege and does not entitle the license holder to automatic renewal of the license.

4. Non-transferable licenses. All licenses issued under this section shall be valid only on the premises for which the license was issued and only for the person or business to whom the license was issued. The transfer of any license to another location, business, or person is prohibited.

620.45. Suspension, revocation or civil penalty

1. Grounds for suspension, revocation. A license issued under this section is subject to the right of the city council to suspend or revoke the license upon any of the grounds identified below. The grounds for suspension, revocation or civil penalty include:
 - a. Fraud, misrepresentation, or false statement contained in a license application or a renewal application.
 - b. Failure to comply with any applicable statute, regulation, or ordinance, including this section, relating to the sale or use of edible THC products.
 - c. If the licensee is also the holder of a tobacco license issued by the city pursuant to section 625 of this code, any grounds for suspension or revocation of the tobacco license under that section.
 - d. If the licensee is also the holder of a massage business license issued by the city pursuant to section 810 of this code, any grounds for suspension or revocation of the massage license under that section.
 - e. If the licensee is also the holder of a liquor license issued by the city pursuant to section 600 of this code, any grounds for suspension or revocation of the liquor license under that section.
2. Procedure. The city will follow the procedure set forth at section 700.035 of this code.

620.50 License restrictions.

1. Legal age. A person must not sell, offer to sell, give away, or otherwise furnish any THC edible product to any person below the age of 21 years.
 - a. Age verification. Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30; however, it is not a defense to a violation of this section that the person appeared to be over the age of 30.
 - b. Signage. Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where THC edible products are offered for sale. The required signage must be posted in a

manner that is clearly visible to anyone who is or is considering making a purchase.

2. Sale, display and storage.

a. A licensee may sell edible THC products only in a direct face-to-face exchange between the licensee or the licensee's employee and the consumer.

b. A person must not sell, dispense, or give away any THC edible product through the use of a vending machine or similar automated dispensing device or by means of delivery.

c. All THC edible products must be stored either 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 general public.

d. No person under twenty-one (21) years of age may sell, give, or otherwise furnish edible THC products at an exclusive tobacco store as defined by section 625.005 of this code. No person under eighteen (18) years of age may sell, give, or otherwise furnish THC products at any other establishment licensed under this section.

e. A person must not distribute samples of any THC edible product free of charge or at a nominal cost.

f. A person must not sell, offer to sell, give away, distribute or display any THC edible products outside the location or area covered by a license.

g. A person must not sell, offer to sell, give away, distribute or display any edible THC product that does not comply with the requirements of Minn. Stat. § 151.72, including but not limited to the packaging, labeling and other requirements provided by that section.

h. A person must not sell, or offer to sell, give away, distribute or display THC edible products in a manner that violates federal or state law.

3. Display of license. All licenses must be posted and displayed in plain view of the general public on the licensed premises.

4. Inspection. The premises licensed under this section must be open to inspection by any authorized representative of the city during regular business hours, for purposes of ensuring compliance with this section.

5. Responsibility. A licensee is responsible for the conduct of its place of business and the conditions of order in it. The act of an employee of the licensee is deemed the act

of the licensee as well, and the licensee is liable for all penalties provided by this section equally with the employee.

620.55 Compliance checks.

From time to time, but at least once per year, the city shall conduct compliance checks of licensed establishments. No person used in compliance checks may attempt to use a form of identification that misrepresents the person's age. All persons lawfully engaged in a compliance check shall answer all questions about their age asked by the licensee or their employee, and produce any identification, if any exists, for which they are asked. The city will conduct a compliance check that involves the participation of a person at least 18 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase the licensed products. Persons used for the purpose of compliance checks shall be supervised by law enforcement or other designated personnel. Nothing in this article 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.

Section 620.60. Violations and penalties.

1. Violations: administrative penalties. Any person violating a provision of this section may be subject to the administrative enforcement program contained in section 1310.015 through 1310.050 of this code.
 - a. Licensees. Any licensee who has violated this section, or whose employee has violated this section, will be charged an administrative fine of at least \$300.00 for a first violation of this section; at least \$600.00 for a second offense at the same licensed premises within 36 months after the initial violation; and at least \$1,000.00 for a third or subsequent offense at the same location within 36 months after the initial violation. In addition, for the third offense, the license will be suspended for not less than seven days and may be revoked.
 - b. Other Adults. Other adults who have violated this section will be charged an administrative fine of at least \$150.00.
 - c. Minors. A person under the age of 21 years who purchases or attempts to purchase, tobacco-related products using a driver's license, permit, Minnesota identification card, or any other type of false identification to misrepresent the person's age, may be required to participate in a youth diversion, tobacco free education, or other alternative program selected by the chief of police. Notwithstanding any provision to the contrary in this section 625, no other monetary or criminal penalty may be imposed for violation of this subdivision 1(c).
 - d. Judicial Review. Any person aggrieved by a decision under paragraphs a. or b.

above may have the decision reviewed in the district court in the same manner and procedure as provided in Minn. Stat. § 462.361.

Except as otherwise provided in section 1(c) of this section, every person who commits or attempts to commit, conspires to commit or aids or abets in the commission of any act constituting a violation of this section, is guilty of a misdemeanor and every person who causes, coerces, permits or directs another to violate any of the provisions of this section is likewise guilty of a misdemeanor. Subdivision 1 of this section does not prohibit the city from seeking prosecution as a misdemeanor for any violation of this section.

Section 2. Section 700.040, subdivision 2 of the Minnetonka City Code, relating to criminal background investigations, is amended to read as follows:

2. Authority to Conduct. The Minnetonka police department is hereby required, as the exclusive entity within the city, to do a criminal history background investigation on the applicants for the following licenses:

- a. liquor, including managers of the establishment;
- b. charitable gambling, when the licensee will operate in the city;
- c. pawnbroker and precious metal dealer;
- d. sexually oriented business;
- e. peddler and solicitor;
- f. massage business, including managers of the business; and
- g. edible THC products.

In conducting the criminal history background investigation in order to screen license applicants, the police department is authorized to access data maintained in the Minnesota bureau of criminal apprehension's computerized criminal history information system in accordance with BCA policy. Any data that is accessed and acquired must be maintained at the police department under the care and custody of the chief law enforcement official or his or her designee. A summary of the results of the computerized criminal history data may be released by the police department to the licensing authority, including the city council and city staff involved in the licensing process.

Section 3. Section 710.005 of the Minnetonka City Code, relating to schedule of fees and charges, is amended by adding a new paragraph 7, to read as shown below and renumbering the existing paragraph 7 and subsequent paragraphs according:

<u>para. no.</u>	<u>description</u>	<u>amount</u>	<u>code section</u>
<u>7.</u>	<u>edible THC products license</u>	<u>\$500.00</u>	<u>620.35</u>

Section 4. This ordinance is effective May 1, 2023 for purposes of accepting and processing applications for licenses; enforcement for violations of the ordinance will begin July 1, 2023.

Adopted by the city council of the City of Minnetonka, Minnesota, on Jan. 9, 2023.

DocuSigned by:



Brad Wiersum, Mayor

Attest:

DocuSigned by:



Becky Koosman, City Clerk

Action on this Ordinance:

Date of introduction: Oct. 24, 2022
Date of adoption: Jan. 9, 2023
Motion for adoption: Schack
Seconded by: Kirk
Voted in favor of: Calvert, Schaeppi, Coakley, Kirk, Schack, Wilburn, Wiersum
Voted against: None
Abstained: None
Absent: None
Ordinance adopted.
Date of publication: Jan. 27, 2023

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on Jan. 9, 2023.

Becky Koosman, City Clerk