

Introduced by Council Member Sutherland.

Seconded by Council Member Brovold.

ORDINANCE NO. 186

AN ORDINANCE ADOPTING LICENSING REGULATIONS RELATING TO THE SALE OF EDIBLE CANNABINOID PRODUCTS WITHIN THE CITY OF BAGLEY, MINNESOTA

BE IT ORDAINED BY THE CITY OF BAGLEY, as follows:

SECTION 1: ADOPTION "CHAPTER 115: EDIBLE CANNIBINOID PRODUCTS" of the City of Bagley Municipal Code is hereby added as follows:

ADOPTION

115. EDIBLE CANNIBINOID PRODUCTS(*Added*)

SECTION 2: ADOPTION "115.1 Purpose and Intent" of the City of Bagley Municipal Code is hereby *added* as follows:

ADOPTION

115.1 Purpose and Intent(*Added*)

The Minnesota Legislature adopted M.S. § 151.72, making it legal to sell certain edibles and beverages infused with tetrahydrocannabinol (THC), the cannabis ingredient extracted from hemp. The City Council deems it necessary to provide for the regulation of edible cannabinoid products in order to protect the public health safety and welfare and to ensure that edible cannabinoid products are sold in accordance with State Law.

SECTION 3: ADOPTION "115.2 Adoption Of State Law By Reference" of the City of Bagley Municipal Code is hereby added as follows:

A D O P T I O N

115.2 Adoption Of State Law By Reference(*Added*) The provisions of M.S. § 151.72, as it may be amended from time to time, are hereby adopted by reference and are made a part of this section as if set out in full.

SECTION 4: ADOPTION "115.3 Definitions" of the City of Bagley Municipal Code is hereby added as follows:

ADOPTION

115.3 Definitions(Added) In addition to the definitions contained in M.S. § 151.72, as it may be amended from time to time, the following terms are defined for purposes of this section.

CITY. The City of Bagley.

COMPLIANCE CHECKS. The system used by the city, or other applicable governmental unit, to investigate and ensure that those authorized to sell edible cannabinoid products are following and complying with the requirements of this chapter. COMPLIANCE CHECKS may involve the use of persons under the age of 21 authorized by this chapter. COMPLIANCE CHECKS may also be conducted by other units of government for the purpose of enforcing appropriate state and local laws and regulations relating to edible cannabinoid product.

SELF-SERVICE MERCHANDISING. Open displays of edible cannabinoid products in any manner where any person has access to the edible cannabinoid product without the assistance or intervention of the licensee or the licensee's employee. Assistance or intervention means the actual physical exchange of the licensed product between the customer and the licensee or employee.

VENDING MACHINE. Any mechanical, electric, or electronic, or other type of device which dispenses tobacco-related products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco-related product.

SECTION 5: ADOPTION "115.4 License" of the City of Bagley Municipal Code is hereby added as follows:

ADOPTION

115.4 License(Added)

A. License required. No person shall sell or offer to sell any edible cannabinoid product without first having obtained a license to do so from the city.

B. Application. An application for a license to sell edible cannabinoid products shall be made on a form provided by the city. Upon receipt of a completed application, the Clerk shall forward the application to the Police Department for the purpose of conducting a background check on the applicant. The Police Department shall have ten (10) days from receipt of a complete application to complete the background check. Upon completion of the background check, the Police Department shall forward the application and investigation results to the City Council for action at its next regularly scheduled meeting. If the Clerk, determines that an application is incomplete, he/she shall return the application to the applicant with notice of the information necessary to make the application complete.

C. Action. The City Council may either approve or deny the 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 Clerk, shall issued 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 decision.

D. License fee: \$500.00. No license shall be issued under this chapter until the appropriate license fee is paid in full. The annual fee for a license under this chapter shall be established in the city's ordinance establishing fees and charges, as may be amended from time to time. Initial license applications covering a period of less than one year shall be charged a fee calculated on a monthly pro rata basis.

E. Restriction on issuance. 1. No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the city are delinquent and unpaid. In the event an action has been commenced pursuant to the provisions of M.S. Ch. 278, as it may be amended from time to time, questioning the amount or validity of taxes, the Council may, on application by the licensee, waive strict compliance with this paragraph. No waiver may be granted, however, for taxes or any portion thereof which remain unpaid for a period exceeding one year after becoming due. 2. No license shall be issued for a premises within 500 feet of any school or church. The distance is to be measured from the closest side of the school or church to the closest side of the structure on the premises within which edible cannabinoid products are to be sold. 3. No license shall be granted if the applicant, responsible party, owner, manager or any other person involved with the licensee: a. Is under the age of 21; b. Who is not of good moral character and repute; and c. Who has been convicted, within five years prior to the application for such license, of any violation of any law of the United States, this state or any other state or territory or of any local ordinance regarding the manufacture, sale or distribution of edible cannabinoid products.

F. Term. All licenses issued under this chapter shall expire on December 31 of each year.

G. Revocation or suspension. Any license issued under this chapter may be revoked or suspended as provided in this chapter.

H Transfers. All licenses issued under this chapter shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

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

J. Renewals. The renewal of a licenses issued under this chapter shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but not more than 60 days before the expiration of the current license.

K. Issuance as privilege and not a right. The issuance of a license issued under this chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

SECTION 6: ADOPTION "115.5 Unlawful Acts" of the City of Bagley Municipal Code is hereby added as follows:

A D O P T I O N

115.5 Unlawful Acts(*Added*)

A. Unlawful sales. It shall be a violation of this chapter for any person to sell any edible cannabinoid product:

1. To any person under the age of 21 years;
2. By means of any type of vending machine;
3. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the edible cannabinoid product and whereby there is not a physical and in person exchange of the edible cannabinoid product between the licensee or the licensee's employee, and the customer; or
4. That is in violation of M.S. § 151.72, as it may be amended from time to time.

B. Use of false identification. It shall be a violation of this chapter for any person to attempt to disguise his/her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

C. Unlawful purchases. It shall be unlawful for any person who is under the age of 21 years to purchase any edible cannabinoid product. Persons acting under the direct supervision of the city, law enforcement, or other governmental unit and which are actively engaged in a compliance check of the licensed premises are exempted from this provision while engaged in the compliance check.

D. Distribution of edible cannabinoid product samples. It shall be unlawful for any licensee or any person, business or retailer to distribute or give away edible cannabinoid products free of charge to any person on any right-of-way, park, playground, school or other property owned by the city.

SECTION 7: ADOPTION "115.6 Licensee Responsibility" of the City of Bagley Municipal Code is hereby added as follows:

A D O P T I O N

115.6 Licensee Responsibility(*Added*)

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of edible cannabinoid products on the licensed premises, and the sale of such an item by an employee shall also be considered a sale by the license holder. The license holder shall at all times be responsible for how edible cannabinoid products are offered for sale on the licensed

premises and for ensuring that such edible cannabinoid products are compliant with this chapter and state and federal law. Violations of this code, state law, or other applicable law or regulation may be enforced against the license holder and any other responsible individual. Nothing in this section shall be construed as prohibiting such separate enforcement actions related to a single behavioral incident nor shall the imposition of any penalty act as a bar to the prosecution, licensing action, or other enforcement action against another.

SECTION 8: ADOPTION "115.7 Compliance Checks; Inspections" of the City of Bagley Municipal Code is hereby added as follows:

ADOPTION

115.7 Compliance Checks; Inspections(Added)

All licensed premises shall be open to inspection by the City Police Department or other authorized city official during regular business hours. The City shall conduct compliance checks from time to time but at least twice per year. The City will conduct at least one compliance check that involves the participation of a person between the ages of 18 and 20 to enter the licensed premises to attempt to purchase edible cannabinoid products. Persons under the age of 21 used for compliance checks shall not be guilty of an unlawful purchase or attempted purchase, not the unlawful possession of edible cannabinoid products when those items are obtained or attempted to be obtained as part of the compliance check. No person under the age of 21 used in compliance checks shall attempt to use a false identification misrepresenting the persons age and all persons under the age of 21 lawfully engaged in a compliance check shall answer all questions about their age asked by the licensee or his/her employee and shall produce any identification, if any exists, for which he/she is asked.

SECTION 9: ADOPTION "115.8 Violations And Penalty" of the City of Bagley Municipal Code is hereby added as follows:

ADOPTION

115.8 Violations And Penalty(Added)

A. Violations a misdemeanor. A violation of this chapter shall be a misdemeanor. Nothing in this chapter shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this chapter.

B. Violations. 1. Notice. Upon discovery of a suspected violation, and in addition to any criminal sanction, the alleged violator may be issued, either personally or by mail, an administrative offense citation setting forth the alleged violation and the alleged violator's right to be heard on the accusation. 2. Hearing. The person accused of violating this chapter may request a hearing in writing within 14 days of receipt of the notice of violation and a hearing shall be scheduled, the time and place of which shall be provided to the accused violator. 3. Hearing of Officer. The City Council, or its designee, shall appoint a person to serve as the hearing officer. 4. Decision. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the

hearing officer's reasons for finding a violation and the penalty to be imposed under this section, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the acquitted accused violator. 5. Appeal. Appeals of any decision made by the hearing officer shall be made to the City Council in writing within seven days of receipt of the hearing officer's decision. The decision of the City Council shall be final. 6. Continued violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

C. Administrative penalties, individuals. If a person who is not a licensee is found to have violated this chapter, the person shall be charged an administrative penalty of \$50 for a first violation of this chapter, \$100 for a second violation within a 12-month period and \$150 for a third or subsequent violation within a 12-month period.

D. Administrative penalties, licensee. Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative penalty of \$500 for a first violation of this chapter, \$1,000 for a second violation at the same licensed premises within a 36-month period and \$2,000 for a third or subsequent violation at the same location within a 36-month period. After the third violation, the license is automatically suspended for seven days commencing the day following the date of exhaustion of any right of appeal, contemplated herein, of the third offense. In addition to the seven day suspension, the City Council shall conduct a hearing at the next regular Council meeting following the third violation to determine whether the license should be suspended longer than seven days. Any additional suspension may be for the remainder of the license period or 90 days, whichever is greater. Upon a fourth violation at the same location within a 36-month period, the license will be revoked.

SECTION 10: ADOPTION "115.9 LICENSE BACKGROUND CHECKS" of the City of Bagley Municipal Code is hereby added as follows:

115.9 Licensing Background Checks (*Added*)

A. Conducting the criminal history background investigation. In order to screen license applicants under this chapter, the Police Department is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehensions Computerized Criminal History information system in accordance with BCA policy. Any data that is accessed and acquired shall be maintained at the Police Department under the care and custody of the chief law enforcement official or his or her designee. A summary of the results of the Computerized Criminal History data may be released by the Police Department to the licensing authority, including the City Council, the City Clerk or other city staff involved in the license approval process.

B. Before the investigation is undertaken, the applicant must authorize the Police Department by written consent to undertake the investigation. The written consent must fully comply with the provisions of M.S. Ch. 13, as it may be amended from time to time, regarding the collection, maintenance and use of the information. Except for the positions set forth in M.S. § 364.09, as it may be amended from time to time, the city will not reject an applicant for a license on the basis of the applicant's prior conviction unless the crime is directly related to the license sought and

the conviction is for a felony, gross misdemeanor, or misdemeanor with a jail sentence. If the city rejects the applicant's request on this basis, the city shall notify the applicant in writing of the following: 1. The ground and reasons for the denial; 2. The applicant compliant and grievance procedure set forth in M.S. § 364.06, as it may be amended from time to time; 3. The earliest date the applicant may reapply for the license; and 4. That all competent evidence of rehabilitation will be considered upon reapplication.

Section 19. EFFECTIVE DATE

This ordinance shall take effect upon the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat., § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Voting in the negative: None

Voting in the affirmative: Sutherland, Brovold, Bonik
and Merschman

Passed this 9th day of November, 2022.

ATTEST: Faye M Jacobs
City Clerk

[Signature]
Mayor

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