

CHAPTER 121: TETRAHYDROCANNABINOL PRODUCTS

Section

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§ 121.01 FINDINGS AND PURPOSE.

The purpose of this chapter is to regulate the sale of legalized adult-use of any product that contains tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under M.S. § 151.72 for the following reasons:

- (A) The city recognizes that, based on the most reliable and up-to-date scientific evidence, the rapid introduction of newly legalized adult-use THC products, presents a significant potential threat to the public health, safety, and welfare of the residents of New Prague, and particularly to youth.
- (B) The city has the opportunity to be proactive and make decisions that will mitigate this threat and reduce exposure of young people to the products or to the marketing of these products and improve compliance among THC product retailers with laws prohibiting the sale or marketing of THC products to minors.
- (C) A local regulatory system for THC product retailers is appropriate to ensure that retailers comply with THC product laws and business standards of the city to protect the health, safety, and welfare of our youth and most vulnerable residents.
- (D) M.S. § 151.72 requires THC product retailers to check the identification of purchasers to verify that they are at least 21 years of age, comply with certain packaging and labeling requirements to protect children and youth, and meet certain potency and serving size requirements.
- (E) State law authorizes the Board of Pharmacy to adopt product and testing standards in part to curb the illegal sale and distribution of THC products and ensure the safety and compliance of commercially available THC products in the State of Minnesota.
- (F) State law does not preempt the authority of a local jurisdiction to adopt and enforce local ordinances to regulate THC product businesses including, but not limited to, local zoning and land use requirements and business license requirements.
- (G) A requirement for a THC product retailer license will not unduly burden legitimate business activities of retailers who sell or distribute THC products to adults but will allow the city to regulate the operation of lawful businesses to discourage violations of state and local THC product-related laws.

(H) In making these findings and enacting this chapter, it is the intent of the City Council to ensure responsible THC product retailing, allowing legal sale and access without promoting increases in use, and to discourage violations of THC product-related laws, especially those which prohibit or discourage the marketing, sale or distribution of THC products to youth under 21 years of age.

(Ord. 331, passed 11-7-22)

§ 121.02 DEFINITIONS.

For the purposes of this chapter, the following words and phrases shall have the meaning hereinafter ascribed to them:

APPLICANT. A person, as defined herein, who completes or signs an application for a license to sell licensed products individually or on behalf of a business.

BUSINESS. The business of selling licensed products.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this article. 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 licensed products.

EXCLUSIVE LIQUOR STORE. An establishment that meets the definition of exclusive liquor store in M.S. § 340A.101(10).

LICENSE HOLDER OR LICENSEE. The owner of the business licensed to sell licensed products.

LICENSED PRODUCT OR THC PRODUCT. Any product that contains tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under M.S. § 151.72.

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.

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

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public, including, but not be limited to, grocery stores, tobacco products shops, convenience stores, gasoline service stations, bars, and restaurants.

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

SELF-SERVICE MERCHANDISING. Open displays of licensed products in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee. Assistance or intervention means the actual physical exchange of the licensed product between the customer and the licensee or employee.

VENDING MACHINE. Any mechanical, electric, or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed product.

(Ord. 331, passed 11-7-22)

§ 121.03 LICENSE REQUIRED.

(A) No person shall sell or offer to sell any licensed product without having obtained a license to do so from the city.

(1) No license shall be issued to a movable place of business as per § 121.06. Only fixed location businesses shall be eligible to be licensed under this chapter.

(2) No license shall be issued to an exclusive liquor store as defined in M.S. § 340A.101(10).

(B) (1) An application for a license to sell licensed products shall be made on a form provided by the city. The application shall include, at a minimum, the full name of the applicant, the applicant's residential and business address and telephone numbers, the name of the proposed license holder, the business location for which the license is sought, and any additional information the city deems necessary. The completed application along with the license fee shall be submitted to the City Administrator who shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Administrator or their designee determines that an application is incomplete, they shall return the application to the applicant with notice of deficiencies.

(2) A business applicant, at the time of application, shall furnish the city with a list of all persons that have an interest of 5% or more in the business. The list shall name all owners and show the interest held by each, either individually or beneficially for others. It is the duty of each business licensee to notify the City Administrator in writing of any change in ownership in the business. Any change in the ownership or control of the business shall be deemed equivalent to a transfer of the license, and any such license shall be revoked 30 days after any such change in ownership or control unless the licensee has notified the City Council of the change in ownership by submitting a new license application for the new owners, and the City Council has approved the transfer of the license by appropriate action. Any time an additional investigation is required because of a change in ownership or control of a business, the licensee shall pay an additional investigation fee to be determined by the city. The city may at any reasonable time examine the transfer records and minute books of any business licensee to verify and identify the owners, and the city may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The City Council may revoke any license issued upon its determination that a change of ownership of a licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the City Council on notice to the licensee.

(C) The City Council may either approve or deny the license, or may delay action for a reasonable period of time as is required to permit the city to complete any investigation of the application or the applicant deemed necessary. If approved, a license shall be issued to the applicant. If denied, a notice of denial shall be issued to the applicant at the business address provided on the application along with the reasons for the denial. The notice shall also inform the applicant of their right to appeal the City Council's decision. If a license is mistakenly issued or renewed to an applicant or license holder, it shall be revoked by the City Council upon the discovery that the person, applicant or license holder was ineligible for the license under this section. If a license application is denied, the earliest an applicant may reapply is 12 months from the date the license is denied.

(D) All licenses are issued for a period of one year. The license period is from January 1 to December 31. The initial license term will expire at the end of the calendar year during which the license was issued.

(E) Any license issued under this section may be revoked or suspended, as provided in § 121.09, or as specifically provided elsewhere in this chapter.

(F) All licenses issued under this section shall be valid only on the business 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 without the prior approval of the City Council.

(G) Every license shall be conspicuously posted at the place of business for which the license is issued, and shall be exhibited to any person upon request.

(H) 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 30 but not more than 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 holder to an automatic renewal of the license.

(J) The following shall be grounds for denying the issuance or renewal of a license under this section. The following is not exhaustive or exclusive:

(1) The applicant is under the age of 21.

(2) The applicant has been convicted within the past five years of a violation of any provisions of this chapter or a violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products, but not including possession or sale of license products.

(3) The applicant has had a license to sell licensed products 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 licensed products, whether in the city or in another jurisdiction, that has had a license to sell 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.

(4) The applicant is a business that does not have an operating officer or manager who is eligible pursuant to the provisions of this chapter.

(5) The applicant is the spouse of a person ineligible for a license pursuant to the provisions of divisions (J)(2) and (3) of this section or who, in the judgement of the Council, is not the real party in interest or beneficial owner of the business to be operated, under the license.

(6) The applicant fails to provide any information required on the city license application, or provides false or misleading information.

(7) The applicant or license holder has outstanding fines, penalties or property taxes owed to the city.

(8) The location of the business is not within a commercial or industrial district where retail is allowed.

(K) The city shall conduct a background investigation on all new applications and applications to transfer a license. The city may conduct a background and financial check on an application for a renewal of a license if it is in the public interest to do so. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this article and the city shall provide the person with a notice of revocation, along with information on the right to appeal.

(Ord. 331, passed 11-7-22)

§ 121.04 LICENSE FEE.

The license fee shall be determined by the City Council, and shall be paid at the time of application. License fees are not prorated.

(Ord. 331, passed 11-7-22)

§ 121.05 PROHIBITED SALES.

(A) No person shall sell, offer to sell, give away, furnish or otherwise deliver any licensed product:

(1) By means of any type of vending machine; or

(2) By any other means, or to any other person prohibited by federal, state, or other local law, ordinance provisions or other regulation.

(B) No person shall sell, offer to sell, give away, furnish or otherwise deliver any licensed product to any person under the age of 21.

(1) Licensees shall 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. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this section.

(2) 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 licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

(C) No person shall distribute samples of any licensed product free of charge or at a nominal cost.

(D) No person shall sell, offer to sell, give away, furnish or otherwise deliver any licensed product by means of self-service merchandising or by any means whereby the customer may have access to the items without having to request the items from the license holder, their agents, or employees. All licensed products shall be stored behind a counter or other area not freely accessible to customers.

(Ord. 331, passed 11-7-22)

§ 121.06 MOBILE SALES.

No license shall be issued for the sale of licensed products at a movable place of business, including, but not limited to motorized vehicles, mobile sales kiosks or trailers.

(Ord. 331, passed 11-7-22)

§ 121.07 COMPLIANCE CHECKS.

(A) All licensed premises shall be open to inspection by the city police or other authorized city officials during regular business hours. From time to time, but at least once per year, the city shall conduct unannounced compliance checks at licensed premises by engaging persons at least 17 years of age but under the age of 21, who, with prior written consent of a parent or guardian if the person is under the age of 18, attempt to purchase licensed products while under the direct supervision of law enforcement or other city employee. No person used in compliance checks shall attempt to use a false identification misrepresenting the person's age, and all persons lawfully engaged in a compliance check shall answer all questions about their age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit any other 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.

(B) Additionally, from time to time, the city will conduct inspection to determine compliance with any or all other aspects of this chapter.

(Ord. 331, passed 11-7-22)

§ 121.08 RESPONSIBILITY.

All licensees are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee. Nothing in this section shall be construed as prohibiting the city from also subjecting the employee to any civil penalties that the city deems to be appropriate under this chapter, state or federal law, or other applicable law or regulation.

(Ord. 331, passed 11-7-22)

§ 121.09 ADMINISTRATIVE PENALTIES.

(A) If a licensee or employee of a licensee sells, gives, or otherwise furnishes licensed products to a person under the age of 21 years, or violates any other provision of this chapter, the licensee shall be charged an administrative penalty of \$300. An administrative penalty of \$600 shall be imposed for a second violation at the same location within 36 months after the initial violation. For a third or any subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 shall be imposed and the licensee shall lose the licensee's authorization to sell licensed products for a period of not less than 30 days nor more than one year. The loss of authorization shall be accomplished by a combination, if necessary, of a suspension of the licensee's then existing authorization and an order prohibiting renewal of the licensee's license for the prescribed period. No suspension, revocation or other penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the City Council. A decision that a violation has occurred must be in writing.

(B) An individual who sells, gives, or otherwise furnishes licensed products to a person under the age of 21 years shall be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the City Council. A decision that a violation has occurred must be in writing.

(Ord. 331, passed 11-7-22)

§ 121.10 ADMINISTRATIVE PENALTY PROCEDURE.

(A) Upon discovery of a suspected violation under § 121.09, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and the administrative penalty for the violation, and informs the alleged violator of his or her right to be heard on the accusation.

(B) If, within 20 days after receipt of a citation, a person accused of violating this chapter so requests, a hearing shall be scheduled, the time and place of which shall be provided to the accused violator.

(C) The City Council, or any other person as the Council may by resolution designate, shall serve as the hearing officer.

(D) If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under § 121.09, 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, the findings shall be recorded and a copy provided to the accused violator.

(E) Appeals of any decision made by the hearing officer shall be filed in the district court for the county in which the violator resides in accordance with applicable laws.

(F) Nothing in this section shall prohibit the city from seeking prosecution as a criminal offense for any alleged violation of this chapter.

(G) Each violation shall constitute a separate offense, and for violations that are ongoing by their nature, each day that such violation continues shall constitute a separate offense.

(Ord. 331, passed 11-7-22)