

ORDINANCE NO. 2022-11
CITY OF OTTERTAIL
AN ORDINANCE REGULATING THE SALE OF
TETRAHYDROCANNABINOL PRODUCTS IN
THE CITY OF OTTERTAIL

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

TITLE XI.: AMENDMENT OF MUNICIPAL CODE, BUSINESS REGULATIONS. Title XI of the Ottertail Municipal Code is hereby amended by adding a new Chapter 115, Tetrahydrocannabinol Products, regulating the sale of tetrahydrocannabinol products in the City of Ottertail, as follows:

CHAPTER 115: - TETRAHYDROCANNABINOL PRODUCTS

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§ 115.01– PURPOSE, FINDINGS 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 Minn. Stat. § 151.72 (“THC Products”) for the following reasons:

- (a) The City recognizes that, based on the most reliable and up-to-date scientific evidence, the rapid introduction of newly legalized adult-use THC products, presents a significant potential threat to the public health, safety, and welfare of the residents of Ottertail, and particularly to youth.
- (b) The City has the opportunity to be proactive and make decisions that will mitigate this threat and reduce exposure of young people to the products or to the marketing of these products and improve compliance among THC product retailers with laws prohibiting the sale or marketing of THC products to minors.

- (c) A local regulatory system for THC product retailers is appropriate to ensure that retailers comply with THC product laws and business standards of the City of Ottertail to protect the health, safety, and welfare of our youth and most vulnerable 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. Stat. § 151.72, subd. 3(c)), comply with certain packaging and labeling requirements to protect children and youth (*Id.*, subd. 5), and meet certain potency and serving size requirements (*Id.*, subd. 5a).
- (e) State law authorizes the Board of Pharmacy to adopt product and testing standards in part to curb the illegal sale and distribution of THC products and ensure the safety and compliance of commercially available THC products in the state of Minnesota.
- (f) State law does not preempt the authority of a local jurisdiction to adopt and enforce local ordinances to regulate THC product businesses including, but not limited to, local zoning and land use requirements and business license requirements.
- (g) A requirement for a THC product retailer license will not unduly burden legitimate business activities of retailers who sell or distribute THC products to adults but will allow the City of Ottertail to regulate the operation of lawful businesses to discourage violations of state and local THC Product-related laws.
- (h) In making these findings and enacting this ordinance, it is the intent of the Ottertail City Council to ensure responsible THC product retailing, allowing legal sale and access without promoting increases in use, and to discourage violations of THC Product-related laws, especially those which prohibit or discourage the marketing, sale, or distribution of THC products to youth under 21 years of age.

115.02 – 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:

CANNABINOIDS DERIVED FROM HEMP A product containing non intoxicating cannabinoid maybe be sold for human or animal consumption if all of the requirements are met. Any retail of a product under definition of **CANNABINOIDS DERIVED FROM HEMP** must follow M.S. §151.72 as it may be amended from time to time.

COMPLIANCE CHECKS. The system the City uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this article. Compliance checks may also be conducted by the City or other units of government for educational, research, and training purposes, or for investigating or enforcing Federal, State, or local laws and regulations relating to licensed products.

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

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.

MOVABLE 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 PRODUCTS Any Product that contains more than trace amounts of tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under Minnesota Statutes, section §151.72, as it may be amended from time to time. Licensed product does not include medical cannabis and defined in Minnesota Statutes, section §152.22, subdivision 6 as may be amended from time to time.

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.

§ 115.03 – 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.

§ 115.04 – LICENSE.

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

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.

- (d) **Term.** All licenses issued under this article shall be valid until December 31 of the year of issue.
- (e) **Revocation or Suspension.** Any license issued under this article may be revoked or suspended as provided in article 110.07 of chapter XI.
- (f) **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.
- (g) **Display.** All licenses shall be posted and displayed in plain view of the general public on the licensed premises.
- (h) **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.
- (i) **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.

§ 115.05 – 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 other regulations contained in state law and city code, including but not limited to chapter 110 of this city code as applicable to a respective otherwise licensed business enterprise regarding operational requirements and restrictions and prohibited acts and sales, shall not be limited by virtue of issuance of a license under this article and shall be complied with as applicable to the otherwise licensed business enterprise selling or offering for sale THC products to the same extent as if THC products were not sold or offered for sale by the otherwise licensed business enterprise. 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.

§115.06 – FEES.

No license shall be issued under this article until the appropriate license fee shall be paid in full. The fee for a license under this article shall be established by the City Council and adopted by resolution 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. The license fee shall be in addition any fee required by any applicable state agency and shall not exceed any statutory maximum. No part of any license or investigation fee shall be refunded unless an application is withdrawn before any action is taken thereon. Any time an additional investigation is required because of a change in ownership or control of a business or for any other reason, the licensee shall pay an additional investigation fee to be determined by the City by resolution.

§ 115.07 – INELIGIBILITY AND BASIS FOR DENIAL OF LICENSE

(a) *Ineligibility.*

(1) *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.

(2) *Exclusive Liquor Store.* No license shall be issued to an exclusive liquor store as defined in Minnesota Statutes, section 340A.101, subdivision 10.

(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 the age of 21 years.

(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 years for any violation of or has otherwise been adjudicated to have violated a Federal, State, or local law, other ordinance, provision, or other regulation relating to the licensed products, but not including possession or sale of licensed products.

(4) The applicant has been convicted of a violation or otherwise adjudicated to have violated this article within the past five years.

(5) The applicant has had a license to sell licensed products suspended or revoked during the 12 months preceding the date of application, or the applicant has or had an interest in another premises authorized to sell licensed

products, whether in the City or in another jurisdiction, that has had a license to sell licensed products suspended or revoked during the same time period, provided the applicant had an interest in the premises at the time of the revocation or suspension, or at the time of the violation that led to the revocation or suspension.

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

(7) The applicant, in the judgement of the Council, is not the real party in interest or beneficial owner of the business to be operated, under the license. Such determination shall be made on a case-by-case basis after examination of all pertinent facts and after consideration of the totality of the circumstances.

(8) 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.

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

(d) 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. If an action has been commenced pursuant to the provisions of Minn. Stats. Ch. 278, questioning the amount or validity of taxes, the Council may, on application by the licensee, waive strict compliance with this provision; no waiver may be granted, however, for taxes, or any portion thereof, which remain unpaid for a period exceeding one year after becoming due unless such one-year period is extended through no fault of the licensee.

§115.08 – PROHIBITED ACTS

(a) *In general.* No person shall sell or offer to sell any licensed product:

(1) By means of any type of vending machine.

(2) By means of self-service merchandising.

(3) 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.

(b) *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. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

(c) *Legal Age; Sale.* No person under the age of 18 shall be allowed to sell any licensed product.

(d) *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.

(e) *Samples Prohibited.* No person shall distribute samples of any licensed product free of charge or at a nominal cost.

(f) *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.

(g) *Hours and Days of Sale.* No sale of THC products may be made between 10:00 p.m., and 8:00 a.m. Monday through Sunday

§ 115.09 – ADDITIONAL REQUIREMENTS

(a) *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.

(b) *Minimum Clerk Age.* Individuals employed by a licensed retail establishment under this article must be at least 18 years of age to sell edible cannabinoid products.

§ 115.10– 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.

§ 115.11 – 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, 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. 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.

§ 115.12 – VIOLATION 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 \$250.00.

(2) *Second Violation Within 12 months.* The Council shall impose a civil fine not to exceed \$500.00.

(3) *Third Violation Within 12 months.* The Council shall impose a civil fine not to exceed \$1500.00.

(b) *Same-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 \$1,000.00 and suspend the license for not less than three days.

(2) *Second Violation Within 36 Months*. The Council shall impose a civil fine of \$2,000.00 and suspend the license for not less than ten consecutive days.

(3) *Third Violation Within 36 Months*. The Council shall impose a civil fine of \$5,000.00 and shall revoke the license for at least one year.

(c) *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.

§ 115.13 – EXCEPTIONS AND DEFENSES

Nothing in this article shall prevent the providing of licensed products to a person under the age of 21 as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this article for a person to have reasonably relied on proof of age as described by state law in Minn. Stat. § 340A.503, subd. 6.

§ 115.14 – 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.

(Ord. passed 11-29-2022)

Passed by the City Council of the City of Ottertail, Otter Tail County, Minnesota this 29th day of November 2022 and effective from and after its passage and publication.

Seal

Grobeck ___
Carlson ___
Windey ___
Hill ___
Grimes ___

Ron Grobeck, Mayor

Attest:

Amanda Thorson, Clerk-Treasurer