

TO: Mayor Fasbender and Members of the City Council
FROM: Kori Land, City Attorney
DATE: March 20, 2023
RE: Licensing and Zoning Cannabis Ordinances – Final Adoption

INTRODUCTION:

At the end of the 2022 Legislative Session, the State of Minnesota passed new laws allowing the sale of edible cannabis/cannabinoid products with .3% THC or less, which went into effect July 1, 2022. The new law limits the sale of CBD products to individuals aged 21 and older and implements regulations regarding the packaging of edible CBD products, as well as many other rules and safeguards to attempt to prevent the sale to or consumption by minors. The new law did not establish any significant State oversight of these legalized edible cannabis products but left licensing and zoning authority open to local jurisdictions.

City Moratorium on Cannabis

The Public Safety Advisory Commission (PSAC) began reviewing the new legislation in August 2022 in order to make a recommendation to the Hasting Public Safety Committee of the Council (PSC) on potential regulations of these cannabis products. On September 19, 2022, the City Council approved a moratorium of 6 months to allow time to conduct research on these uses. The moratorium expires on or around March 19, 2023. Those businesses that were already selling cannabis products were allowed to continue selling during the moratorium, but it prohibited their expansion, and it prohibited new businesses from selling these products.

PSAC Review of Cannabis

During the moratorium, PSAC studied and reviewed potential City regulations on legal cannabis products during several meetings from September 2022 to January 2023. PSAC invited existing Hastings retailers to share their knowledge and expertise about the various products, including edibles and beverages. A report outlining its recommendations was unanimously approved by PSAC and forwarded to the PSC, who reviewed them in January and adopted nearly all of the recommendations. These recommendations served as the template for the proposed ordinances. (The reports from each committee are attached.)

As you are aware, the Minnesota State Legislature introduced legislation for state-regulated Adult-Use Cannabis. The proposed legislation includes cannabis uses from cultivating to retail sales and every step in between. It includes all types of cannabis products that contain less than .3% THC and products that contain more than .3% THC.

The proposed State legislation does not allow for *local licensing* of Adult-Use Cannabis, but it does allow for *local zoning* as long as it is related to time, place and manner regulations.

Armed with the recommendations from the PSC and using some of the proposed legislation verbiage, a Licensing Ordinance and Zoning Ordinance were prepared and are before you for Final Reading.

DISCUSSION:

You will note that the Zoning Ordinance and the Licensing Ordinance contain many identical provisions. The reason for this is because while we cannot be certain that the proposed legislation will be adopted this session or even if it is, that it will remain in its current rendition, it is possible that licensing will be completely preempted by the State, thereby making any local Licensing Ordinance ineffective. However, if identical provisions are in the Zoning Ordinance, authority for which is anticipated to survive in the proposed legislation, then the City is able to preserve its intent of protecting the public health, safety and general welfare, particularly as it relates to the unauthorized sales to and use by minors.

In anticipation of the legality of Adult-Use Cannabis, the Licensing and Zoning Ordinances before you attempt to capture all of the cannabis uses – including those uses that are legal now (less than .3% THC) and those that may become legal in the near future (greater than .3% THC). In addition, both ordinances contain a provision that states that no cannabis products within the City can contain more than .3% THC. The intent is that if the proposed legislation passes, the City can hit the “pause” button before businesses automatically begin selling Adult-Use Cannabis, giving the Council time to re-evaluate and determine if additional regulations or less regulations are necessary and if the zoning districts are appropriate. We are not guaranteed that any adopted state law will allow the City to enforce the “no greater than .3%” provision, but at least it shows the Council’s intent to review and reflect on the uses prior to full implementation. It is likely that cities will be allowed to enact a longer-than-normal moratorium if needed to take an official “pause” and study the issue, so hopefully the City will be able to review it either way.

There is no way to predict the direction the State legislature will go or what provisions it will include. If the State completely preempts local licensing, then it is helpful that all of the performance standards are in the Zoning Ordinance, which are all related to time, place and manner regulations. If the State legislation permits local licensing, then it is not harmful that we have duplicative conditions, standards and regulations in both ordinances.

PROPOSED ORDINANCES:

The proposed ordinances include the following provisions:

1. Cannabis businesses must be licensed by the City and in compliance with zoning.
2. The definition of a Cannabis Business is as follows:

“CANNABIS BUSINESS: means a cultivator, manufacturer, retailer, wholesaler, transporter, testing facility, event organizer, delivery service, edible retailer, medical cultivator, medical processor and medical retailer, of cannabis, cannabis products or cannabis related devices.”

3. Includes definitions that are in the current law for edible cannabis products and in the proposed legislation, such as “adult-use cannabinoid” to try to capture all of the cannabis uses of today and tomorrow.
4. Medical marijuana uses are excluded from licensing requirements, since they are preempted by the existing State laws, however, they would be required to comply with zoning and can only operate in the appropriate zoning districts.
5. Allows the following uses in the following districts:
 - a. Ag District
 - i. Cultivation operations by Special Use/Conditional Use Permit if:
 - On 100 contiguous acres; and
 - No sales are permitted on the same property
 - b. C-3 and C-4 District
 - i. Cannabis product retail sales by Special Use/Conditional Use Permit
 - See performance standards below
 - c. I-1
 - i. Manufacturing, testing, processing, wholesale operations by Special Use/Conditional Use Permit
 - Some of these uses tend to have odor issues which can be mitigated with reasonable conditions on a case-by-case basis
6. Time, place and manner regulations for Retail Sales:
 - a. Prohibits the purchase, use and possession of anyone under 21
 - b. Clerks must be 21 to sell products
 - c. Business must require proof of age and have signage of age requirement
 - d. Products must comply with State labeling and packaging requirements (currently 5 mg THC per serving and 50 mg THC per package, must be child-resistant, not resemble candy products, etc.)
 - e. Sales only between 8:00 a.m. and 10 p.m.
 - f. Products must be behind a counter – no direct contact by customer until point of sale
 - g. Security plan approved by the Police Chief
 - h. Comply with compliance checks (like tobacco and alcohol)
 - i. No vending machines
 - j. No mobile sales or deliveries (transient merchants, peddlers, special events, home occupations)

- k. Not allowed at liquor stores or bars
- l. No sale of cannabis products with more than .3% THC

The Fee Ordinance Amendment is also being introduced as a first reading. As part of the discussion for these ordinances, it would be an appropriate time to discuss the fees for the uses noted above.

We are proposing a July 1, 2023, implementation date for City Staff to develop the license application form, to educate the businesses on the local licensing and zoning provisions, to give businesses time to decide if they want to apply for a license or to sell out their inventory, and to see what happens at the State legislature.

The following language will apply to existing businesses and any new business attempting to open between the time of adoption (March 20, 2023) and the Effective Date (July 1, 2023):

- A. Existing cannabis businesses that do not comply with this ordinance as of the date of adoption may be allowed to continue to operate as a cannabis business until the Effective Date, after which time they shall be required to be in full compliance with City licensing or registration requirements and all zoning requirements.
- B. No new cannabis business shall be allowed to open or start operating from the date of adoption of this ordinance without being in full compliance with all City ordinances.

The Planning Commission held a public hearing on February 27, 2023, and unanimously recommended the Zoning Ordinance for approval.

The Council approved both ordinances for first reading on March 6, 2023, so they are now before you for Final Reading.

RECOMMENDATION:

Discuss ordinances

Adopt Ordinance Amending City Code Chapter 155 – Zoning Ordinance Regarding Uses, Sales and Operations of Cannabis and Hemp Businesses

Adopt Ordinance Enacting City Code Chapter 117 – Ordinance Regarding the Licensing of Uses, Sales and Operations of Cannabis and Hemp Businesses

ATTACHMENTS:

- Ordinance Amending City Code Chapter 155 – Zoning Ordinance Regarding Uses, Sales and Operations of Cannabis and Hemp Businesses

- Ordinance Enacting City Code Chapter 117 – Ordinance Regarding the Licensing of Uses, Sales and Operations of Cannabis and Hemp Businesses
- Report from the Public Safety Committee
- Report from the Public Safety Advisory Commission

ORDINANCE NO. 2023-**AN ORDINANCE FOR THE CITY OF HASTINGS, MINNESOTA, ENACTING
HASTINGS CITY CODE CHAPTER 117 - ORDINANCE REGARDING THE
LICENSING OF USES, SALES AND OPERATIONS OF CANNABIS AND HEMP
BUSINESSES**

The City Council of the City of Hastings, Dakota County, Minnesota, does hereby ordain as follows:

SECTION 1. AMENDMENT. The Code of the City of Hastings, County of Dakota, State of Minnesota, Chapter 117 Cannabis Businesses is hereby enacted as follows:

117.01 Purpose

Because the City recognizes that persons under the age of twenty-one (21) years may purchase or otherwise obtain, possess and use intoxicating cannabis products; and the sale of these products to persons under twenty-one (21) years of age are violations of State and Federal laws; and because the use of intoxicating cannabis products by those underage subsequently places a financial burden on all levels of government, this chapter is intended to regulate the sale of intoxicating cannabis products and cannabis-related devices for the purpose of enforcing and furthering existing laws. In order to protect the public health, safety, and welfare, the City Council deems it necessary to provide for the regulation and licensing of cannabis businesses.

117.02 Definitions

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT-USE CANNABINOID or CANNABIS PRODUCT: means any cannabinoid product authorized for sale under Minnesota state law. It includes edible cannabinoid products but not medical cannabinoid products. It does not include non-intoxicating cannabis products.

CANNABINOID: means any of the chemical constituents of hemp plants or cannabis plants that are naturally occurring, biologically active, and act on the cannabinoid receptors of the brain. Cannabinoid includes but is not limited to tetrahydrocannabinol and cannabidiol.

CANNABINOID or CANNABIS PRODUCT: means any of the following:

1. Cannabis concentrate;
2. A product infused with cannabinoids, including but not limited to tetrahydrocannabinol, extracted or derived from cannabis plants or cannabis flower;
3. Any other product that contains cannabis concentrate;
4. A product infused with artificially derived cannabinoids;

5. Adult-use cannabinoid products;
6. Edible cannabinoid products;

It does not include cannabis flower, artificially derived cannabinoids or hemp-derived consumer products.

CANNABIS: means a compound of the cannabis plant known as cannabidiol.

CANNABIS BUSINESS: means a cultivator, manufacturer, retailer, wholesaler, transporter, testing facility, event organizer, delivery service, edible retailer, of cannabis, cannabis products or cannabis related devices.

CANNABIS RELATED DEVICES: means any equipment, products or materials of any kind which are used, intended for use, or designed for use in repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling or otherwise introducing cannabis or cannabis products into the human body.

CERTIFIED HEMP: means hemp products that have been tested and found to meet the requirements of Minnesota Statutes, Chapter 18K, and the rules adopted thereunder by the State of Minnesota.

EDIBLE CANNABINOID or CANNABIS PRODUCT: means any product that is intended to be eaten or consumed as a food or beverage, contains a cannabinoid in combination with food ingredients, and is not a drug.

HEMP OR INDUSTRIAL HEMP: means the “Industrial Hemp” definition provided under Minnesota Statutes Section 18K.02 subdivision 3.

HEMP MANUFACTURING: means the ability to facilitate the manufacturing of industrial hemp.

INTOXICATING CANNABINOID or CANNABIS: means a cannabinoid, including an artificially derived cannabinoid, that when introduced into the human body impairs the central nervous system or impairs the human audio, visual, or mental processes. Intoxicating cannabinoid includes but is not limited to, any THC.

MEDICAL CANNABIS: means the definition provided under Minnesota Statutes Section 152.22, subdivision 6.

MEDICAL CANNABIS DISTRIBUTION FACILITY: means a facility operated by a medical cannabis manufacturer for purposes of distributing medical cannabis in accordance with Minnesota Statutes Section 152.29, subdivision 1(a), and the requirements of the Commissioner of Minnesota Department of Health or other applicable state law.

MOVABLE PLACE OF BUSINESS: means any form of business operated out of a truck, van, automobile, trailer, tent, table, or booth, that is transportable and not a fixed address store front or other permanent type of structure.

NON-INTOXICATING CANNABINOID or CANNABIS PRODUCT: means products made from substances extracted from certified hemp plants that do not produce intoxicating effects when consumed by any route of administration. This may include tinctures, creams, lotions, ointments, or salves.

THC: means tetrahydrocannabinol.

117.03 License

No person shall engage in a cannabis business directly or indirectly deal in, sell, keep for sale, deliver, manufacture, distribute, test, cultivate, grow, transport, or organize an event for any intoxicating cannabinoid or cannabis product, without first having received a license to do so from the state, if so required and from the City, as provided in this chapter. No license shall be required for a cannabis business that only sells non-intoxicating cannabis products or any medical cannabis businesses that are regulated by State law.

117.04 License Application

A. *Application.* An application for a license 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 and telephone numbers, the name of the business for which the license is sought, a copy of the educational materials the applicant intends to use to educate employees and any additional information the city deems necessary. Upon receipt of completed application, the City Clerk shall forward the application to the Council for action at a City Council meeting. If the Clerk determines an application is incomplete, the Clerk shall return the application to the applicant with notice of the information necessary to make the application complete.

B. *Investigation Fee.*

1. At the time of filing an application for any license that can be issued under this chapter, the applicant shall pay the city an investigation fee in the amount established by ordinance of the City Council.
2. This investigation fee shall be a non-refundable fee and shall be used to cover the city's cost in processing the application and investigation of the applicant.
3. At the time of a renewal of a license, the investigation will be included in the renewal license fee, which will be established by ordinance of the City Council.

C. *Background Investigation.*

1. At the time of making an initial application, renewal application, or request for a new operating officer, the applicant shall file a completed application form with the City Clerk. The applicant shall authorize the Hastings Police

Department and other city departments, as deemed necessary by the City Clerk, to investigate all information in the application and to conduct a thorough background and criminal record investigation on the applicant. The applicant shall authorize the police to release information received from the investigation to the City Council.

2. Upon completion of the background investigation, the Hastings Police Department shall file with the City Clerk a written report of its investigation.
 3. Upon receipt of the investigation results, the City Clerk shall forward a recommendation to the City Council for approval or denial.
 4. No license will be issued or renewed if the results of the background investigation show to the satisfaction of the City Council that issuance of a license would not be in the public interest.
- D. *Renewals*. The renewal of a license issued under this section 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.

117.05 Fees

No license shall be issued under this chapter until the appropriate fees are paid in full. The fee for a license under this chapter shall be set by ordinance.

117.06 Action, Display, Term, Transferring

- A. The City Council may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.
- B. *Display*. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- C. *Term*. All licenses shall be for a period of one (1) year and shall expire on December 31 of each year, regardless of when the license was originally issued. All retail licensees will be subject to an annual compliance check.
- D. *No Transfers*. All licenses issued under this chapter shall be issued only for the premises to which the license was issued and only for the person to whom the license was issued. No transfer of any license to another person or location shall be allowed.

117.07 Basis For Denial Of A License

The following shall be grounds for denying issuance or a renewal of a license under this chapter.

- A. The applicant is under the age of 21 years.
- B. The applicant has been convicted within the past 5 years of any violation of a federal, state, or other law, ordinance provision, or other regulation relating to the license.
- C. The applicant had a similar license revoked within the preceding 12 months of the date of application in any jurisdiction.
- D. The applicant fails to provide information required in the application or provides false or misleading information.
- E. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation, from holding such a license.
- F. The applicant or license holder has outstanding fines, penalties, or property taxes owed to the city.

117.08 Performance Standards

- A. A cannabis business shall only operate in an authorized zoning district with an 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 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 stored 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 cameras, 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.

117.09 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) to 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 package 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. Intoxicating cannabis products cannot be sold at exclusive liquor stores or on-sale liquor establishments.
- K. No sampling or free donations or distributions of intoxicating cannabis products is allowed.
- L. 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.

117.10 Hearings And Appeals

- A. *Notice.* Upon discovery of a suspected violation of the City Code or state law, the licensee shall be issued, either personally or by mail, a notice, complaint or citation that sets forth the alleged violation. The consequences of an alleged violation may include, but are not limited to an administrative citation, criminal citation, administrative action such as suspension or revocation, informing other state regulatory agencies, or other such action as authorized by law.
- B. *Generally.* For an administrative citation, the process set forth in City Code Section 10.25 shall be followed. For an administrative action, such as a license suspension or revocation, a license holder will be afforded a hearing before the City Council with an opportunity to be represented by counsel, to testify, present evidence and witnesses for the Council's consideration.

C. *Findings.* If after the hearing, the applicant is found to have violated this chapter, the City Council may issue a suspension or revocation of the license. All decisions by the Council shall be in writing, setting forth the reasons for the findings and such writing shall be provided to license holder.

D. *Misdemeanor Prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this chapter and the city is not precluded from suspending or revoking the license of a licensee as provided by this chapter.

SECTION 2. SUMMARY PUBLICATION. Pursuant to Minnesota Statutes Section 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 text amendment adopted by the Hastings City Council on _____, 2023 modifies the City Ordinance to regulate adult-use cannabis and hemp operations and uses through licensing with performance standards.

SECTION 3. MORATORIUM TERMINATION; EFFECT ON EXISTING AND NEW BUSINESSES.

A. Upon adoption of this ordinance, the Interim Ordinance Prohibiting the Establishment of New Uses or the Expansion of Existing Uses Related to Cannabis and Intoxicating Cannabinoids (CBD) Sales, Testing, Manufacturing or Distribution, adopted on September 19, 2022, is hereby terminated.

B. Existing cannabis businesses that do not comply with this ordinance as of the date of adoption may be allowed to continue to operate as a cannabis business until the Effective Date, after which time they shall be required to be in full compliance with City licensing or registration requirements and all zoning requirements.

C. No new cannabis business shall be allowed to open or start operating from the date of adoption of this ordinance without being in full compliance with all City ordinances.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect on July 1, 2023.

Passed this _____ day of _____, 2023.

Mary Fasbender, Mayor

Attest:

Kelly Murtaugh, City Clerk

Published in the _____ on [Date].

ORDINANCE NO. 2023-

AN ORDINANCE FOR THE CITY OF HASTINGS, MINNESOTA, AMENDING HASTINGS CITY CODE CHAPTER 155 - ZONING ORDINANCE REGARDING USES, SALES AND OPERATIONS OF CANNABIS AND HEMP BUSINESSES

The City Council of the City of Hastings, Dakota County, Minnesota, does hereby ordain as follows:

SECTION 1. AMENDMENT. The Code of the City of Hastings, County of Dakota, State of Minnesota, Chapter 155, Section 155.21.D Special Use Permits in the A - Agricultural District shall be amended as follows:

D. Uses by Special Permit

5. Cannabis, medical cannabis and hemp growing, cultivating or farming operations pursuant to the following conditions:
 - a. A minimum of 100 contiguous acres under single ownership is required for the operation;
 - b. The operator must be licensed by the State of Minnesota;
 - c. The sale of cannabis products is not permitted on the same property as the operation.

SECTION 2. AMENDMENT. The Code of the City of Hastings, County of Dakota, State of Minnesota, Chapter 155, Section 155.30.C Special Use Permits in the C-3 Community Regional Commerce District shall be amended as follows:

C. Uses by Special Permit

10. Cannabis retailer, edible retailer, medical retailer, and medical cannabis distribution facility that comply with the requirements in City Code Section 155.07.J.

SECTION 3. AMENDMENT. The Code of the City of Hastings, County of Dakota, State of Minnesota, Chapter 155, Section 155.32.C Special Use Permits in the C-4 Regional Shopping Center District shall be amended as follows:

C. Uses by Special Permit

6. Cannabis retailer, edible retailer, medical retailer, and medical cannabis distribution facility that comply with the requirements in City Code Section 155.07.J.

SECTION 4. AMENDMENT. The Code of the City of Hastings, County of Dakota, State of Minnesota, Chapter 155, Section 155.34.C Special Use Permits in the I-1 Industrial Park District shall be amended as follows:

C. Uses by Special Permit

4. Cannabis, medical cannabis or hemp manufacturer, testing facility, wholesaler and processor.

SECTION 5. AMENDMENT. The Code of the City of Hastings, County of Dakota, State of Minnesota, Chapter 155, Section 155.07 SPECIAL PROVISIONS shall be amended by adding the following section for Cannabis Businesses as follows:

J. *Cannabis Businesses.* Because the City recognizes that persons under the age of twenty-one (21) years may purchase or otherwise obtain, possess and use intoxicating cannabis products; and the sale of these products to persons under twenty-one (21) years of age are violations of State and Federal laws; and because the use of intoxicating cannabis products by those underage subsequently places a financial burden on all levels of government, this chapter is intended to regulate the sale of intoxicating cannabis products and cannabis-related devices for the purpose of enforcing and furthering existing laws.

1. The following words, terms, and phrases when used in this Chapter shall have the meaning ascribed to them in this Section except where the context clearly indicates a different meaning:

ADULT-USE CANNABINOID or CANNABIS PRODUCT: means any cannabinoid product authorized for sale under Minnesota state law. It includes edible cannabinoid products but not medical cannabinoid products.

CANNABINOID: means any of the chemical constituents of hemp plants or cannabis plants that are naturally occurring, biologically active, and act on the cannabinoid receptors of the brain. Cannabinoid includes but is not limited to tetrahydrocannabinol and cannabidiol.

CANNABINOID or CANNABIS PRODUCT: means any of the following:

- a. Cannabis concentrate;
- b. A product infused with cannabinoids, including but not limited to tetrahydrocannabinol, extracted or derived from cannabis plants or cannabis flower;
- c. Any other product that contains cannabis concentrate;
- d. A product infused with artificially derived cannabinoids;
- e. Adult-use cannabinoid products;
- f. Edible cannabinoid products;
- g. Medical cannabinoid products.

It does not include cannabis flower, artificially derived cannabinoids or hemp-derived consumer products.

CANNABIS: means a compound of the cannabis plant known as cannabidiol.

CANNABIS BUSINESS: means a cultivator, manufacturer, retailer, wholesaler, transporter, testing facility, event organizer, delivery service, edible retailer, medical cultivator, medical processor and medical retailer, of cannabis, cannabis products or cannabis related devices.

CANNABIS RELATED DEVICES: means any equipment, products or materials of any kind which are used, intended for use, or designed for use in repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling or otherwise introducing cannabis or cannabis products into the human body.

CERTIFIED HEMP: means hemp products that have been tested and found to meet the requirements of Minnesota Statutes, Chapter 18K, and the rules adopted thereunder by the State of Minnesota.

EDIBLE CANNABINOID or CANNABIS PRODUCT: means any product that is intended to be eaten or consumed as a food or beverage, contains a cannabinoid in combination with food ingredients, and is not a drug.

HEMP OR INDUSTRIAL HEMP: means the “Industrial Hemp” definition provided under Minnesota Statutes Section 18K.02 subdivision 3.

HEMP MANUFACTURING: means the ability to facilitate the manufacturing of industrial hemp.

INTOXICATING CANNABINOID or CANNABIS: means a cannabinoid, including an artificially derived cannabinoid, that when introduced into the human body impairs the central nervous system or impairs the human audio, visual, or mental processes. Intoxicating cannabinoid includes but is not limited to, any THC.

MEDICAL CANNABIS: means the definition provided under Minnesota Statutes Section 152.22, subdivision 6.

MEDICAL CANNABIS DISTRIBUTION FACILITY: means a facility operated by a medical cannabis manufacturer for purposes of distributing medical cannabis in accordance with Minnesota Statutes Section 152.29, subdivision 1(a), and the requirements of the Commissioner of Minnesota Department of Health or other applicable state law.

MOVABLE PLACE OF BUSINESS: means any form of business operated out of a truck, van, automobile, trailer, tent, table, or booth, that is transportable and not a fixed address store front or other permanent type of structure.

NON-INTOXICATING CANNABINOID or CANNABIS PRODUCT: means products made from substances extracted from certified hemp plants that do not produce intoxicating effects when consumed by any route of administration. This may include tinctures, creams, lotions, ointments, or salves.

THC: means tetrahydrocannabinol.

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 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 stored 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) to 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 package 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. Intoxicating cannabis products cannot be sold at exclusive liquor stores or on-sale liquor establishments.
- k. No sampling or free donations or distributions of intoxicating cannabis products is allowed.
- l. 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.

SECTION 6. SUMMARY PUBLICATION. Pursuant to Minnesota Statutes Section 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 text amendment adopted by the Hastings City Council on _____, 2023 modifies the City Ordinance to regulate cannabis and hemp operations and uses by allowing them in specific zoning districts with performance standards.

SECTION 7. MORATORIUM TERMINATION; EFFECT ON EXISTING AND NEW BUSINESSES.

- A. Upon adoption of this ordinance, the Interim Ordinance Prohibiting the Establishment of New Uses or the Expansion of Existing Uses Related to Cannabis and Intoxicating Cannabinoids (CBD) Sales, Testing, Manufacturing or Distribution, adopted on September 19, 2022, is hereby terminated.
- B. Existing cannabis businesses that do not comply with this ordinance as of the date of adoption may be allowed to continue to operate as a cannabis business until the Effective Date, after which time they shall be required to be in full compliance with City licensing or registration requirements and all zoning requirements.
- C. No new cannabis business shall be allowed to open or start operating from the date of adoption of this ordinance without being in full compliance with all City ordinances.

SECTION 8. EFFECTIVE DATE. This ordinance shall be in full force and effect on July 1, 2023.

Passed this _____ day of _____, 2023.

Mary Fasbender, Mayor

Attest:

Kelly Murtaugh, City Clerk

Published in the Hastings Journal on _____.



Hastings

Public Safety Advisory Commission Report on THC/CBD

Membership: Commissioners: Pemble, Stevens, Blackstad, Ascheman, Baukol, Auge` and Caflisch and Gunter.

Guests: Kori Land, Hastings City Attorney from LeVander Gillen and Miller
 Hastings Sergeant Ryan Kline
 Judith Kulla, Owner; Caring Hands
 Zach Rohr, CEO of Minnie Grown
 Kelly Murtaugh: Assistant City Administrator
 Andrew Caflisch: incoming PSAC member
 Mary Fasbender: Hastings City Mayor

Timeline:

- **August:**
 The new legislation was reviewed by Kori Land. A detailed document was provided to the commission. Chief Wilske explained our role of developing a recommendation for the Hastings Public Safety Committee of the council. At this meeting, the commission recommended a one-year moratorium to allow time to gather resources and prepare a recommendation. City council granted a moratorium of 6 months.
- **September:**
 Commission invited two Hastings retailers to share their customers experiences regarding these products. The commission received some licensing recommendations from Minnie Grown. The commission also learned that these products are not limited to “edibles”. They can be found in beverages as well. The commission also heard from Judith Kulla; the owner of Caring Hands about sales of Minnie Grown products in her store and perceived benefits from her viewpoint. The commission received copies of provisions that Stillwater and Golden Valley have put in place.
- **October:**
 The commission discussed the merits of performing a community survey, much like Golden Valley’s. Each commission member was tasked with drafting thoughts on city ordinance priorities as well as survey questions.
- **November:**
 Chief Wilske informed the commission with there are 5 retailers selling these products. This does not include internet sales. Kelly Murtaugh provided the commission with an overview on licensing and permits. The commission agreed to recommend a license over

a permit. The commission finalized a draft of ordinance recommendations. No consensus reached regarding a survey.

- **December:**

The list of combined recommendations was reviewed with Attorney Land. Edits were made to the list. The commission agreed to finalize a draft report.

- **January:**

The draft report of recommendations were reviewed including two new commission members. Edits were made. The commission adopted the final recommendations unanimously.

Final Ordinance Recommendations:

Despite the possibility of replication, we recommend the following be included in a Hastings city ordinance. We recommend that this be applied to all products containing THC, regardless of how it is ingested. We are aware this topic has the potential to have ongoing statute changes.

- In the event that the Minnesota legislature legalizes recreational marijuana, the City's specific identification of prohibition of selling any product over .3% or 5mg of THC would not be immediately available for any business to sell recreational marijuana upon adoption of state law (unless the state law pre-empted local zoning). This would allow the City time to study if and where recreational marijuana should be allowed.
- Retailers must be a registered business with Minnesota Secretary of State.
- Retailers must have a MN hemp license or if obtaining products out of state must be from a retailer USDA approved.
- Retailers selling these products must have a current city license.
- Licensing fee of \$8,000 – \$10,000. Applicants will undergo a background check (at their expense), pay the fee and submit proof of insurance to the city. Annual compliance checks would be performed by the city.
- Licenses to sell these products are non-transferable from person to person or place to place.
- We recommend limiting retailers to commercial zoning only.
- We are recommending prohibiting restaurants with an on-sale license to sell these products.
- Retailers that sell products containing THC must have signage limiting sales to those 21 or older.
- Retailers selling THC products must have product behind a barrier, which would require an employee to hand it to them.
- Retailers must have a process verifying age by photo ID of customer purchasing product to age 21 or older.
- No retail sales by use of temporary sales or vending machine sales.

- No retail may offer sampling of products.
- No THC sales at any City of Hastings events that require a special permit by the city. Ex: Rivertown Days, Rivertown Live, Gobble Gait, etc.
- Retailers cannot have a drive-up window or use delivery sales.

The commission is prepared to offer rationale on any these recommendations.

The Public Safety Committee (Fox, Leifeld) met Jan. 30, 2023 to hear from PSAC on their THC ordinance recommendations. The committee would like to move forward with the ordinance to contain the following information:

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