

City of Austin



500 Fourth Avenue NE  
Austin, Minnesota 55912-3773  
507-437-9940  
[www.ci.austin.mn.us](http://www.ci.austin.mn.us)

## **EDIBLE CANNABINOID LICENSE**

### **NEW LICENSE REQUIREMENTS**

- General Application for License
- \$10 application fee
- \$1000 annual fee - Pro-rated to \$500 minimum
- Completed Workers' Compensation Compliance Form
- *Per Minnesota statute, effective October 2, 2023, all establishments (including exclusive liquor stores) that sell hemp-derived cannabinoid products must register with the State of Minnesota before they sell any hemp-derived cannabinoid products*
- *Verify with the Minnesota Department of Health website regarding additional changes that have been made regarding the sale of hemp-derived cannabinoid products in 2023*

OFFICE USE ONLY

Receipt No. \_\_\_\_\_

Date: \_\_\_\_\_

iWorq Entry: \_\_\_\_\_



City of Austin
General Application for License
City of Austin ♦ 500 4th Avenue NE
Austin, MN 55912
507-437-9940
www.ci.austin.mn.us
Submit to licensing@ci.austin.mn.us

New License [ ]

Renewal [ ]

Transfer [ ]

SECTION A. License Information

License Type: \_\_\_\_\_ Fee: \_\_\_\_\_

SECTION B. Applicant Information

Applicant's First Name: \_\_\_\_\_ Applicant's Middle Name: \_\_\_\_\_ Applicant's Last Name: \_\_\_\_\_

Type of Entity: [ ] Individual Owner [ ] LLC [ ] Corporation [ ] Partnership

Business/ Legal Name: \_\_\_\_\_ Business Phone: \_\_\_\_\_ Personal Phone: \_\_\_\_\_

DBA: \_\_\_\_\_ Email Address: \_\_\_\_\_

DBA Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Correspondence Mailed To: [ ] Corporate [ ] DBA

SECTION C. Corporations, LLCs and partnerships must complete this section

Corporate Name: \_\_\_\_\_ Corporate Phone Number: \_\_\_\_\_

Corporate Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Officer Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Officer Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

**SECTION D. Tax Identification Information**

Pursuant to Minnesota Statute 270C.72, the licensing authority is required to provide to the Minnesota Commissioner Revenue your Minnesota business tax identification number and the social security number of each license applicant. Under the Minnesota Government Data Practices Act and the Federal Privacy Act of 1974, we are required to advise you of the following regarding use of this information:

- This information may be used to deny the issuance, renewal or transfer of your license in the event you owe the Minnesota Department of Revenue delinquent taxes, penalties, or interest;
- Upon receiving this information, the City of Austin will supply it only to the Minnesota Department of Revenue. However, under the Federal Exchange Information Agreement, the Department of Revenue may supply this information to the Internal Revenue Service.
- **Failure to supply this information may jeopardize or delay the processing of your license issuance or renewal application.**

Applicant's Name (Last, First, MI):		Social Security Number:	
Home Address:	City:	State:	ZIP:
Business Name:			
Business Address:	City:	State:	ZIP:
Minnesota Business Tax ID Number:	Federal Tax ID Number:		

**SECTION E. Certification of Compliance for Minnesota Workers' Compensation**

Minnesota Statute Section 176.182 requires every state and local licensing agency to withhold the issuance or renewal of a license or permit to operate a business in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of MSS Chapter 176. If the required information is not provided or is falsely stated, it shall result in a \$2000 penalty assessed against the applicant by the commissioner of the Department of Labor and Industry.

Insurance Company Name (not the agent):	Policy Number:
Dates of Coverage: _____ to _____	

**OR**

I am not required to have workers' compensation liability coverage because:

- I have no employees
- I am self-insured (include permit to self-insure)
- I have no employees who are covered by the workers' compensation law (these include spouse, parents, children, and certain farm employees)

Government Data Practices Act: The data you supply on this form will be used to process the license you are applying for. You are not legally required to provide this data, but we will not be able to process the license without it. Some of the data will be classified as public data if and when the license is granted. Private financial information including tax identification numbers and social security numbers are classified as private data and will be available to governmental personnel and other governmental agencies whose access is necessary to perform their official duties.

*I certify that the information provided on this form is accurate and complete. If I am signing on behalf of a business, I certify that I am authorized to sign on behalf of the business.*

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 SIGNATURE

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 POSITION

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 DATE SIGNED

# **AUSTIN POLICE DEPARTMENT**

## **LAW ENFORCEMENT CENTER**

201 1<sup>ST</sup> STREET NE STE 2 AUSTIN MN 55912 (507) 437-9400 FAX: (507) 437-9546



09-08-2022

Austin Tobacco License Holders or others with an interest in selling cannabinoid products in the City of Austin,

On 9-6-22, the Austin City Council passed an update to the current ordinance covering tobacco licensing. This is under ordinance 6.34. A summary of those changes is included with this letter. These changes were made in order to facilitate a licensing structure for edible cannabinoid products. What an edible cannabinoid product per ordinance directs to the definition under Minnesota State Statute 151.72. Things that are important to note.

- 1.) A separate license is required to sell edible cannabinoid products. The City Clerk's Office will have those applications. This fee was set by Council at \$1,000.
- 2.) Edible cannabinoid products are those products defined as such under Minnesota State Statute 151.72. (c) "Edible cannabinoid product" means any product that is intended to be eaten or consumed as a beverage by humans, contains a cannabinoid in combination with food ingredients, and is not a drug.
- 3.) This includes CBD, THC, and Delta 8,9,10 products amongst others. If it has cannabiniol chemical in it, a license is required.
- 4.) An edible cannabinoid product must not contain more than five milligrams of any tetrahydrocannabinol in a single serving, or more than a total of 50 milligrams of any tetrahydrocannabinol per package. This is referring to THC products which might also be labeled Delta 8, 9, or 10.
- 5.) This applies only to nonintoxicating cannabinoids or those with THC (with-in certain limits) as those are the only ones legally approved for sale in Minnesota.
- 6.) A guide from the Minnesota Pharmacy Board will be included with the license application as well a checklist the Austin Police Department would use in regulating these products.
- 7.) The ordinance will be published on 9-10-22. It will take effect on 9-18-22.

Respectfully,

Chief David McKichan

AN EQUAL OPPORTUNITY EMPLOYER

## SUMMARY OF ORDINANCE NO. 709

### ORDINANCE AMENDING AUSTIN CITY CODE SECTION 6.34 TO ACCOMMODATE THE ISSUANCE OF LICENSES FOR AND THE ENFORCEMENT OF REGULATIONS PERTAINING TO EDIBLE CANNABINOID PRODUCTS

**SUMMARY FOR PUBLICATION PURSUANT TO MINN.STAT. § 412.191.subd. 4.**  
**A full copy of the Ordinance is available for pickup at the City Clerk's Office**  
**located at 500 4<sup>th</sup> Avenue NE, Austin, MN 55912,**  
**or a copy may be requested to be mailed by USPS by calling 507-437-9940.**

The City Council of the City of Austin, Minnesota, recently adopted revisions to § 6.34 of the Austin City Code of Ordinances for the purposes of creating and issuing licenses for the sale of Edible Cannabinoid Products, as defined under Minnesota Statutes § 151.72, and establishing and enforcing regulations related to the sale of those Products. The changes to said § 6.34 are reasonably summarized as follows:

§ 6.34, Subd. 1, now includes a new Para. B describing the scientific, public policy, and other grounds for regulating the retail sale of Edible Cannabinoid Products.

§ 6.34, Subd. 2, now includes minor revisions to accommodate the addition of the new Edible Cannabinoid Products license to the prior compliance checks, introducing the definition of “Edible Cannabinoid Product” (identical to state statute), and clarifying the definition of “Sell or Sale” of the product to include giving product away as an incentive to purchase other products.

§ 6.34, Subd. 3, now includes minor revisions to create the new License for retail sale of Edible Cannabinoid Products that is separate and distinct from the prior License for retail sale of Tobacco Products and Tobacco Related Devices. The new license is subject to the same requirements as the Tobacco license.

§ 6.34, Subd. 6, now includes minor revisions to clarify that the existing prohibition against selling “marijuana” products is not intended to apply to lawfully manufactured and packaged Edible Cannabinoid Products in compliance with the amended ordinance

§ 6.34, Subd. 11, now includes minor revisions clarifying what constitutes an “illegal sale,” and adding the following offenses related to underage persons and Edible Cannabinoid Products: “illegal possession,” “illegal use,” and “illegal procurement.” Further amendments add the offense of using false identification to purchase licensed products. Further, retailers of Edible Cannabinoid Products are required to secure their inventory of Edible Cannabinoid Products by placing them either behind a checkout counter where the public is not permitted; inside a locked display case; or within six feet of an unobstructed view of an attended checkout counter. All Edible Cannabinoid Products must comply with Minnesota Statutes § 151.72. Finally, the sale of Edible Cannabinoid Products is limited to Sundays between the hours of 11:00 a.m. and 6:00 p.m., or Mondays through Saturdays between the hours of 8:00 a.m. and 10:00 p.m.. Sales are prohibited Thanksgiving Day, Christmas Day, and after 8:00 p.m. on Christmas Eve.

§ 6.34, Subd. 13, now includes minor revisions to include a method for challenging any confiscation of licensed products deemed “contraband” under state law, and to clarify that the former enforcement mechanisms for Tobacco Products now apply to Edible Cannabinoid Products.

**ORDINANCE NO. 709**

**AN ORDINANCE OF THE CITY OF AUSTIN,  
MINNESOTA AMENDING CHAPTER 6.34 OF THE CITY CODE  
TOBACCO AND EDIBLE CANNABINOID PRODUCTS**

The Council of the City of Austin does ordain:

Section 1. Austin City Code Chapter 6, Section 6.34 is hereby repealed.

Section 2. A new is hereby Chapter 6, Section 6.34 enacted and should read as follows:

§ 6.34 TOBACCO and EDIBLE CANNABINOID PRODUCTS.

Subd. 1. *Purpose and intent.*

A. *Tobacco.* Because the city recognizes that many retailers sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine and lobelia delivery products to persons under the age of 21; and because sales to persons under the age of 18 are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts, have shown that youth use of any commercial tobacco product has increased to 26.4% in Minnesota; and because nearly 90% of cigarette users begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because commercial tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this section shall be intended to regulate the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine and lobelia delivery devices for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious effects associated with the use and initiation of commercial tobacco products and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.

B. *Edible Cannabinoid Products.* The rapid introduction of newly legalized Edible Cannabinoid Products (defined below), presents a significant potential threat to the public health, safety, and welfare of the residents of the City of Austin, and particularly to youth. It is vital to take reasonable steps to mitigate this threat and reduce exposure of young people to the products and the marketing of the products. The United States Surgeon General has issued an advisory to alert the public to the known and potential harms to developing brains posed by the increasing availability of highly potent tetrahydrocannabinol in multiple,

concentrated forms, and the reasons for concerns with the increasing use of such chemicals by pregnant women, adolescents, and youth. The National Academies of Science, Engineering and Medicine notes that the growing acceptance, accessibility, and use of tetrahydrocannabinol and its derivatives have raised important public health concerns, while the lack of aggregated knowledge of tetrahydrocannabinol's health effects has led to uncertainty about the impact of its use. Nearly 33-million Americans ages 12 and older reported using cannabis in the past 30 days, and nearly 50-million Americans reported use in the past year. Ninety percent of adult use is recreational. These statistics are increasing. Cannabis use during adolescence, especially products high in tetrahydrocannabinol, or heavy use in lower doses, is associated with suicide attempts, high school drop-outs, and a higher likelihood of use of other illicit drugs and experiencing mental health impairment. The perception of risk from cannabis consumption has been steadily increasing the likelihood of first-time use. Vaping of marijuana by youth age 18-22 doubled between 2017 and 2018. In 2018, national marijuana use among full-time college students reached a 35-year high. Nationally, there have been significant increases in cannabis use amount those age 12 and older, but especially among those age 18-22, and cannabis use rates by youth age 18-22 are higher in states with legal adult-use cannabis than in non-legal states. Use during pregnancy has risen substantially between 2000 and 2014, increasing the risk of low birth weight. In 2016, far more 11<sup>th</sup> grade students in Minnesota reported using marijuana in the past 30 days than those reporting cigarette smoking. In 2017, the National Academies of Sciences, Engineering and Medicine reviewed the available scientific evidence on the health effects of cannabis and cannabis-derived products, and while noting substantial evidence of therapeutic effectiveness of medicinal cannabis for a limited number of indications, noted evidence of association of cannabis use with harm in a wide range of areas. This study found "substantial evidence" to support the following conclusions: (a) Initiation of use at an earlier age or more frequent use is a risk factor for the development of problem cannabis use; (b) maternal cannabis smoking during pregnancy is associated with low birth weight in offspring; (c) Cannabis use is associated with increased risk of motor vehicle crashes; (d) Cannabis use increases the risk of development of schizophrenia and other psychoses, with the highest risk among the most frequent users; (e) Long-term cannabis smoking is associated with worse respiratory symptoms and more frequent chronic bronchitis episodes; and (f) increases in cannabis use frequency are associated with developing problem cannabis use. This study found less conclusive, but still worrisome, emerging evidence for a wide range of other harms, including impaired academic achievement and

educational outcomes, development of substance use disorders, suicide completion, high blood pressure and increased unemployment, among others. The findings of this study and other research lead us to conclude that (a) legalization of adult-use cannabis/tetrahydrocannabinol should be carried out cautiously, in such a way as to prevent undue exposure of youth and expansion of problem use; (b) that unfettered expansion and diversification of products and of marketing are not prudent; and that, (c) like tobacco and alcohol, cannabis/ tetrahydrocannabinol use may pose significant risks to public health, especially when initiated early in life. Minnesota has recognized the danger of cannabis use among youth by prohibiting the sale of Edible Cannabinoid Products to those under age 21 (Minn. Stat. § 151.72, subd. 3(c)) and by requiring that edibles be packaged without appeal to children and in child-resistant containers (Minn. Stat. § 151.72, subd. 5a(b)). Many years of alcohol and tobacco retailing, which are likely to have parallels in Edible Cannabinoid Product retailing, have demonstrated that Minnesota retailers continue to sell alcohol and tobacco to underage consumers, as evidenced by the following: (a) Among minors nationwide who smoked cigarettes in 2011, 14% percent had obtained their own cigarettes by buying them in a store or gas station; and (b) 14.5% of minors nationwide who used alcohol in the past 30 days in 2012 had obtained the alcohol themselves in an alcohol retail outlet. The density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates. Multiple studies have found that the density of tobacco retailers near schools was positively associated with the prevalence of students reporting smoking. A recent study found that higher dispensary density in states with legal cannabis laws was associated with higher likelihood of youth ages 14-18 experimenting with cannabis vaping and edibles. Home delivery of alcohol products has been associated with increased rates of purchase by minors. Unintentional exposure to marijuana by children under age 10 resulting in seeking care at poison centers in Colorado increased by 34% between 2009 and 2016, including increases from the two years before to the two years after legalization. Children and young people are particularly influenced by cues suggesting tobacco smoking is acceptable, which holds relevance for tetrahydrocannabinol consumption once legalized. Young people are much more likely to use candy- and fruit-flavored tobacco and alcohol products than similar non-flavored products. The U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction and similar findings are expected for tetrahydrocannabinol



consumption once legalized. The federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy and fruit-flavored cigarettes, and in 2020 FDA guidance prioritized enforcement against flavored e-cigarettes largely because these flavored products were marketed to youth and young adults, and younger smokers were more likely to have tried these products than older smokers; and similar findings are expected for flavored tetrahydrocannabinol products. Edible Cannabinoid Products have become increasingly common and are available in a variety of flavors and forms that appeal to children and young adults, including cotton candy, lollipops, gummy bears, brownies, chocolate chip cookies, “pot” tarts, Rice Krispies™ bars, and bubble gum, apple, cherry, chocolate, grape, peach, strawberry, and vanilla flavors. The potency of cannabis and cannabis products has increased dramatically over the past decades from 4% tetrahydrocannabinol (THC) to 15-30+% THC in flower and up to 90% or more in extracted products, and growing evidence clearly supports greater risk from these products. Daily use of cannabis products over 10% THC has been associated with fivefold higher odds of developing psychosis, and such daily use has greatly increased in the past decade amongst youth. The U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students dramatically increased from 2017 to 2018, up 78% among high schoolers and 48% among middle schoolers. Use of similar devices for consumption of cannabis by youth has been rapidly increasing in Minnesota with 18.2% of high school students reporting they have used an e-cigarette device to vape marijuana. While the sale of Edible Cannabinoid Products has been legalized in Minnesota, it continues to be a Schedule I prohibited substance federally and therefore presents special challenges in multiple federally regulated spheres including banking, broadcasting and immigration. Youth exposure to advertising of products such as alcohol, tobacco and food has been shown to create positive attitudes, brand identification, and an increased likelihood of initiation and use of these products. The City Council finds that a local regulatory system for Edible Cannabinoid Product retailers is appropriate to ensure that retailers comply with the cannabis laws and business standards of the City of Austin to protect the health, safety, and welfare of our youth and most vulnerable residents. The City of Austin has the opportunity to be proactive and make decisions that improve compliance among Edible Cannabinoid retailers with laws prohibiting the sale or marketing of cannabis products to underage persons. Research has demonstrated that local tobacco retail ordinances dramatically reduce youth access to cigarettes, and therefore provide a useful model for

preventing sales to youth of cannabis products. A review of U.S. jurisdictions with strong tobacco retailer licensing ordinances showed that youth cigarette and e-cigarette use was lower than in jurisdictions with weaker tobacco retailer licensing ordinances. A requirement for an Edible Cannabinoid Product Retailer Permit will not unduly burden legitimate business activities of retailers who sell or distribute Edible Cannabinoid Products to adults, but will allow the City of Austin to regulate the operation of lawful businesses to discourage violations of state and local cannabis-related laws. The City of Austin has a substantial interest in promoting compliance with state and local laws intended to regulate sales and use of Edible Cannabinoid Products and promoting compliance with laws prohibiting sales of such products to underage persons. Low prices are known to facilitate use of tobacco by minors and while prices of Edible Cannabinoid Products should not be so high as to promote illicit sales, they should also not be artificially lowered through discounting or depressed by overproduction. Research demonstrates that youth are particularly price sensitive and responsive to changes in price, and in the case of tobacco, when cigarettes cost more, fewer adolescents start smoking, and similar findings are expected for Edible Cannabinoid Products. It is the intent of the City Council, in enacting this ordinance, to ensure responsible Edible Cannabinoid Product retailing, allowing legal sale and access, without promoting increases in use, and to discourage violations of cannabis-related laws, especially those which prohibit or discourage the marketing, sale or distribution of cannabis and cannabis products to youth under 21 years of age.

Subd. 2. *Definitions.* Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- A. ***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 section. Compliance checks conducted under this section must involve persons at least 17 years of age, but under the age of 21, who, with the prior written consent of a parent or guardian if the person is under the age of 18, attempt to purchase licensed products under the direct supervision of a law enforcement officer or an employee of the licensing authority. The age requirements for persons participating in compliance checks under this section shall not affect the age requirements in federal law for persons participating in federally required compliance checks of these locations.

- B. *ELECTRONIC DELIVERY DEVICE.*** Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic delivery device shall include, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. Electronic delivery device shall include any component part of a product, whether or not marketed or sold separately. Electronic delivery device shall not include any product that has been approved or certified by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- C. *EDIBLE CANNABINOID PRODUCT.*** A product or substance defined as an “Edible Cannabinoid Product under Minnesota Statutes § 151.72 (2022).
- D. *LICENSED PRODUCTS.*** The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product. This term also includes any lawful Edible Cannabinoid Product.
- E. *LOOSIES.*** The common term used to refer to single or individually packaged cigars or cigarettes, or any other licensed product that has been removed from its intended retail packaging and offered for sale. ***LOOSIES*** does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least \$4 per cigar.
- F. *MINOR.*** Any natural person who has not yet reached the age of 18 years.
- G. *MOVEABLE PLACE OF BUSINESS.*** Any form of business operated out of a kiosk, truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.
- H. *NICOTINE OR LOBELIA DELIVERY PRODUCT.*** Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a tobacco or an electronic delivery device as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco-cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.
- I. *RETAIL ESTABLISHMENT.*** Any place of business where licensed products are available for sale to the general public. The phrase shall include but not be limited to

grocery stores, tobacco products shops, convenience stores, gasoline service stations, bars, and restaurants.

- J. ***SELL or SALE.*** Any transfer of goods for money, trade, barter or other consideration, including any provision of goods for free as part of a sale of other goods or services.
- K. ***SELF-SERVICE MERCHANDISING.*** Open displays of licensed products in any manner where any person shall have access to the licensed products, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, or tobacco related device between the customer and the licensee or employee. The phrase shall not include vending machines.
- L. ***SMOKING.*** Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying or using an activated electronic delivery device.
- M. ***TOBACCO or TOBACCO PRODUCTS.*** Any products containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, sorted, sniffed, or ingested by any other means or any component, part, or accessory of a tobacco product, including, but not limited to, any substance or item containing tobacco leaf, cigarettes; cigars; pipe tobacco; snuff, fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plus cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking or both for chewing and smoking. ***TOBACCO PRODUCTS*** excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
- N. ***TOBACCO RELATED DEVICES.*** Any tobacco product as well as a pipe, rolling papers, wraps or other device intentionally designed or intended to be used with tobacco products. Tobacco related device includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco related devices may or may not contain tobacco.

O. **VENDING MACHINE.** Any mechanical, electric or electronic, or other type of device which 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 tobacco, tobacco product or tobacco related device.

Subd. 3. *License.*

- A. *License required.* No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city. There shall be a separate license for selling Tobacco Products/Tobacco Related Devices, and for selling Edible Cannabinoid Products. Each such license shall identify the premises upon which the licensed products will be sold. All sales of licensed products shall occur within the licensed premises. Every licensee under this Section shall be responsible for the acts or omissions regulated under this Section.
- 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 and telephone numbers, 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 shall determine that an application is incomplete, he or 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 shall approve 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.
- D. *Term.* All licenses issued under this section shall be valid for one calendar year from the date of issue.
- E. *Revocation or suspension.* Any license issued under this section may be revoked or suspended as provided in Subd. 13.
- F. *Transfers.* All licenses issued under this section shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued.

- G. *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 section.
- H. *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- I. *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.
- J. *Issuance as privilege and not a right.* The issuance of a license issued under this section 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.
- K. *Right to Inspect Licensed Premises.* All premises licensed under this Section shall, at all times, be open to inspection by any police officer to determine whether or not this Section and all other laws are being observed. All persons, as a condition to being issued the license, consent to the inspection by such officers and without a warrant for searches and seizures. It is unlawful for any licensee, or agent or employee of a licensee, to hinder or prevent a police officer from making inspection.

Penalty, see Subd. 13.

Subd. 4. *Fees.* No license shall be issued under this section until the appropriate license fee shall be paid in full. The fee for a license under this section shall be as established from time to time by council resolution, as it may be amended from time to time.

Penalty, see Subd. 13.

Subd. 5. *Basis for denial or license.*

- A. Grounds for denying the issuance or renewal of a license under this section includes but is not limited to the following:
  - 1. The applicant is under the age of 21 years.
  - 2. The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products.
  - 3. The applicant has had a license to sell licensed products revoked within the preceding 12 months of the date of application.

4. The applicant fails to provide any information required on the application, or provides false or misleading information.
  5. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.
- B. However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license.
- C. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section.

Subd. 6. *Prohibited sales.* It shall be a violation of this section for any person to sell or offer to sell any licensed product:

- A. To any person under the age of 21 years.
1. Licensees must 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.
  2. 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 county, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- B. By means of loosies.
- C. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products. It is further not the intention of this provision to ban the sale of lawfully manufactured and packaged Edible Cannabinoid Products as allowed under state law.
- D. By any other means, to any other person, or in any other manner of form prohibited by federal, state or other local law, ordinance provision, or other regulation.

Penalty, see Subd. 13.

Subd. 7. *Vending machines.* It shall be unlawful for any person licensed under this section to allow the sale of licensed products by the means of a vending machine unless persons under the age of 21 are at all times prohibited from entering the licensed establishment.

Penalty, see Subd. 13.

Subd. 8. *Self-service sales.* It shall be unlawful for a licensee under this section to allow the sale of licensed products by any means where by the customer may have access to those items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the licensed products between the licensee or his or her clerk and the customer. 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. Any retailer selling licensed products at the time this section is adopted shall comply with this section within 90 days following the effective date of this section.

Penalty, see Subd. 13.

Subd. 9. *Responsibility.* All licensees under this section shall be responsible for the actions of their employees in regard to the sale of licensed products on the licensed premises, and the sale of an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this section, state or Federal law, or other applicable law or regulation.

Penalty, see Subd. 13.

Subd. 10. *Compliance checks and inspections.* All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks. In accordance with state law, the city will conduct at least one compliance check that involves the participation of a person between the ages of 17 and 20 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

Penalty, see Subd. 13.

Subd. 11. *Other illegal acts.* Unless otherwise provided, the following acts shall be a violation of this section:

- A. *Illegal sales.* It shall be a violation of this section for any person to sell, give, or otherwise furnish or provide any licensed product to any person who is under the age of 21.



- B. *Illegal possession.* It shall be a violation of this section for anyone under age 21 to have in his or her possession any Edible Cannabinoid Product. This division B. shall not apply to minors lawfully involved in a compliance check.
- C. *Illegal use.* It shall be a violation of this section for anyone under age 21 minor to consume otherwise use any Edible Cannabinoid Product.
- D. *Illegal procurement.* It shall be a violation of this section for any person under the age of 21 to purchase or attempt to purchase or otherwise obtain any Edible Cannabinoid Product. It shall be a violation of this section for any person to purchase or otherwise obtain those items on behalf of a person under age 21. It shall further be a violation for any person to coerce or attempt to coerce a person under the age of 21 to illegally purchase or otherwise obtain or use any licensed product. This division D. shall not apply to minors lawfully involved in a compliance check.
- E. *Use of false identification.* A person under the age of 21 years who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices and who uses a driver's license, permit, Minnesota identification card, or any type of false identification to misrepresent the person's age, shall only be subject to an alternative civil penalty, in accordance with subd 13.B.3. It shall be a violation of this section for any person under the age of 21 to attempt to disguise his or 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.
- F. A business establishment that offers for sale Edible Cannabinoid Products shall ensure that all packages of the products are displayed and offered for sale only:
- i. Behind a checkout counter where the public is not permitted;
  - ii. Inside a locked display case; or
  - iii. Within six feet of an unobstructed view of an attended checkout counter.
- G. No person may sell an Edible Cannabinoid Product to a person under the age of 21 years.
- H. No person may sell an Edible Cannabinoid Product in a package or container that is labelled or packaged in a manner inconsistent with Minnesota Statutes § 151.72 (2022).
- I. No sale of any Edible Cannabinoid Product may be made on Sundays, except between the hours of 11:00 a.m. and 6:00 p.m., or before 8:00 a.m. or after 10:00 p.m. on Monday through Saturday, or on Thanksgiving Day, or on Christmas Day (December 25), or after 8:00 p.m. on Christmas Eve (December 24).

Penalty, see Subd. 13.

Subd. 12. *Exceptions and defenses.*

- A. *Religious, spiritual, or cultural ceremonies or practices.* Nothing in this section shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a person under the age of 21 as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- B. It shall be an affirmative defense to the violation of this section for a person to have reasonably relied on proof of age as described by state law.

Subd. 13. *Violations and penalty.*

A. *Violations.*

1. *Notice.* Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.
2. *Hearings.* If a person accused of violating this section so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator. A hearing may also be requested to challenge any confiscation of licensed products as “contraband” as defined under state law.
3. *Hearing officer.* The city official designated by the City Council shall serve as the hearing officer.
4. *Decision.* If the hearing officer determines that a violation of this section did occur or that confiscation was proper, that decision, along with the hearing officer’s reasons for finding a violation and the penalty to be imposed under division B. of 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. *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the District Court for the city in which the alleged violation occurred.
6. *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this Section.

7. *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

B. *Administrative penalties.*

1. *Licensees.* If a licensee or employee of a licensee sells, gives, or otherwise furnishes any licensed product to a person under the age of 21 years, or violates any other provision of this section, the licensee shall be charged an administrative penalty of \$300 for the first violation. An administrative penalty of \$600 must be imposed for a second violation at the same location within 36 months after the initial violation. For a third or any subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 must be imposed, and the licensee's authority to sell licensed products at that location must be suspended for not less than seven days and may be revoked. No suspension, revocation, or other penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.
2. *Other individuals.* An individual who sells, gives, or otherwise furnishes licensed products to a person under the age of 21 years may be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.
3. *Alternative penalties for subd. 11.E.* Law enforcement and court system representatives shall consult, as applicable, with interested persons, including but not limited to parents, guardians, educators, and persons under the age of 21 years, to develop alternative civil penalties for persons under the age of 21 years who violate this section. Consulting participants shall consider a variety of alternative civil penalties including but not limited to tobacco-free or drug free education programs, community service, court diversion programs, and tobacco cessation or drug cessation programs, and for persons under the age of 18 years, notice to schools and to parents or guardians. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.
4. *Misdemeanor.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this section.
5. *Statutory penalties.* If the administrative penalties authorized to be imposed by M.S. § 461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.

Passed by the Austin City Council this 6th day of September, 2022

YEAS 7

NAYS 0

ATTEST:

/s/ Tom Dankert  
City Recorder

APPROVED:

/s/ Stephen M. King  
Mayor

This ordinance was introduced on September 6, 2022; approved on September 6, 2022; was published in the Austin Daily Herald on September 10, 2022, and becomes effective September 17, 2022.

















