

Ordinance: Sale of Hemp Derived THC (Tetrahydrocannabinols)

An Ordinance Regulating the Sale of Tetrahydrocannabinol Products In The City Of Rock Creek

Subd.1 Purpose and Intent.

The purpose of this Section 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 Minnesota Statutes 151.72 ("THC Products") for the following reasons:

- A. By enacting 2022 Session Law Chapter 98, Article 13, the Minnesota Legislature amended MN 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 zoning and land use requirements and business license requirements.
- 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 of Rock Creek to protect the health, safety and welfare of our residents.
- D. State law requires THC product retailers to check the identification of purchasers to verify that they are at least 21 years of age (Minn. Statute 151.72, subd. 3 c), comply with certain packaging and labeling requirement to protect children and youth (*Id.*, subd. 5), and meet certain potency and serving size requirements (*Id.*, subd. 5a).
- E. In making these findings and enacting this ordinance, it is the intent of the City Council of Rock Creek to ensure responsible THC product retailing, 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.
- F. This Ordinance is only for the Retail Sales of Hemp Derived THC. All other cannabis use policies can be found in the Ordinance Regulating the Use of Cannabis and Cannabis Derived Products in Public Places.

Subd.2 Definitions.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted 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:

Any edible cannabinoid product or nonedible cannabinoid product authorized for sale in Minnesota Statute.

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

Delivery Sale:

The sale of any licensed 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 licensed retail establishment. Delivery sale includes but is not limited to the sale of any licensed product when the sale is conducted by telephone, other voice transmission, mail, internet or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.

Exclusive Liquor Store:

An establishment that meets the definition of exclusive liquor store in Minnesota Statutes, section 340A.101, subdivision 10.

Label:

The meaning given in Minnesota Statute Section 151.01 subdivision 18.

Licensed Product or THC Product:

Any product that contains tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under Minnesota Statutes, section 151.72.

Licensee:

A human person licensed under this Article.

Licensee's clerk:

A person employed by a licensee to work at a sales or service counter or otherwise make sales to the licensee's customers.

Minor:

Any person who has not yet reached the age of 21 years.

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.

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 and whereby there is not a physical exchange of the licensed products between the licensee or the licensee's clerk and the customer. Assistance or intervention means the

actual physical exchange of the licensed product between the customer and the licensee or employee.

THC:

means tetrahydrocannabinol.

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.

State Law Adopted:

Except as further restricted or regulated by this chapter, the provisions of Minn. Stat. § 151.72 relating to the definition of terms, licensing, and all other matters pertaining to the retail sale, distribution and consumption of cannabinoid products are adopted and made a part of this chapter as if set out in full. Whenever there is an inconsistency between the provisions of Minn. Stat. § 151.72, as amended, and the provisions of this section, the more restrictive provision shall govern.

Subd 3. License

1. License Types:

- Cannabis microbusiness
- Cannabis mezzo business
- Cannabis cultivator
- Cannabis manufacturer
- Cannabis retailer
- Cannabis wholesaler
- Cannabis transporter
- Cannabis testing facility
- Cannabis event organizer
- Cannabis delivery service
- Lower-potency hemp edible manufacturer
- Lower-potency hemp edible retailer
- Medical cannabis cultivator
- Medical cannabis processor
- Medical cannabis retailer
- Medical cannabis combination business

2. License Required.

No person shall sell or offer to sell, directly or indirectly, on any pretense or by any device, any licensed product as part of a retail commercial transaction within the corporate limits of the city without first having obtained a license

to do so from the State and zoning approval from the City.

3. Application.

An application for a license to sell licensed products shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant's residential and business addresses, telephone numbers, and email addresses, the name of the business for which the license is sought, and any additional information the City deems necessary. Upon receipt of a completed application and Certificates of Insurance for Liability and Worker's Compensation, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Clerk determines that an application is incomplete, they shall return the application to the applicant with notice of the information necessary to make the application complete.

4. 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.

5. Term.

All licenses issued under this article shall be valid until December 31 of the year of issue.

6. Location.

No license may be issued pursuant to this chapter for a location or place of sale if a THC license previously issued for that location or place of sale has been revoked for any reason other than nonpayment of license fees within the past five (5) years, subject to the following exceptions:

A. Notwithstanding subdivision 5, a license may be issued if the new applicant:

1. Currently holds another THC license in the city;
2. Has held the license for at least 5 years; and
3. The license:
 - a. Has not been subject to adverse action within the past two (2) years;
 - b. Has been subject to no more than one (1) adverse action within the past five (5) years; and
 - c. Is not the subject of any pending adverse action.

B. Notwithstanding subdivision 5, a license may be issued if the new applicant is otherwise able to demonstrate at least five (5) years of previous experience operating a THC product retail establishment in a law-abiding manner in the State of Minnesota. In considering an application made pursuant to this subsection, the factors to be considered by the Council include, but are not limited to:

1. Any adverse or disciplinary actions against any business license held by the applicant in the previous five (5) years; and
2. Any violations of the law related to operating a retail establishment, committed by the applicant in the previous five (5) years, regardless of whether any criminal charges have been brought in connection therewith.

7. Revocation or Suspension.

Any license issued under this article may be revoked or suspended as provided in Section 509.12 of this chapter.

8. 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(s) or business to whom the license was issued. The transfer of any license to another location, business, or person is prohibited.

9. Display.

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

10. 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 no more than 60 days before the expiration of the current license.

11. Issuance as Privilege and Not a Right.

The issuance of a license issued under this article is a privilege and does not entitle the license holder to automatic renewal of the license.

12. Limiting of Registrations

The City of Rock Creek will allow 1 establishment located within the C-1 Highway Commercial District to have retail sales of THC or Cannaboid products; provided they have an approved application from the State of MN and signed off by the City of Rock Creek.

In applying this limitation, cannabis retail business applications will be prioritized based upon the date the application is received by the City. Applications will be reviewed in the order the applications were received, starting with the earliest received. Incomplete application or those not following the requirements of this Ordinance will be removed from the order.

Subd. 4 Conditions.

All licenses issued under this article shall be issued subject to the conditions set forth in this chapter and subject to all city ordinances and sections of this Code applicable thereto and the laws of the state. All such regulations applicable to an otherwise licensed business shall remain applicable to the operations of the otherwise licensed business enterprise during the term of a license issued under this article.

Subd. 5 Fees.

No license shall be issued under this article until the appropriate license fee is paid in full. The fee for a license under this article shall be established by the City Council and adopted yearly in the City fee schedule in an amount not to exceed any maximum allowed by state law, and may be amended from time to time. The license fee shall not be prorated for licenses issued for less than a full year.

Subd. 6 Ineligibility and Basis for Denial of License.

1. Ineligibility.

- A. Moveable Place of Business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this article.
- B. Exclusive Liquor Store. No license shall be issued to an exclusive liquor store as defined in Minnesota Statutes, section 340A.101, subdivision 10.

2. Grounds for Denial

Grounds for denying the issuance or renewal of a license under this article include, but are not limited to, the following:

- A. The applicant is under the age of 21 years.
- B. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation from holding a license.
- C. The applicant has been convicted within the past five (5) years for any violation of or has otherwise been adjudicated to have violated a Federal, State, or local law, ordinance provision, or other regulation relating to the licensed products.
- D. The applicant has had a license to sell licensed products suspended or revoked during the five (5) years preceding the date of application.
- E. 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, or any part thereof.
- F. No license shall be granted or renewed for operation on any premises on

which real estate taxes, assessments, or other financial claims of the City or of the State are due, delinquent, or unpaid.

Subd. 7 Prohibited Acts.

1. In general.

No person shall sell or offer to sell any licensed product:

- A. By means of any type of vending machine.
- B. By means of self-service merchandising.
- C. By means of delivery sales.
- D. By any other means, to any other person, on in any other manner or form prohibited by this article or state or other local law, ordinance provision, or other regulation.

2. Legal Age; Verification.

No person shall sell any licensed product to any person under the age of 21. Licensees shall verify by means of government issued photographic identification that the purchaser is at least 21 years of age.

3. Legal Age; Sale.

No person under the age of 18 shall be allowed to sell any licensed product.

4. 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.

5. Samples Prohibited.

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

6. Possession.

No person under the age of 21 shall be in possession of any THC Product. Any person under the age of 21 in possession of a THC Product may be subject to a petty misdemeanor. Any person under the age of 21 in possession of any THC Product may have it confiscated by a law enforcement officer.

7. Hours and Days of Sale.

No sale of THC products may be made between 9:00 p.m. and 10:00 a.m. Monday through Sunday

Subd. 8 Additional Requirements.

1. Storage.

All licensed products shall either be stored 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.

Subd. 9 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.

Subd. 10 Compliance Checks and Inspections.

All premises licensed under this subdivision 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 by engaging, with the written consent of his/her parents or guardians, minors at least 17 years of age, but less than the age of 21 years, to enter the licensed premises to attempt to purchase the licensed product. Minors used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession when those items are obtained as part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or their employee and shall produce any identification, if any exists, for which he/she is asked. Nothing in this section 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.

Subd. 11 Violations and Penalty.

1. Administrative Civil Penalties-Individuals.

Any person who sells any licensed product to any minor is subject to an administrative penalty. The City Council may impose administrative penalties as follows:

- A. First Violation The Council may impose a civil fine not to exceed \$50.00.
- B. Second Violation Within 24 months. The Council may impose a civil fine not to exceed \$100.00.
- C. Third Violation Within 36 months. The Council may impose a civil fine not to exceed \$1000.00.

2. Administrative Civil Penalties-Licensee.

If a licensee or an employee of a licensee is found to have violated this article, the licensee may be charged an administrative penalty as follows:

- A. First Violation The Council may impose a civil fine not to exceed \$250.00 and/or suspend the license for a period not to exceed 10 days.
- B. Second Violation Within 24 Months. The Council may impose a civil fine not to exceed \$500.00 and/or suspend the license for a period not to exceed 20 days.
- C. Third Violation Within 36 Months. The Council may impose a civil fine

not to exceed \$750 and/or suspend the license for a period not to exceed 30 days.

D. Fourth violation within 48 months. The City Council may impose a civil fine not to exceed \$1,000 and/or license revocation.

3. Administrative Penalty Procedures.

Any administrative penalty, whether it be a fine, a revocation or suspension, or a combination thereof, shall be preceded by a hearing before the City Council. Mailed notice of the hearing shall be given to the individual or licensee at least 10 days prior to the date of the hearing. The notice shall include the time and place of the hearing and shall state the nature of the alleged license violation(s).

4. Misdemeanor Prosecution.

Any person who sells or offers to sell any licensed product in violation of this article shall be guilty of a misdemeanor. Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this article.

5. 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.