

ORDINANCE NO. 367, 2nd Series

AN ORDINANCE OF THE CITY OF ELY, MINNESOTA, ADDING TO THE ELY CITY CODE, CHAPTER 6, SECTION 6.40, ENTITLED EDIBLE CANNABINOID PRODUCTS DEALERS.

THE COUNCIL OF THE CITY OF ELY DOES HEREBY ORDAIN:

SECTION 1. A new Section shall be added to Chapter 6 as Section 6.40, of the Ely City Code to read as follows:

SEC. 6.40. EDIBLE CANNABINOID PRODUCTS DEALERS.

Subd. 1. Defined. “**Club**” means an incorporated organization organized under the laws of the State for civic, fraternal, social, or business purposes, for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization, which: (1) has more than fifty members; (2) has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members; (3) is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body. Such club or congressionally chartered veterans' organization must have been in existence for at least three years.

“**Compliance Checks**” means the system the City uses to investigate and ensure that those authorized to sell Edible Cannabinoid Products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of decoys as authorized by this ordinance. Compliance checks shall also mean the use of decoys who attempt to purchase Edible Cannabinoid Products for educational, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State or local laws and regulations relating to Edible Cannabinoid Products.

“**Decoy**” means a natural person between the ages of seventeen (17) and twenty (20) who assist law enforcement in compliance checks.

“**Edible Cannabinoid Products Dealer**” means a person engaging in the business of selling Edible Cannabinoid Products of any kind.

“**Edible Cannabinoid Products**” means goods which contain a product or substance defined as an “Edible Cannabinoid Product” under Minnesota Statutes § 151.72.

“**Employee**” means any person having the authority or claiming to have the authority to make sales of an Edible Cannabinoid Product on behalf of an Edible Cannabinoid Products Dealer.

“Hotel” means an establishment where food and lodging are regularly furnished to transients, and which has: (1) a resident proprietor or manager; (2) a dining room serving the general public at tables and having facilities for seating at least thirty guests at one time; and (3) at least ten guest rooms.

“Off-Sale” means the sale of Edible Cannabinoid Products in original packages for consumption off the licensed premises only.

“On-Sale” means the sale of Edible Cannabinoid Products for consumption on the licensed premises only.

“Person” means any natural person, firm, partnership, association, corporation, company, organization, or any other legal or commercial entity of any kind.

“Package” and **“Original Package”** mean any container or receptacle holding Edible Cannabinoid Products, which container or receptacle is corked, capped or sealed by a manufacturer or wholesaler.

“Restaurant” means an establishment, other than a hotel, under the control of a single proprietor or manager, where meals are regularly served to tables and to the general public, and having seating capacity for at least thirty guests and not less than sixty percent (60%) of its gross sales attributable to the sale of food.

“Sale”, “Sell” and **“Sold”** mean all barter and all manners or means of furnishing Edible Cannabinoid Products to persons, including such furnishing in violation or evasion of law.

“Theater” shall mean an establishment a building containing an auditorium in which live movies, dramatic, musical, dance, or literary performances are regularly presented to holders of tickets for those performances and whose capacity for seating is greater than 30 seats.

Subd. 2. License Required. It is unlawful for any person to engage in the business of, or operate as, an edible cannabinoid products dealer without a license from the City.

(A)Off-Sale Edible Cannabinoid Products Dealer License Required. It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of Edible Cannabinoid Products off-sale, as part of a commercial transaction, without a license therefor from the City. The City may issue annual off-sale Edible Cannabinoid Products Dealer licenses to an applicant who meets the criteria set forth below.

(B) On-Sale Edible Cannabinoid Products Dealer License Required. It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of Edible Cannabinoid Products on-sale, as part of a commercial transaction, without a license therefor from the City. The City may issue annual on-sale Edible Cannabinoid Products Dealer licenses only to the following: (1) hotels; (2) restaurants; (3) bowling centers; (4) clubs or congressionally chartered veterans’ organizations, provided that

Edible Cannabinoid Products sales will be made only to members and bona fide guests; and (5) theaters

(C) Application. An application for a license to sell edible cannabinoid products. 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 and proper backgrounding, the City Clerk shall forward the application to the Council for action at its next regularly scheduled Council Meeting. If the 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.

False Statements. It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in such application, or any willful omission to state any information called for on such application form shall, upon discovery of such falsehood, work as 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.

Application and Investigation Fees. At the time the initial application is made, an applicant for a license under this Chapter shall accompany such application with payment of a fee to be considered an application and investigation fee, not refundable to the applicant, to cover the cost of the City in processing the application and the investigation of the applicant.

(D) Action. The Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Council shall approve the license, the Clerk shall issue the license to the applicant. If the 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 Council's decision.

(E) Term. All licenses issued under this ordinance shall be valid for one (1) year, except licenses issued mid-year. For purposes of this ordinance, the license term shall be September 1 to August 31.

(F) Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties Section of this ordinance.

(G) Transfers. All licenses issued under this ordinance 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 Council.

(H) Moveable Place of Business. No licenses shall be issued to a moveable place of business. Only businesses with a fixed location shall be eligible to be licensed under this ordinance.

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

(J) Renewals. The City shall notify the Edible Cannabinoid Products license applicants of their renewal in August of each year.

Subd. 3. Basis for Denial of License.

(A) Grounds for denying the issuance or renewal of a license under this chapter include but are 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 any commerce of licensed products.
3. The applicant has had a license to sell Edible Cannabinoid Products revoked within the preceding twenty four (24) 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 chapter.

Subd. 4. Issuance as a Privilege and Not a Right. The issuance of an Edible Cannabinoid Product Dealer license under this section to any person shall be considered a privilege and not an absolute right and shall not entitle the person who holds a license to an automatic renewal of such license.

Subd. 5. School And Church Restrictions. No license shall be granted for any building located on a lot immediately adjacent to a lot upon which there is any public school or church structure. For purposes of this Section, a lot located across a street or alley from a public school or church structure is not immediately adjacent. The erection, location, or relocation of a school or church within the prohibited area after the original license application has been granted shall not, in and of itself, cause the existing license to be in violation of this Section, nor shall it render such premises ineligible for renewal of the license.

Subd. 6. Prohibited Sales.

(A) Generally. It shall be a violation of this section for any person to sell or offer to sell any Edible Cannabinoid 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. 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 must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
 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.
- b. By means of a vending machine.
- c. Containing alcohol, opium, morphine, jimson weed, bella donna, strychnos, or cocaine.

(B) Off-Sale. It shall be a violation of this section for any person to sell or offer to sell any Edible Cannabinoid product for off-premises consumption:

- a. By any means whereby the customer may have access to such 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 Edible Cannabinoid Products between the licensee or his or her employee and the customer. All Edible Cannabinoid Products shall either be stored behind a counter or within six feet of an unobstructed view of an attended checkout counter, or in a locked case or other storage unit not left open and accessible to the general public, or
- b. In a package or container that is labelled or packaged in a manner inconsistent with Minnesota Statutes § 151.72, or
- c. 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).

(C) On-Sale. It shall be a violation of this section for any person to sell or offer to sell any Edible Cannabinoid product for on-premises consumption:

- a. By any means whereby the customer may have access to such 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 Edible Cannabinoid Products between the licensee or his or her employee and the customer, or
- b. After 2:00 a.m. By 2:30 a.m., all Edible Cannabinoid Products beverage bottles, cans, glasses or other receptacles in which Edible Cannabinoid Products have been served shall be remove from all tables, counters, or any other locations in the customer areas of the establishment. Further, said establishment shall not permit consumption of Edible Cannabinoid Products by anyone on the premises after 2:30 a.m

Subd. 7. Employees. All licensees under this ordinance 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 be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City from also subjecting the employee to whatever penalties are appropriate under this ordinance, State or Federal law, or other applicable law or regulation.

(A) Minimum Age. Individuals employed by a person licensed under this ordinance must be at least eighteen (18) years of age to sell Edible Cannabinoid Products.

Subd. 8. 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.

(A) Use of Decoys. From time-to-time, but at least once per year, the City shall conduct compliance checks by engaging, with the written consent of their parents or guardians, decoys who are seventeen (17) years old but less than twenty-one (21) years old, to enter the licensed premises to attempt to purchase Edible Cannabinoid Products when such items are obtained as a part of the compliance check. No decoy used in compliance checks shall be supervised by City designated law enforcement officers or other designated City personnel. Decoys used for compliance checks shall not be guilty of unlawful possession of Edible Cannabinoid Products when such items are obtained as a part of the compliance check. No decoy used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the decoy's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Section 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.

Right to Inspect Licensed Premises. At any time, any police officer who has reason to suspect that the licensee, their agent or employee, is preparing to sell, in the act of selling, or recently concluded a sale of Edible Cannabinoid Products outside of business hours as defined by this section, has a right to inspect the premises. It is unlawful for any licensee, or agent or employee of a licensee, to hinder or prevent a police officer from making an inspection. All licensees, or agents or employees of a licensee within the licensed premises or on the surrounding property

owned or leased by the licensee, as a condition to being issued the license, consent to the inspection by such officers and without a warrant for searches and seizures.

Subd. 9. Open Package Prohibition

(A) **Public Consumption.** It is a violation of this ordinance for a person to drink or consume Edible Cannabinoid Products on public property, including in city parks and in a motor vehicle when the vehicle is upon a street or highway.

Subd. 10. Violations.

(A) **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.

(B) **Hearings.** If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

(C) **Hearing Officer.** A designee of the Ely City Council shall be appointed as the Hearing Officer.

(D) **Decision.** If the Hearing Officer determines that a violation of this ordinance did occur, that decision, along with the Hearing Officer's reasons for finding a violation and the penalty to be imposed under Subdivision 9 of this ordinance, 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, such findings shall be recorded and a copy provided to the acquitted accused violator.

(E) **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.

Subd. 11. Penalties.

(A) **Licensees..**

- a. *Fines.* Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine according to the following schedule:

First violation	\$300
Second violation within a twenty-four (24) month period	\$500
Third violation within a twenty-four (24) month period	\$1,000
Fourth violation within a twenty-four (24) month period	\$2,000

- b. *Suspension or Revocation.* Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be liable for a suspension or revocation

of their license issued under this ordinance, in accordance with the following schedule:

First Violation	3 days
Second Violation within a twenty-four (24) month period	6 days
Third Violation within a twenty-four (24) month period	12 days
Fourth Violation within a twenty -four (24) month period	Revocation of License

The Council reserves the right to revoke the license of a licensee who or whose employee has violated this ordinance by committing a felony or other grave violation on their premises or in the course of their business.

Any Council action concerning suspension or revocation shall occur as soon as practicable following the adjudication of a criminal violation in State or Federal Criminal Courts. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing in accordance with this chapter.

(B) Employees. Any employee of an Edible Cannabinoid Products Dealer found to be in violation of this ordinance shall be charged an administrative fee of \$500.

(C) Misdemeanor. Nothing in this Subdivision shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this ordinance.

Subd. 12. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of Edible Cannabinoid Products to a minor a part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person or have reasonably relied on proof of age as described by State law.

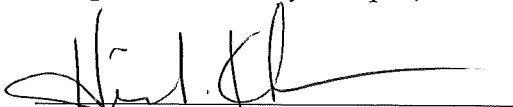
Subd. 13. Severability and Savings Clause. If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this ordinance.

SECTION 2. Effective Date: Pursuant to Section 3.08 of the Charter of the City of Ely, Minnesota, the adoption of this Ordinance is effective 30 days after final adoption and publication.

First Reading: March 21, 2023

Second Reading: April 4, 2023

Adopted this 4th day of April, 2023.



Mayor



Clerk/Treasurer

Publication Date: March 25, 2023
Newspaper: Ely Echo

Public Hearing: April 4, 2023