

CITY OF WHITE BEAR LAKE
ORDINANCE NO. 23-08-2067

AN ORDINANCE REQUIRING A LICENSE AND IMPOSING REGULATIONS
ON THE RETAIL SALE OF EDIBLE CANNABINOID PRODUCTS

The Council of the City of White Bear Lake does ordain:

Section 1. Purpose. The purpose of this ordinance is to establish licensing and sale regulations for the retail sale of edible cannabinoid products derived from hemp as provided in Minnesota Statutes, section 151.72.

Section 2. Legislative Findings. The City Council hereby finds and determines as follows:

- (a) In 2022, the Minnesota Legislature’s amended Minnesota Statutes, section 151.72 to expressly allow the sale of edible products that contain tetrahydrocannabinol (“THC”) without any associated licensing requirements.
- (b) The unexpected change in the law, the lack of licensing and other regulatory standards, and the concerns regarding the potential impacts of the sale of edible cannabinoid products resulted in the City Council acting on September 27, 2022 to enact a one-year moratorium on the sale of THC Products.
- (c) Since that time, the City has studied the issue and anticipated the Legislature would provide additional guidance and regulation during the 2023 session on the sale of such products. While the Legislature did adopt a 321-page cannabis bill, it essentially maintained the status quo regarding the sale of edible cannabinoid products under Minnesota Statutes, section 151.72 until the newly established Office of Cannabis Management begins licensing cannabis businesses.
- (d) Because the Office of Cannabis Management is not likely to begin issuing licenses to sell lower-potency hemp products until early 2025, and faced with continuing uncertainties associated with the sale of edible cannabinoid products, the City Council determines it is in the best interests of the City to require a license to sell such products and to impose related regulations until the Office of Cannabis Management assumes the licensing of cannabis businesses.

Section 3. Definitions. For the purposes of this ordinance, the following terms shall have the meanings given them in this section. If a term is not defined herein, it shall have the meaning given it in Minnesota Statutes, section 151.72 or, if not defined therein, the definition given the term in the municipal code.

Subd. 1. City. The City of White Bear Lake, Minnesota.

Subd. 2. Compliance Checks. The system the City uses to investigate and ensure that those authorized to sell edible 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 ordinance, who purchase or attempt to purchase edible 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 edible cannabinoid products.

Subd. 3. Delivery Sales. The sale of any edible cannabinoid product 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 retail establishment. Delivery sales include, but are not limited to, the sale of any edible cannabinoid products when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sales include delivery by licensees or third parties by any means, including curbside pick-up.

Subd. 4. Edible Cannabinoid Product. Any product containing nonintoxicating cannabinoids extracted from hemp that meets the requirements to be sold for human or animal consumption under Minnesota Statutes, section 151.72. The term includes edible cannabinoid products as defined in Minnesota Statutes, section 151.72, subdivision 1(f). The term does not include medical cannabis as defined in Minnesota Statutes, section 152.22, subdivision 6.

Subd. 5. Eligible Business. A business located within the City that has a current tobacco license to sell tobacco or tobacco products at retail issued by the City under Article XI, Chapter 1104 of the municipal code, or that has a current on-sale or off-sale liquor license to sell intoxicating liquor issued by the City under Article X of the municipal code.

Subd. 6. Hemp or Industrial Hemp. Has the same meaning given the term in Minnesota Statutes, section 18K.02, subdivision 3, as it may be amended.

Subd. 7. Label. Has the same meaning given the term in Minnesota Statutes, section 151.01, subdivision 18, as it may be amended.

Subd. 8. Labeling. Has the meaning given the term in Minnesota Statutes, section 151.72, subdivision 1(i).

Subd. 9. Licensee. The entity issued a license under their ordinance to sell edible cannabinoid product at retail.

Subd. 10. Moveable Place of Business. Any form of business operated out of 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 sales transactions.

Subd. 11. Municipal Code. The most current version of the Municipal Code of City of White Bear Lake, Minnesota.

Subd. 12. Ordinance. This ordinance requiring a license and imposing regulations on the retail sale of edible cannabinoid products.

Subd. 13. Product Label. Has the same meaning given the term "label" in Minnesota Statutes, section 151.72, subdivision 1(h).

Subd. 14. THC. Means tetrahydrocannabinol.

Subd. 15. Self-Service Merchandising. Open displays of edible cannabinoid products in any manner where any person has access to the edible cannabinoid products without the assistance or intervention of the licensee or the licensee's employee. Assistance or intervention

means the actual physical exchange of the edible cannabinoid product between the customer and the licensee or employee.

Subd. 16. Vending Machine. Any mechanical, electric, or electronic, or other type of device that dispenses edible cannabinoid products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the edible cannabinoid product.

Section 4. License.

Subd. 1. Required. No person may directly or indirectly, or by means of any device, keep for retail sale, sell at retail, offer to sell, or otherwise dispose of any edible cannabinoid product at retail at any place in the City without first having obtained a license from the City issued in accordance with the provisions of this ordinance.

Subd. 2. Eligibility. The City shall only issue a license to sell edible cannabinoid products to an eligible business that qualifies to receive a license under the requirements of this ordinance.

Subd. 3. Manufacturing Exception. No license is required under this ordinance for the manufacturing of edible cannabinoid products or the sale by a manufacturer of its products to resellers, provided the manufacturer does not sell edible cannabinoid products directly to the public.

Section 5. Ineligible Places and Operations. The City shall not issue or renew a license under this ordinance to sell edible cannabinoid products to:

- (a) A business or operation that does not qualify as an eligible business under this ordinance;
- (b) A business providing delivery sales of any edible cannabinoid products;
- (c) A moveable place of business;
- (d) A business utilizing a vending machine to sell edible cannabinoid products;
- (e) A business located at a premise 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, ordinance 278, questioning the amount or validity of taxes, the City 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; or
- (f) A business that is in violation of one or more provisions of the municipal code related to its operations as an eligible business.

Section 6. Application Procedure. An application for a license shall be submitted and processed in accordance with this section.

Subd. 1. License Application. An application for a new or renewed license to sell edible cannabinoid products shall be made on a form provided by the City and filed, along with all required fees, with the City Clerk. 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, information to establish the business qualifies as an eligible business, a site plan for the business, and any additional information the City deems necessary. If the City Clerk determines an application is incomplete, the City Clerk shall provide the applicant notice of the information necessary to make the application complete. The City shall not process an application until it is made complete. Upon receipt of a completed application, the City Clerk shall forward the application to the Police Department to conduct a background investigation.

Subd. 2. Fees. No license shall be processed or issued under this ordinance until the appropriate fees have been paid in full. The fees for a license under this ordinance shall be established by City Council resolution.

Subd. 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.

Subd. 4. License Decision. The City Council may grant or deny a license application. The City Council may also continue its consideration of a license if it determines it needs additional information before making its decision. Any of the following are grounds for denial or nonrenewal of a license.

- (a) The business does not qualify as an eligible business or is an ineligible business or operation under section 5 of this ordinance.
- (b) The applicant is under the age of 21 years old.
- (c) 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 edible cannabinoid products or the operation of the eligible business.
- (d) The applicant has had a license to sell edible cannabinoid products, tobacco products, or liquor suspended or revoked during the 12 months preceding the date of application, or the applicant has or had an interest in another premises authorized to sell edible cannabinoid products, whether in the City or in another jurisdiction, that has had a license to sell edible cannabinoid products suspended or revoked during the same time period, provided the applicant 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.

- (e) The applicant is the spouse, parent, stepparent, grandparent, brother, or sister, by blood or marriage, of a person ineligible for a license under this ordinance who the City Council determines is not the real party in interest or is not the beneficial owner of the business to be operated under the license.
- (f) The applicant is a business that does not have an operating manager or agent who is eligible pursuant to the provisions of this ordinance.
- (g) The applicant provides false or misleading information. Any false statement on an application, or any willful omission of any information called for on such application form, shall cause an automatic refusal of license, or if already issued, shall render any license issued pursuant thereto void and of no effect upon written notice of the City.
- (h) The proposed location does not meet all applicable zoning requirements or requirements of this ordinance.
- (i) The applicant is prohibited by federal or state law, local ordinance, or other regulation, from holding such a license.
- (j) The applicant failed to provide information required by the application or provided false or misleading information.

Subd. 5. Term. All licenses issued under this ordinance shall expire on March 31 of each calendar year, unless it is revoked, suspended, or forfeited prior to that date.

Subd. 6. Renewal. An application to renew a license must be submitted at least 60 days prior to the expiration of the current license. The issuance of a license issued under this ordinance is a privilege and does not entitle the license holder to automatic renewal of the license.

Subd. 7. Non-Transferable. All licenses issued under this ordinance 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.

Section 7. Operational Requirements.

Subd. 1. License Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

Subd. 2. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of edible cannabinoid products on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the licensee.

Subd. 3. Product Compliance. All edible cannabinoid products shall comply with the requirements of Minnesota Statutes, section 151.72 including, but not limited to, that they do

not contain more than 0.3 percent of any tetrahydrocannabinol, 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. 4. Product Display. All edible cannabinoid products shall be stored either: (a) behind a counter or other area not freely accessible to customers; or (b) in a case or other storage unit not left open and accessible to the general public.

Subd. 5. Age Posting. 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 edible cannabinoid 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.

Subd. 6. Age Verification. A licensee's employees shall verify by means of government issued photographic identification that any purchaser of an edible cannabinoid product is at least 21 years of age.

Subd. 7. Sales. Edible cannabinoid products may only be sold in a direct face-to-face exchange between the licensee's employee and the consumer. The licensee's employees selling edible cannabinoid products must be at least 21 years old. It shall be a violation of this ordinance for a licensee to give away, dispense, sell, or offer to sell any edible cannabinoid product in a manner that violates any of the following:

- (a) To a person under the age of 21 years old. It shall be an affirmative defense to the violation of this section for a person to have reasonably relied upon proof of age;
- (b) Through the use of a vending machine or similar automated dispensing device;
- (c) In a manner that does not comply with the requirements of Minnesota Statutes, section 151.72 including, but not limited to, the packaging, labeling, and other requirements provided by that section;
- (d) At any location outside of the licensed premises;
- (e) By self-service, or in open displays which are accessible to the public without the assistance or intervention of a store employee;
- (f) By a mobile business, including but not limited to motorized vehicles, moveable sales kiosks, or trailers. Licenses shall be issued to fixed location businesses only;
- (g) By delivery sales;
- (h) By any employee under the age of 21 years;
- (i) To a visibly intoxicated person;
- (j) By the means of providing samples of any edible cannabinoid product free of charge or at a nominal cost; or

- (k) To any other person, in any other manner or form prohibited by federal or state law or regulation, or by local ordinance.

Subd. 8. Inspections. The premises licensed under this ordinance must be open to inspection by any authorized representative of the City during regular business hours for purposes of ensuring compliance with this ordinance.

Subd. 9. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended by the City Council for a violation of any provision of this ordinance as provided herein.

Section 8. Other Prohibited Acts.

Subd. 1. Non-Compliant Products. No person shall sell or offer for sale a product containing THC, including edible cannabinoid products, that does not meet all the applicable requirements in Minnesota Statutes, section 151.72.

Subd. 2. Presumptions. Edible cannabinoid products shall comply with the labeling requirements in Minnesota Statutes, section 151.72, subdivision 5 and all other applicable labeling requirements. The City may presume, for the purposes of enforcing this ordinance, a edible cannabinoid product being offered for sale or that is sold by a licensee has been tested by an independent lab as required in Minnesota Statutes, section 151.72, subdivision 4 and that the information contained on the product label is accurate.

Subd. 3. Pricing and Discounts. No person shall accept or redeem any coupon, price promotion, or the instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any edible cannabinoid product 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 relates shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.

Subd. 4. Purchase for Others. It is a misdemeanor violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any edible cannabinoid product on behalf of a person under the age of 21.

Subd. 5. Under Aged Persons. It is a petty misdemeanor for any person under the age of 21 to do any of the following:

- (a) To attempt to disguise their true age by the use of a false form of identification, whether the identification is that of another person has been modified or tampered with to represent an age older than the actual age of the person using that identification;
- (b) To attempt to purchase edible cannabinoid products; or
- (c) To possess edible cannabinoid products. This prohibition does not apply to a licensee's employee who is handling edible cannabinoid products.

Section 9. Compliance Checks. The City may from time-to-time conduct unannounced 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 edible cannabinoid products. Persons used for the purpose of compliance checks shall be supervised by law enforcement or other designated personnel. Nothing in this ordinance shall prohibit compliance checks authorized by state or federal laws for businesses manufacturing, storing, or selling edible cannabinoid products under any applicable federal or state law. The compliance checks authorized by this ordinance are in addition to any other compliance checks that may be performed related to the tobacco or liquor license held by an eligible business.

Section 10. License Actions.

Subd. 1. Basis for Action. The City may suspend, revoke, or nonrenew a license issued under this ordinance for any of the following reasons:

- (a) 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 the licensed activity, or has had a license to sell edible cannabinoid products, tobacco, or liquor revoked or suspended within the past five years;
- (b) Fraud, misrepresentation, bribery, or incorrect statement contained in the application for license, or made in carrying on the licensed activity;
- (c) Actions that are unauthorized or otherwise beyond the scope of the license granted;
- (d) Violation of any federal, state, or local regulation or provision;
- (e) Failure to continuously comply with all conditions required as part of the license;
- (f) Failure to comply with the applicable zoning code; or
- (g) Failure to pay an administrative penalty imposed by the City Council.
- (h) The City discovers the license was mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this ordinance.

Subd. 2. Process. The City will provide a licensee at least 10 days written notice of a hearing to be held before the City Council on the potential suspension, revocation, or nonrenewal of its license. The licensee shall be provided an opportunity to be heard at the hearing. If the City Council acts to suspend, revoke, or not renew the license, the City will provide the licensee a written notice of the period of suspension, or of the revocation or nonrenewal. All sales of edible cannabinoid products must cease during a suspension period or permanently upon revocation or nonrenewal of the license.

Section 11. Violation. Unless expressly indicated otherwise, a violation of this ordinance is a misdemeanor. The City may also impose administrative penalties on a licensee for violation of

this ordinance. Any administrative penalties may be imposed by the City Council, or by administrative citation, and shall be collected in accordance with the municipal code. Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

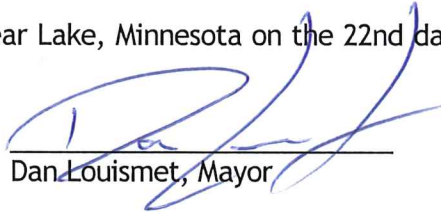
Section 12. Severability and Savings. If any section or portion of this ordinance is found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as invalidation or affect the validity and enforceability of any other section or provision of this ordinance.

Section 13. Effective Date and Term. This ordinance shall become effective on the first day of publication after adoption. This ordinance shall terminate and no longer be effective once the sale of edible cannabinoid products is no longer allowed except upon the issuance of a license to sell lower-potency hemp edibles by the Office of Cannabis Management under Minnesota Statutes, chapter 342.

Section 14. Incorporation. This ordinance incorporates by reference the sections or provisions of the municipal code as may be needed to give effect to the provisions of this ordinance and to otherwise carry out its intent.

Section 15. Not Codified. Because this ordinance has a limited duration, it will not be codified into the municipal code.

Adopted by the City Council of the City of White Bear Lake, Minnesota on the 22nd day of August 2023.



Dan Louismet, Mayor

ATTEST:



Caley Longendyke, City Clerk

First Reading: August 8, 2023
Initial Publication: July 26, 2023
Second Reading: August 22, 2023
Final Publication: August 30, 2023
Posted on web: August 23, 2023