

ORDINANCE NO. 486

AN ORDINANCE AMENDING CHAPTER 22 OF THE CITY CODE PROVIDING LICENSING REQUIREMENTS FOR THE SALE OR DISPOSAL OF EDIBLE PRODUCTS CONTAINING TETRAHYDROCANNABINOL (THC)

The City Council of the City of Ada hereby ordains as follows:

Section 1. Chapter 22 of the Ada City Code is amended by adding a new section IV as follows:

ARTICLE IV. EDIBLE THC PRODUCTS

Sec. 22-43. Purpose and Intent.

The Ada 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 significant 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 Article is to require a license for the sale of those edible THC products that may be legally sold under Minnesota Law.

- a) By enacting 2022 Session Law Chapter 98, Article 13, the Minnesota Legislature amended Minnesota Statutes, section 151.72 to allow the sale of certain products containing tetrahydrocannabinol (THC).
- b) The new law does not prohibit municipalities from adopting and enforcing local ordinances to regulate THC product businesses including, but not limited to, local business license requirements.
- c) The City recognizes the danger THC presents to the health, welfare, and safety of the public, particularly the youth, in the City of Ada.
- d) The Minnesota Legislature recognized the danger of THC product use among youth by prohibiting the sale of any product containing THC to those under the age of 21, requiring that edible THC products be packaged without appeal to children and in child-resistant packaging or containers.
- e) 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 of Ada to protect the health, safety, and welfare of our youth and most vulnerable residents.

- f) 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.

Sec. 22-44. Definitions.

When used in this Article, the following terms have the following meanings:

- a) “Edible THC Product” means any product that contains more than trace amounts of THC and 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. § 152.22, subd. 6, as may be amended.
- b) “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 and not a fixed address storefront or other permanent type of structure authorized for sales transactions.
- c) “Retail Establishment” means any place of business where licensed products are available for sale to the general public, including, but not limited to, grocery stores, tobacco products shops, CBD stores, convenience stores, gasoline services stations, bars, and restaurants.
- d) “Sale” means any transfer of goods for money, trade, barter, or other consideration.
- e) “Vending Machine” means any mechanical, electrical or electronic, or other types of device which, upon the insertion of money, tokens, or other forms of payment into or onto the device, dispenses edible THC products and includes vending machines equipped with manual, electric, or electronic locking devices.

Sec. 22-45. License.

- a) *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.
- b) *Application.* Application for a new license or license renewal must be filed with the City on forms supplied by the City. Applicants must answer fully and completely all questions asked and supply information required by the application forms.

- c) *Fees.* No license shall be issued under this article until the appropriate license fee shall be paid in full. The annual fee for a license under this article shall be \$700.00 and may be amended from time to time by the City Council. The fees established for this license cover the City's costs in processing the application, conducting the investigation, and administering the provisions of this section.
- d) *Background 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.
- e) *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. 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.
- f) *Action.* The City Council may either approve or deny the application for a license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council approves the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision. If a license application is denied, the earliest an applicant may reapply is 12 months from the date the license is denied.
- g) *Term.* All licenses issued under this Article shall be valid for one calendar year from the date of issue.
- h) *Revocation or Suspension.* Any license issued under this Article may be revoked or suspended as provided in Sec. 22-50.

- i) *Transfers.* All licenses issued under this Article 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.
- j) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premises.
- k) *Renewals.* The renewal of a license issued under this Article shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but not more than 60 days before the expiration of the current license.
- l) *Issuance as Privilege and Not a Right.* The issuance of a license under this Article is a privilege and does not entitle the license holder to automatic renewal of the license.

Sec. 22-46. Ineligibility and Basis for Denial of a License.

- a) *Ineligibility.*
 - 1. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this article.
 - 2. No license may be issued for a business located within an exclusive liquor store as defined in Minn. Stat. § 340A.101, subd. 10.
 - 3. No license shall be issued to a person under twenty-one (21) years of age.
- b) *Grounds for Denial.* Grounds for denying the issuance or renewal of a license under this article include, but are not limited to, the following:
 - 1. The applicant is under twenty-one (21) years of age.
 - 2. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation from holding a license.
 - 3. The applicant 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 the sale or distribution, of any drug, as defined in Minn. Stat. § 151.01, subd. 5, or products containing THC.
 - 4. The applicant or related person has had an interest in a license to sell THC products 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.

5. The applicant fails to provide any information required on the application or 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 to protect the applicant from prosecution for violation of this chapter, of any part thereof.

Sec. 22-47. Prohibited Acts.

a) *In general.*

1. No person shall sell or offer to sell any licensed product:
 - i. By means of any type of vending machine.
 - ii. By means of self-service merchandising.
 - iii. By any other means, to any other person, on in any other manner or form prohibited by state or other local law, ordinance provision, or other regulation.
2. No person shall sell or offer for sale a product containing THC that does not meet all the requirements of Minn. Stat. § 151.72, as may be amended from time to time.

b) *Legal Age.* No person shall sell any licensed product to any person under twenty-one (21) years of age.

1. *Age verification.* Licensees shall verify by means of government issued photographic identification that the purchaser is at least 21 years of age.
2. *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 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) *Samples Prohibited.* No person shall distribute samples of any licensed product free of charge or at a nominal cost.

Sec. 22-48. 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 ordinance, state or federal law, or other applicable law or regulation.

Sec. 22-49. Compliance Checks and Inspections.

All premises licensed under this Article shall be open to inspection by the City during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks.

No person used in compliance checks shall attempt to use a false identification misrepresenting their 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.

Additionally, from time to time, the City will conduct inspections to determine compliance with any or all other aspects of this ordinance.

Sec. 22-50. Violations and Penalty.

- a) *Administrative Civil Penalties*—Individuals. If a person who is not a licensee is found to have violated this article, the person shall be charged an administrative penalty as follows:
 - 1. First Violation. The Council shall impose a civil fine not to exceed \$50.00.
 - 2. Section Violation Within 12 Months. The Council shall impose a civil fine not to exceed \$100.00.
 - 3. Third Violation Within 12 Months. The Council shall impose a civil fine not to exceed \$150.00.

- b) *Administrative Civil Penalties*—Licensee. If a licensee or an employee of a licensee is found to have violated this article, the licensee shall be charged an administrative penalty as follows:
 - 1. First Violation. The Council shall impose a civil fine of \$500.00 and suspend the license for not less than 1 day.
 - 2. Second Violation Within 36 Months. The Council shall impose a civil fine of \$1,000.00 and suspend the license for not less than 3 consecutive days.
 - 3. Third Violation Within 36 Months. The Council shall impose a civil fine of \$2,000.00 and suspend the license for not less than 10 consecutive days.

4. Fourth Violation Within 36 Months. The Council shall revoke the license for at least one year.
- c) *Administrative Penalty Procedures.* Notwithstanding anything to the contrary in this section:
1. Any of the administrative civil penalties set forth in the section that may be imposed by the Council, may in the alternative be imposed by an administrative citation.
 2. If one of the foregoing penalties is imposed by an action of the Council, no penalty shall take effect until the licensee or person has received notice (served personally or by mail) of the alleged violation and of the opportunity for a hearing before the Council, and such notice must be in writing and must provide that a right to a hearing before the Council must be requested within 10 business days of receipt of the notice.
 3. Any person aggrieved by a decision under this section may have the decision reviewed in the district court in the same manner and procedure as provided in Minn. Stat. § 462.361
- d) *Misdemeanor Prosecution.* Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this article.

Sec. 22-51. Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Sec. 22-52. Effective Date.

This ordinance becomes effective upon passage and publication.

Section 2. Pursuant to Min. Stat. § 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 is enacting license regulations for the sale of edible THC products.
Adopted by the City Council of the City of Ada, Minnesota this ____ day of _____, 2023.

CITY OF ADA

ATTEST:

John Hintz
Mayor

Ashley Larson
City Administrator