

City of Excelsior  
Hennepin County, Minnesota

Ordinance No. 639

An Ordinance to Amend Chapters 3 and 10 of the Excelsior City Code  
to Regulate Tetrahydrocannabinol Products

THE CITY COUNCIL OF EXCELSIOR, MINNESOTA, HEREBY ORDAINS:

SECTION ONE: AMENDMENT. That section 3-1 of the Excelsior City Code be amended as follows:

Sec. 3-1. Findings.

The city council finds that there is a need for alternative methods of enforcing certain provisions of the City Code ~~and Appendix E, the city zoning code and chapter 8, chapter 16, environment, and chapter 20, historic preservation of the City Code.~~ While criminal and civil prosecution have been the most frequent enforcement mechanisms, using such mechanisms has sometimes proved to be ineffective and inappropriate. The delay inherent in either enforcement vehicle does not ensure prompt resolution. Also, criminal prosecution is often inappropriate because:

- (1) Residents resent being labeled as criminals for violations of administrative regulations;
- (2) The higher burden of proof and the potential of incarceration do not appear appropriate for most administrative violations; and
- (3) The criminal process does not always regard City Code violations as being important.

The civil prosecution mechanism is often too expensive to be appropriate for smaller scale violations.

Accordingly, the city council finds that the use of administrative citations and the imposition of administrative penalties is a legitimate and necessary alternative method of enforcement that should be available in addition to any other legal remedy that may be pursued for violations of the City Code

or Appendix E, the zoning code and chapter 8, building and building regulations, chapter 16, environment, and chapter 20, historic preservation of the City Code.

SECTION TWO: AMENDMENT. That section 3-2 of the Excelsior City Code be amended as follows:

- (a) Any violation of the City Code Appendix E, the city zoning code (including the terms and/or conditions of any permits, variances, or other approvals under Appendix E, the zoning code), chapter 34, or chapter 16 of the City Code is an administrative offense that may be subject to an administrative citation and administrative penalties. Each day a violation exists constitutes a separate offense.
- (b) An administrative offense may be subject to an administrative penalty not exceeding \$2,000.00.
- (c) The city council shall adopt by resolution a schedule of fines for offenses initiated by administrative citation. The city council is not bound by that schedule when a matter is appealed to it for administrative review. The city council may also adopt a schedule of fees to be paid to administrative hearing officers.
- (d) The city manager shall use the administrative citation program to encourage compliance with Appendix E, the city zoning code, chapter 8, chapter 10, chapter 34, or chapter 16 of the City Code. The city manager's efforts to encourage compliance may, but are not required to, include efforts to informally resolve the alleged violation of chapter 8, chapter 10, chapter 34, chapter 16 of the City Code or any provision of Appendix E, the zoning code, before a citation is issued. Nothing herein is intended to require the city manager to issue an administrative citation or otherwise pursue the remedies outlined in this chapter. Nor is anything herein intended to prevent the city manager from pursuing other remedies authorized by law including, but not limited to, issuance of a stop work order, abatement, criminal prosecution, and/or application for civil injunctive relief.

SECTION THREE. AMENDMENT. That section 3-3(a) of the Excelsior City Code be amended as follows:

Section 3-3. – Administrative citation.

- (a) The city manager or his or her designee may issue an administrative citation upon belief that a violation of Appendix E, the city zoning code, chapter 8, chapter 10, chapter 34, or chapter 16 of the City Code has occurred. The citation shall be issued in person or by certified mail to the person responsible for the violation. The citation shall state the date, time, and nature of the violation, the name of the issuing officer, the amount of the scheduled fine, and the manner for paying the fine or appealing the citation. In the event that the violation is a continuing violation, the citation may also include a notice of abatement pursuant to section 16-37 or a stop work order pursuant to section 10-7 of Appendix E, the zoning code.

SECTION FOUR. AMENDMENT. Section 3-5(a) of the City Code is amended as follows:

- (a) The hearing officer's decision in any of the following matters may be appealed by a party to the city council for administrative review:

(1) An alleged failure to obtain a permit or other approval from the city council as required by ~~Appendix E, the city zoning code or chapter 20~~ of the City Code; and

(2) An alleged violation of a permit, license, other approval, or the conditions attached to the permit, license, or approval, that was granted by the city council pursuant to ~~Appendix E, the city zoning code or chapter 20~~ of the City Code.

SECTION FIVE. AMENDMENT. That section 3-7(e) of the City Code be amended as follows:

(e) During the time that an administrative penalty remains unpaid the violator shall be ineligible to receive any permit or other approval required by ~~Appendix E, the city zoning code or chapter 20~~ of the City Code.

SECTION SIX. AMENDMENT. That Chapter 10, Article II of the Excelsior City Code be amended to add Article XXIII as follows:

### ***ARTICLE XXIII. TETRAHYDROCANNABINOL PRODUCTS***

#### **Sec. 10-1201. Purpose and Intent.**

The purpose of this Section is to regulate the sale of legalized adult-use of any product that contains tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under Minnesota Statutes, section 151.72 (“THC Products”) for the following reasons:

- (a) The City recognizes that, based on the most reliable and up-to-date scientific evidence, the rapid introduction of newly legalized adult-use THC Products, presents a significant potential threat to the public health, safety, and welfare of the residents of Excelsior, and particularly to youth.
- (b) The City has the opportunity to be proactive and make decisions that will mitigate this threat and reduce exposure of young people to THC Products or to the marketing of these products and improve compliance among THC Product retailers with laws prohibiting the sale or marketing of THC Products to minors.
- (c) A local regulatory system for THC Product retailers is appropriate to ensure that retailers comply with THC Product laws and business standards of the City of Excelsior to protect the health, safety, and welfare of our youth and other vulnerable residents.
- (d) State law requires THC Product retailers to check the identification of purchasers to verify that they are at least 21 years of age (Minn. Stat. § 151.72, subd. 3(c)), comply with certain packaging and labeling requirements to protect children and youth (*Id.*, subd. 5), and meet

certain potency and serving size requirements (*Id.*, subd. 5a).

- (e) State law authorizes the Board of Pharmacy to adopt product and testing standards in part to curb the illegal sale and distribution of THC Products and ensure the safety and compliance of commercially available THC Products in the State of Minnesota.
- (f) State law does not preempt the authority of a local jurisdiction to adopt and enforce local ordinances to regulate THC Product businesses including, but not limited to, local zoning and land use requirements and business license requirements.
- (g) A requirement for a THC Product retailer license will not unduly burden legitimate business activities of retailers who sell or distribute THC Products to adults but will allow the City of Excelsior to regulate the operation of lawful businesses to discourage violations of state and local THC Product-related laws.

In making these findings and enacting this ordinance, it is the intent of the Excelsior City Council to ensure responsible THC Product retailing, allowing legal sale and access without promoting increases in use, and to discourage violations of THC Product-related laws, especially those which prohibit or discourage the marketing, sale or distribution of THC Products to youth under 21 years of age.

**Sec. 10-1202. Definitions.**

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

*Exclusive Liquor Store.* An establishment that meets the definition of exclusive liquor store in Minnesota Statutes, section 340A.101, subdivision 10.

*Licensed Product or TCH Product.* Any product that contains tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under Minnesota Statutes, section 151.72.

*Locked Non-Portable Storage Unit.* A cabinet, closet, or other enclosure that is secured by a lock that can be opened by a key or combination. If a storage unit is freestanding and weighs less than 750 pounds, it shall be mounted or secured to something immovable (i.e., bolted to a wall or the floor or embedded in concrete).

*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 storefront or other permanent type of structure authorized for sales transactions.

*Retail Establishment.* Any place of business where Licensed Products are available for sale to the general public.

*Sale.* Any transfer of goods for money, trade, barter, or other consideration.

*Self-Service Merchandising.* Open displays of Licensed Products in any manner where any person has access to the Licensed Products without the assistance or intervention of the licensee or the licensee's employee. 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 that dispenses Licensed Products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the Licensed Product.

#### **Sec. 10-1203. 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.
- (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 determines that an application is incomplete, they shall return the application to the applicant with notice of the information necessary to make the application complete.

At the time of application, an applicant shall furnish the City with a list of all persons that have an interest of five percent or more in the business. The list shall name all owners and show the interest held by each, either individually or beneficially for others. It is the duty of each business licensee to notify the City Clerk in writing of any change in ownership in the business prior to the effective date of the change. Any change in the ownership or control of the business shall be deemed equivalent to a transfer of the license, and any such license shall be revoked 30 days after any such change in ownership or control unless the licensee has notified the City of the change in ownership by submitting a new license application for the new owners, and the City Council has approved the transfer of the license by appropriate action.

Any time an additional investigation is required because of a change in ownership or control of a business, the licensee shall pay an additional investigation fee to be determined by the City. The City may at any reasonable time examine the transfer records and minute books of any business licensee to verify and identify the owners, and the City may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The Council may revoke any license issued upon its determination that a change of ownership of a licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the Council on notice to the licensee.

- (c) *Action.* The City Council may either approve or deny the application for a license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council approves the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant. If a license application is denied, the earliest an applicant may reapply is 12 months from the date the license is denied.
- (d) *Term.* All licenses issued under this article shall be valid for one calendar year from the date of issue.
- (e) *Enforcement.* Any license issued under this article may be revoked or suspended as provided in Section 10-1209. In addition, licensees and other persons violating the provisions of this article may be subject to administrative penalties as outlined in section 10-1210 and Chapter 3 of the City Code. Any violation of this article may also be prosecuted as a misdemeanor under section 1-3 of the City Code.
- (f) *Transfers.* All licenses issued under this article shall be valid only on the premises for which the license was issued and only for the person or business to whom the license was issued. The transfer of any license to another location, business, or person is prohibited.
- (g) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premises.
- (h) *Renewals.* The renewal of a license issued under this article shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.
- (i) *Issuance as Privilege and Not a Right.* The issuance of a license issued under this article is a privilege and does not entitle the license holder to automatic renewal of the license.
- (j) *Number of licenses.* The city may issue up to two (2) licenses for the sale of THC Products in the city.

**Sec. 10-1204. Fees.**

No license shall be issued under this article until the appropriate license fee shall be paid in full. The fee for a license under this article shall be established by the City Council and adopted in the City fee schedule, and may be amended from time to time.

**Sec. 10-1205. Ineligibility and Basis for Denial of License.**

(a) *Ineligibility.*

- (1) *Moveable Place of Business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this article.
- (2) *Exclusive Liquor Store.* No license shall be issued to an exclusive liquor store as defined in Minnesota Statutes, section 340A.101, subdivision 10.

(b) *Grounds for Denial.* Grounds for denying the issuance or renewal of a license under this article include, but are not limited to, the following:

- (1) The applicant is under the age of 21 years.
- (2) The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation from holding a license.
- (3) The applicant has been convicted within the past five years for any violation of a Federal, State, or local law, other ordinance, provision, or other regulation relating to the Licensed Products, but not including possession or sale of Licensed Products.
- (4) The applicant has had a license to sell Licensed Products suspended or revoked during the 12 months preceding the date of application, or the applicant has or had an interest in another premises authorized to sell Licensed Products, whether in the City or in another jurisdiction, that has had a license to sell Licensed Products suspended or revoked during the same time period, provided the applicant had an interest in the premises at the time of the revocation or suspension, or at the time of the violation that led to the revocation or suspension.
- (5) The applicant is a business that has an operating officer or manager who is ineligible pursuant to the provisions of this article.
- (6) The applicant is the spouse of a person ineligible for a license pursuant to the provision of Subsections (b)(2) and (3) of this section or who is not the real party in interest or

beneficial owner of the business to be operated under the license.

- (7) The applicant fails to provide any information required on the application, or provides false or misleading information. Any false statement on an application, or any willful omission of any information called for on such application form, shall cause an automatic refusal of license, or if already issued, shall render any license issued pursuant thereto void and of no effect to protect the applicant from prosecution for violation of this chapter, or any part thereof.
- (c) The City shall conduct a background investigation on all new applications and applications to transfer a license. The City may conduct a background and financial check on an application for a renewal of a license if it is in the public interest to do so. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this article and the City shall provide the person with a notice of revocation, along with information on the right to appeal.
- (d) No license shall be granted or renewed for operation on any premises on which real estate taxes, assessments, or other financial claims of the City or of the State are due, delinquent, or unpaid. If an action has been commenced pursuant to the provisions of Minn. Stats. Ch. 278, questioning the amount or validity of taxes, the Council may, on application by the licensee, waive strict compliance with this provision; no waiver may be granted, however, for taxes, or any portion thereof, which remain unpaid for a period exceeding one year after becoming due unless such one-year period is extended through no fault of the licensee.

**Sec. 10-1206. Prohibited Acts.**

- (a) *In general.* No person shall sell or offer to sell any Licensed Product:
  - (1) By means of any type of vending machine.
  - (2) By means of self-service merchandising.
  - (3) By any other means, to any other person, on in any other manner or form prohibited by state or other local law, ordinance provision, or other regulation.
- (b) *Legal Age.* No person shall sell any Licensed Product to any person under the age of 21.
  - (1) *Age verification.* Licensees shall verify by means of government issued photographic identification that every purchaser is at least 21 years of age.
  - (2) *Signage.* Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where Licensed Products are offered for sale. The required signage must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

- (c) *Samples Prohibited.* No person shall distribute samples of any Licensed Product free of charge or at a nominal cost.

**Sec. 10-1207. Additional Requirements.**

- (a) *Storage.* During business hours, 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. After business hours, all Licensed Products shall be stored in a locked non-portable storage unit.

**Sec. 10-1208. Responsibility.**

All licensees are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of Licensed Products on the licensed premises. The sale, offer to sell, or furnishing of any Licensed Product by an employee shall be considered an act of the licensee. Nothing in this section shall be construed as prohibiting the City from also subjecting the employee to any civil or criminal penalties that the City deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.

**Sec. 10-1209. Compliance Checks and Inspections.**

All premises licensed under this subdivision shall be open to inspection by the City during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks.

No person used in compliance checks shall attempt to use a false identification misrepresenting their age. All persons lawfully engaged in a compliance check shall answer all questions about their age asked by the licensee or their employee, and produce any identification, if any exists, for which they are asked. Persons used for the purpose of compliance checks shall be supervised by law enforcement or other designated personnel. Nothing in this article shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

Additionally, from time to time, the City may conduct inspections to determine compliance with any or all other aspects of this ordinance.

**Sec. 10-1210. Violations and Penalty.**

- (a) *Administrative Civil Penalties—Individuals.* If a person who is not a licensee is found to have violated this article, the person shall be charged an administrative penalty as follows:
  - (1) *First Violation.* The Council shall impose a civil fine not to exceed \$50.00.

- (2) *Second Violation Within 12 months.* The Council shall impose a civil fine not to exceed \$100.00.
  - (3) *Third Violation Within 12 months.* The Council shall impose a civil fine not to exceed \$150.00.
- (b) *Same—Licensee.* If a licensee or an employee of a licensee is found to have violated this article, the licensee shall be charged an administrative penalty as follows:
- (1) *First Violation.* The Council shall impose a civil fine of \$500.00 and suspend the license for not less than 10 days.
  - (2) *Second Violation Within 36 Months.* The Council shall impose a civil fine of \$1,000.00 and suspend the license for not less than 30 consecutive days.
  - (3) *Third Violation Within 36 Months.* The Council shall impose a civil fine of \$2,000.00 and suspend the license for not less than 60 consecutive days.
  - (4) *Fourth Violation Within 36 Months.* The Council shall revoke the license for at least one year.
- (c) *Administrative Penalty Procedures.* Notwithstanding anything to the contrary in this section:
- (1) Any of the administrative civil penalties set forth in this section that may be imposed by the Council, may in the alternative be imposed by an administrative citation under Section 1-9.
  - (2) If one of the foregoing penalties is imposed by an action of the Council, no penalty shall take effect until the licensee or person has received notice (served personally or by mail) of the alleged violation and of the opportunity for a hearing before the Council, and such notice must be in writing and must provide that a right to a hearing before the Council must be requested within 10 business days of receipt of the notice or such right shall terminate.
- (d) *Misdemeanor Prosecution.* Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this article.

**Sec. 10-1211. Severability.**

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

**Sec. 10-1212. Effective Date.**

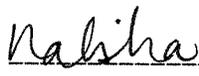
This ordinance becomes effective 30 days after passage and publication.

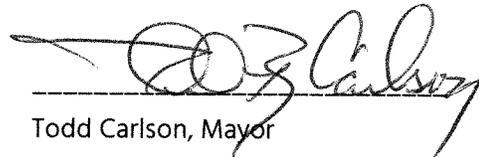
**Secs. 10-1213—10-1299. Reserved.**

SECTION SEVEN. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after publication..

Adopted by the City Council this 6th day of September 2022.

ATTEST:

  
\_\_\_\_\_  
Nalisha Williams, City Clerk

  
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Todd Carlson, Mayor

  
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Kristi Luger, City Manager

First Reading of Ordinance:

August 15, 2022

Second Reading and Adoption:

September 6, 2022

Publication of Ordinance:

September 15, 2022

Effective Date:

October 17, 2022