



City Council Memorandum

To: Mayor Fasbender and City Council
From: John Hinzman, Community Development Director
 Emily King, Deputy City Clerk
Date: September 3, 2024
Item: Special Use Permit & Product Retail License – Cannabis Sales – Hastings Tobacco –
 1769 Market Blvd

Council Action Requested:

Take the following actions related to a Special Use Permit (SUP) and Product Retail License application for cannabis retail sales for Hastings Tobacco on property located at 1769 Market Blvd owned by Hastings Marketplace Station LLC.

- 1) Hold the public hearing.
- 2) Table action on the Special Use Permit & Cannabis Product Retail License until permission is granted from the property owner. If permission is not granted, the Council would take action at the October 21, 2024 meeting (the end of our statutory review period).

History:

The City Council continued the above actions at the August 19, 2024 meeting. The property owner Hastings Marketplace Station LLC has not granted permission to consider sale of cannabis products.

Compliance Overview:

- 6/18/2024 – Violation of Hastings City Ord 117.03 Misdemeanor Sell THC Product w/o License
- 8/25/2020 – Potential ordinance violation check for selling paraphernalia. Located items of paraphernalia for sale - advised to remove. Follow up on 9/3/2020 – items of paraphernalia not removed and again advised to remove them. *While at store, officer witnessed a sale of tobacco to minor (see *9/3/2020 below) Follow up on 9/8/2020 – all items had been removed.
- *9/3/2020 – Violation of MSS 609.685.1a(a) - Sale of Tobacco to Children Under 21 Years of Age

- 04/06/2020 – Investigated anonymous complaint the business is open in violation of Governor’s Executive Order re: Covid-19 pandemic. Was advised to close. While at store, Officer observed an open bar area where customers use vaping and/or tobacco products. Officer advised this is in violation of MN Clean Air Act and City Ordinance, if this were to continue when open, and advised on signage and cordoning off bar area.
- 11/23/2016 – Violation of MSS 609.685.1a(a) Sale of Tobacco to Children Under 21 Years of Age, and MSS 609.506.1 Give False Name to Police Officer
- 4/1/2011 – Assist other Agency (MN Revenue Agent). While on scene HPD located and confiscated several packets/containers of synthetic marijuana
- 7/27/2010 – Compliance Check – Violation of Hastings City Ord 130.16 Drug Paraphernalia. (Search Warrant conducted and approximately 1,000 items of paraphernalia confiscated and destroyed)

The associated fees have been paid

Advisory Commission Review:

The Planning Commission voted 6-1 to recommend approval of the SUP request as presented at the August 19, 2024 meeting. No one spoke for or against the item during the public hearing. The applicant was cited for selling cannabis products without City permits. Commissioners discussed issuance of permits to sell cannabis in situations where cannabis was sold without permits.

Attachments:

- Planning Commission Staff Report – August 12, 2024



Planning Commission Memorandum

To: Planning Commission

From: Lindsey Duggan, Community Development Intern

Date: August 12, 2024

Item: Public Hearing – Special Use Permit (SUP) – Cannabis Retail Sales – Hastings Tobacco 1 Inc. – 1769 Market Blvd

REQUEST

The Planning Commission is asked to take the following actions related to the Special Use Permit (SUP) application of Hastings Tobacco 1 Inc. to conduct cannabis retail sales at Hastings Tobacco located at 1769 Market Blvd on property owned by Hastings Marketplace Station LLC:

- 1) Hold a public hearing.
- 2) Review the SUP application and provide a recommendation to City Council.

BACKGROUND INFORMATION

Cannabis Business Regulations

In November 2023, the City adopted [Chapter 155.07, Subd. J](#) of the Zoning Code to allow for Cannabis Businesses. The ordinance outlines performance standards and prohibited acts pertaining to cannabis. Cannabis sales were added as a Special Use permit in the C-3 Community Regional Commerce and C-4 Regional Shopping Center Districts. The city also adopted licensing requirements under City Code Chapter 117 that are similar to those adopted in the zoning code.

Cannabis Business License

An application for a cannabis business license has been submitted along with the SUP application and will be considered by the City Council in conjunction with action on the SUP.

Notification and Public Hearing

Notification of the request was mailed to all property owners within 350 feet. Staff has not received any comments at this time.

Comprehensive Plan Classification

The 2040 Comprehensive Plan designates the property as Commercial. The proposed use is consistent with the plan.

Zoning Classification

The property is C-4 –Regional Shopping Center. The C-4 District allows for cannabis retailers as a special use.

Adjacent Zoning and Land Use

Direction	Property Use	Zoning	Comp Plan
North	Dakota Summit DaVita Dialysis	C-4	Commercial
East	Arby's Culvers	C-4	Commercial
South	Hastings Marketplace West Outlot	C-4	Commercial
West	Xcel Energy Substation	Nininger Twp	Commercial

Existing Condition

Hastings Tobacco has been in operation for a number of years. They recently received a misdemeanor on June 18, 2024 for violating Hastings City Ord 117.03 by selling THC Product without a city license.

SPECIAL USE PERMIT REVIEW

Background

Hastings City Code Chapter 155.32, Subd. C.6 – allows cannabis retailers and edible retailers as a “special use” within the C-4 Zoning District, subject to the requirements of 155.07, Subd. J as follows:

2. Performance Standards.

- a. A cannabis business shall only operate in an authorized zoning district with approved State and local license or registration.
- b. Any person selling or distributing cannabis products shall require proof of age by means of government issued photographic identification from the prospective purchaser showing purchaser is twenty-one (21) years old or older.
- c. Signage identifying the legal sales age and the age verification requirement shall be posted at the point of sale. The required signage shall be posted in a manner so that it is clearly visible to anyone who is considering or making a purchase. The sign shall provide notice that all persons responsible for selling these products must verify the age of any person under thirty (30) years of age, by means of

photographic identification required in this section, containing the bearer's date of birth.

- d. Cannabis products must comply with the testing, labeling and packaging requirements in Minnesota State law.
- e. No sales or distribution of intoxicating cannabis products shall be allowed at the licensed premises after 10:00 p.m. or before 8:00 a.m.
- f. It shall be unlawful for a retailer to allow the sale of intoxicating cannabis products or cannabis related devices by any means whereby a customer has access to such items without having to request the item from the retailer or the retailer's employee. There shall be a physical exchange of the intoxicating cannabis product or cannabis-related devices between the retailer or the retailer's employee and the customer. All intoxicating cannabis products and cannabis-related devices shall be either store behind a counter or other area not freely accessible to customers, or in a storage unit or case not open and accessible to the general public.
- g. All retail establishments of intoxicating cannabis products shall have a security plan approved by the Police Chief stating how the facility will address public health, welfare and safety concerns including, but not limited to security, fencing, lighting, window coverings, door placement, and landscaping.
- h. **Compliance Checks and Inspections**
All licensed premises must be open to inspection by the local law enforcement or other authorized City officials during regular business hours. From time to time, but at least once per year, the City will conduct compliance checks on Retailers and Edible Retailers of intoxicating cannabis products by engaging persons between the ages of seventeen (17) and twenty-one (21) years, to enter the licensed premises to attempt to purchase intoxicating cannabis products. Persons used for compliance checks are not guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of intoxicating cannabis products when the items are obtained or attempted to be obtained as a part of the compliance check. No person used in compliance checks may attempt to use a false identification misrepresenting the person's age, and all persons lawfully engaged in a compliance check may answer all questions about the person's age asked by the retailer or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section prohibits 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.

3. *Prohibited Acts.*

- a. It shall be unlawful for any person to sell, purchase, obtain or otherwise provide any intoxicating cannabis product to any person under the age of twenty-one (21).
- b. It shall be unlawful for any person under the age of twenty-one (21) to possess any intoxicating cannabis product. This chapter shall not apply to persons under the age of 21 lawfully involved in a compliance check.
- c. It shall be unlawful for any person under the age of twenty-one (21) to use or consume any intoxicating cannabis product, unless it is legally authorized medical cannabis.

- d. It shall be unlawful for any person under the age of twenty-one (21) attempt to disguise the person's true age by the use of a false form of identification, whether the identification is that of another person or one in which the age of the person has been modified or tampered with, to represent an age older than the actual age of the person, in order to purchase any intoxicating cannabis product.
- e. No adult-use cannabinoid or cannabis product may contain more than 0.3% of THC
- f. No edible cannabis product can contain an amount of THC that exceeds the per serving or per packaging requirements in Minnesota State law.
- g. No intoxicating cannabis product may be sold to an obviously intoxicated person or a person under the influence of a controlled substance.
- h. No one under the age of twenty-one (21) shall sell intoxicating cannabis products.
- i. Intoxicating cannabis products cannot be sold in vending machines, by transient merchants, peddlers, at a movable place of business, through a drive-through window, at special events, home occupations, by internet sales or delivery service.
- j. No sampling or free donation or distributions of intoxicating cannabis products is allowed.
- k. No sales of intoxicating cannabis products may be completed through self-check-out. The retailer or retailer's employee must process each transaction at a point of sale.

Analysis

- Cannabis sales are allowed as a special use within C-4 zoning district. Operational license to be considered by City Council.
- The above are also part of the annual licensing requirements. The Hastings Police Department has approved the security plan for the facility and the business is subject to periodic review by the Hastings Police Department.

Special Use Permit Requirements

Special Use Permit review is outlined in Chapter 30.02, Subd. E.2.b.5 of the City Code and subject to adherence to the following (staff analysis appears in red)

1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenient traffic flow and control, and access in case of fire or catastrophe; **Ingress and egress to the property will be unchanged. The sale of cannabis products on site will not require changes to ingress and egress.**
2. Off-street parking and loading areas where required, with particular attention to division (E)(2)(b)5. a. above, and the economic, noise, glare, or odor effects of the special use on adjoining properties and properties generally in the district; **Parking and loading is adequate, and the proposed use will not require changes. The property is surrounded by other commercial uses as well as a large parking lot.**
3. Refuse and service areas, with particular reference to items divisions (E)(2)(b)5.a. and (E)(2)(b)5. b. above; **The sale of cannabis products will not increase the need for refuse areas.**

4. Utilities, with reference to locations, availability, and compatibility; **Utility service is adequate and will not change with cannabis sales.**
5. Screening and buffering with reference to type, dimensions, and character; **Screening and buffering is adequate and will not change with cannabis sales.**
6. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district; **Staff is not aware of any changes to signage.**
7. Required yards and other open space; **Yards and open space are unchanged.**
8. General compatibility with adjacent properties and other properties in the district. **Property abuts mostly commercially zoned properties.**

Recommendation

Approval of the Special Use Permit is recommended subject to the following requirements:

- 1) Maintaining a Cannabis Products Retail License from the Hastings City Clerk's Office.
- 2) Adherence to Hastings City Code Chapter 117 – Cannabis Businesses and Chapter 155.07, Subd. J – Cannabis Businesses.

Attachments

- Location Map
- Site Picture
- Application

LOCATION MAP



SITE PICTURES



Looking south from front parking lot off South Frontage Rd.



Looking west from front parking lot off South Frontage Rd.



Looking east from front parking lot off South Frontage Rd.