

Study Session Meeting Minutes
January 31, 2023 - Council Chambers, Ely City Hall

CALL TO ORDER

Mayor Omerza called the meeting to order at 6:30pm.

Present: Council members A.Forsman, Kess, Debeltz, Callen, Campbell, Bisbee, and Mayor Omerza

Absent: None

Also Present: Clerk/Treasurer Langowski, Attorney Klun, Police Chief Houde, and Officer Bradley Roy

ADDITIONS OR OMISSIONS: None

OLD BUSINESS: None

NEW BUSINESS:

A. Discussion on Ordinance 367, 2nd Series – Edible Cannabinoid Products Dealers

The following information was provided in the Council Agenda Packet

Ordinance No. 367 – On-Sale Not Allowed

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MN State Statutes 151.72 Sale of Certain Cannabinoid Products

League of MN Cities – FAQ – Cities and Regulation of Edible Cannabinoid Products

THC and Minnesota Law – An Informational Guide to MN Statute 151.72

MN Board of Pharmacy – Hemp-Derived Products FAQ

MN Board of Pharmacy – Hemp-Derived Cannabinoid Products Guidance

Attorney Klun indicated that we provided several informational documents and 2 ordinances for the council's review. One ordinance is On Sale Allowed in which customers are allowed to consume in the place they purchased the product and the other ordinance is On Sale Not Allowed which the customer would purchase the product then take it home or elsewhere to consume.

Attorney Klun indicated that we received correspondence from the original business owner that came forward that they are not going to do the lounge portion of their business plan at this time. We also received correspondence from another restaurant/bar owner that they would like to sell THC beverages on site.

Attorney Klun also indicated that she would like the council to discuss the penalty portion of the ordinance.

Attorney Klun indicated that the first question for discussion would be On Sale Allowed or Not Allowed.

Omerza asked for On Sale can we limit where they are allowed.

Attorney Klun indicated that we can put more restrictions on the license as a home rule charter city.

A.Forsman asked about the content of alcohol in the product, as the state moves forward with their laws if they legalize marijuana derived things and infused alcohol

with marijuana derived THC which is out there in other states right now that is legally available. We are prohibiting it with alcohol right now, if the state moves to allow it, what do we do?

A. Forsman asked the officers present that if we allow on sale how do we test for people that are under the influence, with alcohol you can test their blood alcohol content, but with THC how do you test. Chief Houde indicated that right now there is not a measure to test; it would be if you showed impairment. It would be the officer's judgement if the person seemed impaired to do a field sobriety test then make a determination after that. Then they could take the person back to the Police Department and apply for a search warrant to do a blood draw, and then make a determination after that. Officer Roy indicated that most of the current officers are certified in Drug Recognition, and it is being enforced already.

Campbell asked for clarification on the difference between on-sale and off-sale. Attorney Klun indicated that off-sale would be like a liquor store where you purchase your product and take it elsewhere to consume. On-Sale would be when you purchase the product to consume at the place you purchased it. If we allow On-Sale yes you could consume it at a restaurant as long as they have a license. Attorney Klun discussed A.Forsman's question from earlier regarding having THC and other marijuana derived products in alcohol. Currently in the ordinance it states that it is prohibited to have alcohol in an edible cannabinoid product. That would need to be changed in the ordinance for that to be allowed, even if the state legislature approves it, it is currently not allowed in city of Ely how the ordinance is written.

Bisbee asked if we can put limitation on how many businesses can be licensed. Attorney Klun indicated that the council can put limits on how many are allowed.

A.Forsman stated that the current hemp derived law restricts places it can be sold, is this correct. Chief Houde indicated that currently it can be sold anywhere except liquor stores, because it falls under the liquor and tobacco statutes.

Bisbee asked if the Ely Police Department has the capability to handle the on and off sale of these products. Chief Houde indicated that there are impaired drivers on the road right now, yes we can handle it, this will increase impaired drivers on the street, but we can handle it. Attorney Klun stated that they prosecute for impaired drivers all the time, this is right along the same thought process, is it harder than alcohol to prosecute, yes, but with time they will come up with a test like blood alcohol for these products.

Kess asked if the use of cannabinoid products is legal currently. Attorney Klun stated yes, as long as you are 21 years old. Kess stated he is concerned that we are going to get ahead of ourselves because the state legislature might change all of these rules, as home rule charter we can do some of these things, but we also need to be cognizant of state law and legal use of cannabinoids because that is already in state

law. Attorney Klun indicated that the only thing we are trying to do with this is regulating the licensees within the City of Ely.

A.Forsman stated that he is reluctantly willing to support the ordinance with no on sale allowed, the reasoning behind it is he feels it is going to pass in the state anyways so we should get ahead and control of it by allowing off sale. He would rather see if people are going to be using it that they take it off premise, we do not need public use of it. He would also not like to see people purchasing it in another city and then driving and being tempted to use it on their way home.

Campbell asked Chief Houde about the people that will be walking the streets or going to the parks and they are impaired. Houde indicated that we do not have public intoxication here, but we do restrict the use of alcoholic beverages in the park. The city could look at restricting it in public parks as well, we have open container law, we could add language like that, but it would be hard to enforce with the edibles or gummies.

Omerza stated that we need to keep in mind that we are a tourist community. We can say yes or no, however people might bring whatever they want to bring up here, so we will be dealing with this one way or another.

Bisbee asked about the open container laws, how can that be enforced, by putting up no smoking signs in public areas. Houde stated that with the edibles we are not smoking yet, it will be hard to tell if people are consuming. There is nothing in state statutes that you cannot consume in public, we can restrict our public areas. The legislatures have not given any guidance on enforcement yet.

Bisbee asked if we can amend the ordinance at a later time to allow on sale. Attorney Klun indicated that we can. Bisbee stated he is in favor of the off sale of the edible cannabinoid products.

Langowski stated that the question from the FAQs from the League – Can cities prohibit the sale of edible cannabinoids? No, the Minnesota law does not provide such an option; the new law makes the cannabinoid products legal in every city throughout the state. Everyone is correct that we are going to be dealing with recreational use marijuana within time. The disappointing thing is a lot of these edible gummies and such are attractive to children.

Kess asked when the current moratorium ends. Attorney Klun indicated mid-March. Kess asked that we can have a moratorium for a year; Attorney Klun stated we can have it for a year, but we would need to extend our current one.

Bisbee stated that for the Basis for the Denial of a license Subd 3 #3, currently it stated that the applicant has had a license to sell Edible Cannabinoid Products revoked within the last 12 months, can we make that more restrictive maybe 2 years.

Omerza asked what are the council's thoughts, Off Sale? On Sale? Continue the Moratorium? Extend the Moratorium? We have heard from the officers that this product is here already, what are we going to do?

A.Forsman indicated that he is concerned with it being sold in convenience stores and alongside other goods. Omerza stated that she is presuming it will be behind the counter. Officer Roy indicated that everywhere he has seen it being sold it has been behind a counter or in a locked box. Attorney Klun stated that by state statutes they need to be behind a counter or locked box.

Kess indicated that he would like to extend the moratorium, to have more time to look at this and to see what comes about from the state. Attorney Klun indicated that we can discuss this at the next agenda.

A.Forsman asked if this is currently being sold in stores in Ely. Attorney Klun indicated that the moratorium allowed the existing products to remain on the shelves until the City moved forward. Forsman asked about CBD that is for dogs or animals would we be regulating this also. Attorney Klun indicated that she will have to look into that portion closer and get back to the council.

A.Forsman indicated that since it is being sold in stores already he would like to move forward with the off sale portion of the ordinance and not extend the moratorium, so we can license the current sellers.

Bisbee agrees, by passing the ordinance we are allowing this to be a transparent purchase of an intoxicating substance, without passing it we are going to have people that are currently using THC will be doing it anyways. So whether we go one way or the other it is still going to occur.

Langowski indicated that we will prepare a draft of the ordinance for the next agenda and if the council is not comfortable with that first reading we can then think about the moratorium extension.

Omerza stated that we did not touch on fines and penalties, we don't need to make a decision tonight, but if we have people's ideas it would make it helpful.

Bisbee indicated that allowing 4 violations seems like a lot. Houde stated he doesn't have an issue with the 4 strikes since you might have an employee that violates your business, but there should be some language that it could move to a revocation or suspension of license depending on the situation.

Callen stated that he would also like to revisit the ordinance within a year or when the state changes the rules.

Omerza asked about the cost of the license. Attorney Klun stated that the license cost is set by resolution, which we would do after the ordinance is passed.

Omerza stated that if anyone has any concerns or questions to let the Clerk's office, the Attorney or Chief Houde know.

ADJOURN

Mayor Omerza adjourned the meeting at 7:27pm without objection.

Casey Velcheff
Deputy Clerk