

# CITY OF PERHAM

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## Ordinance No. 427

### An Ordinance Amending the Perham City Code by Adding Chapter 119 Relating to Tetrahydrocannabinol Product Sales

The City Council of the City of Perham does hereby ORDAIN:

**SECTION I.** That Chapter 119 of the Perham City Code is hereby added as follows:

#### **Chapter 119. Tetrahydrocannabinol Product Sales.**

- Subd. 1. **Purpose and Intent.** By enacting Laws 2022, Chapter 98, Article 13 the Minnesota Legislature amended Minnesota Statutes, Section 151.72 and legalized the sale and adult use of certain products containing tetrahydrocannabinol (“THC”). The purpose of this Section is to regulate the sale of products that contain THC and are intended for human or animal consumption, excluding “medical cannabis” as defined by Minn. Stat. § 152.22, Subd. 6, as the same may be amended from time to time, (“THC Product” or “licensed product”) 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 Perham, 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 the 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 Perham to protect the health, safety, and welfare of our youth and most 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, comply with certain packaging and labeling requirements to protect children and youth, and meet certain potency and serving size requirements.
  - 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 Perham to regulate the operation of lawful businesses to discourage violations of state and local THC Product-related laws.
- H. In making these findings and enacting this ordinance, the Perham City Council intends to ensure responsible THC product retailing, allow legal sale and access without promoting increases in use, and discourage violations of THC Product-related laws, especially those which prohibit or discourage the marketing, sale, distribution, possession, and use of THC products to or by 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. The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this Subdivision:

- A. Applicant: The natural person or business entity applying for a license under this section, and in the case of an applicant that is not a natural person, any owner of the applicant.
- B. Assistance or intervention: The actual physical exchange of the licensed product between the customer and the licensee or employee.
- C. 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 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.
- D. Exclusive Liquor Store: An establishment that meets the definition of exclusive liquor store in Minnesota Statutes, section 340A.101, subdivision 10.
- E. Fixed Place of Business: Any form of business operated from a fixed address storefront or other permanent type of structure that is not a Moveable Place of Business.
- F. License: A license issued under this section.
- G. Licensed Product or THC Product: Any product that contains more than trace amounts of tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under Minnesota Statutes, section

151.72, as the same may be amended from time to time. Licensed Product and THC Product does not include Medical Cannabis.

- H. Medical Cannabis: Medical cannabis shall have the meaning provided in Minn. Stat. § 152.22, Subd. 6, as the same may be amended from time to time.
- I. Moveable Place of Business: Any form of business operated out of a kiosk, truck, van, automobile, trailer, or other type of vehicle or transportable shelter and is not a fixed address storefront or other permanent type of structure authorized for sales transactions.
- J. Retail Establishment: Any place of business where licensed products are available for sale to the general public.
- K. Restaurant: The term “restaurant” shall have the meaning given in Minn. Stat. § 157.15, Subd. 12, as the same may be amended from time to time.
- L. Sale: Any transfer of goods for money, trade, barter, or other consideration.
- M. School: Any public or private elementary, vocational, or secondary school, or a public or private college or university, or a state licensed day care center.
- N. 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.
- O. Vending Machine: Any mechanical, electric, electronic, or other type of device that dispenses licensed products upon the use of cash, coins, tokens, credit or debit card, personal identification number, or any form of direct or indirect payment, by the person seeking to purchase the licensed product.

Subd. 3. **License.**

- A. License Required. No natural person, corporation, partnership, limited liability company, or business entity of any type shall sell, donate, give away, or otherwise transfer any THC product, or offer to do so, without first having obtained a license to do so from the City.
- B. *Application.* An application for a license to sell tobacco, tobacco products, or tobacco related devices, electronic delivery device, or nicotine or lobelia delivery product 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 Manager shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Manager 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. Investigation.

viii. On an initial application for a license and on application for transfer of an existing license, the applicant shall pay a license fee to cover the cost of the background check. The City shall request that its Chief of Police conduct a preliminary background and financial investigation of the applicant. If the Council deems it in the public interest to have an investigation made on a particular application for renewal of a license, it shall so determine. If the Council determines that a comprehensive background and financial investigation of the applicant is necessary, it may conduct the investigation itself or contract with the Bureau of Criminal Apprehension for the investigation. If an investigation outside the state is required, the applicant shall be charged the cost not to exceed \$10,000, which shall be paid by the applicant after deducting any initial investigation fee already paid. The fee shall be payable by the applicant whether or not the license is granted. Upon completion of the investigation, the Chief of Police shall make a recommendation to the City Council of his or her findings, including a specific report on any violations of federal or state law or municipal regulations.

D. *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 Manager 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.

E. *Term.* All licenses issued under this section shall be valid from January 1 until December 31. License fees shall be prorated on a monthly basis for the portion of any year remaining on an initial application and with any portion of a licensed month counting as a full month.

F. *Revocation or Suspension.* Any license issued under this article may be revoked or suspended whenever the City Council deems there is cause to do so. Cause exists whenever a licensee violates any provision of this section or no longer meets the license eligibility requirements of this section.

G. *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 or business to whom the license was issued. The transfer of any license to another location, business, or person is prohibited, except as provided herein for successors of licensees.

H. *Display.* The licensee shall post and display on the licensed premises and in plain public view any license issued hereunder.

- 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 is a privilege and does not entitle the applicant to a license, nor does it entitle a license holder to automatic renewal of the license.

Subd. 4. **Fees.**

- A. Fee Required. No license shall be issued under this section until the appropriate license fee shall be paid in full.
- B. Fee. The fee for a license under this section shall be as established by the City Council in the City's fee schedule.
- C. Payment. Each application for a license shall be accompanied by a receipt from the City Treasurer for payment in full of the license fee. All fees shall be paid into the General Fund. If an application for a license is rejected, the Treasurer shall refund the amount paid as a license fee.

Subd. 5. **Ineligibility and Basis for Denial of License.**

- A. Ineligibility.
  - i. Moveable Place of Business. No license under this section shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this section.
  - ii. Financial Delinquencies. 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 Minnesota Statutes Chapter 278, as the same may be amended, 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.
  - iii. Zoning Ordinance Applies. No license shall be issued for a location not zoned for the sales proposed by the applicant.
- B. Grounds for Denial. Grounds for denying the issuance or renewal of a license under this section include, but are not limited to, the following:
  - i. The applicant, or any owner of an applicant that is not a natural person, is under the age of 21 years.

- ii. The applicant is prohibited by Federal, State, or other local law, ordinance, or other rule or regulation from holding a license.
- iii. The applicant has been convicted within the past five years for any:
  - a. violation of a Federal, State, or local law relating to the licensed products or any controlled substance law; or
  - b. misdemeanor or felony, including alcohol-related driving offenses but excluding other traffic offenses.
- iv. 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.
- v. The applicant has had any license issued by the City or any other jurisdiction suspended or revoked during the 12 months preceding the date of application, or the applicant has or had an interest in another premises, whether in the City or in another jurisdiction, that has had a license 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.
- vi. The applicant is a business that does not have an operating officer manager, proprietor, or other agent who is eligible pursuant to the provisions of this section.
- vii. The applicant is the spouse of a person ineligible for a license pursuant to this section or who, in the judgement of the City Council, is not the real party in interest or beneficial owner of the business to be operated, under the license.
- viii. The applicant fails to provide any information required on the application or provides false or misleading information. Any false or misleading 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 or license denial, revocation, or suspension for violation of this section, or any part thereof.
- ix. The proposed licensed premises is located within 300 feet of any school or addiction recovery center. The distances herein referred to

shall be measured in a straight line from the nearest property boundary of the licensed premises to the nearest property boundary of the school or addiction recovery center.

x. A license issued under this section shall be for a single fixed location only.

C. **Background Check.** Upon receipt of an application for a license under this section, the City shall conduct a background investigation on all new applications and applications to transfer a license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery of the mistake, and the City shall provide the licensee with a notice of revocation, along with information on the right to appeal.

Subd. 6. **Prohibited Acts.**

A. In general. No person shall sell, donate, give away, or otherwise dispense or distribute any licensed product, or offer to do so:

i. By means of any type of vending machine.

ii. By means of self-service merchandising, provided, however that self-service merchandising is permitted in a licensed establishment where entry to the premises is restricted to persons of age 21 or older.

iii. 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.

iv. That is not packaged in strict compliance with state laws, rule, and regulations.

v. From any location other than a fixed place of business that is a licensed premises. Delivery of licensed products from a licensee to a purchaser who is located off the licensed premises is strictly prohibited.

vi. By any form of internet/online transaction.

vii. By acceptance or redemption of any coupon, price promotion, or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any THC products to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.

B. **Controlled Substances.** No person shall sell, offer to sell, or otherwise provide any licensed products containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious,

hallucinogenic, toxic, or controlled substances not authorized by state or federal law.

C. Legal Age.

- i. Age to Sell. No person under the age of 18 shall sell any licensed product to any person.
- ii. Age to Purchase. No person, regardless of license status, shall sell any licensed product to any person under the age of 21.
- iii. Age verification. Licensees, including their employees and representatives, shall verify by means of government issued photographic identification that the purchaser is at least 21 years of age.
- iv. Signage. All licensees shall post and display in plain view of the general public on the licensed premise, which shall state that it is illegal to sell licensed products to anyone under the age of 21 years and that the possession and use of such items by anyone under the age of 21 is also illegal under state, federal, and/or local law.

D. Samples Prohibited. No person shall distribute samples of any licensed product free of charge or at a nominal cost. Sampling is prohibited on any licensed premises.

E. Other Prohibitions. No person shall sell, offer to sell, or otherwise provide, dispense, or distribute any licensed products by any means, to any other person, or in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation. Possession on the premises by the licensee of any licensed product in a package indicating that the contents do not comply with the requirements of state laws, rules, or regulations shall be prima facie evidence that the contents of the package violate this ordinance. It shall be the licensee's burden to prove, by a preponderance of the evidence, that the contents do comply.

F. Sales to Obviously Intoxicated or Impaired Persons. No person shall sell, give, furnish, dispense, distribute, or in any way procure for another person any licensed products for use by an obviously intoxicated person or a person who is obviously impaired by or under the influence of licensed products or any controlled or intoxicating substance.

Subd. 7. **Other Illegal Acts.** Unless otherwise provided, the following acts shall be a violation of this Ordinance:

A. Illegal Possession. It shall be a violation of this ordinance for any person under the age of 21 to have any THC product in his or her possession. This subdivision shall not apply to persons under the age of 21 who are lawfully involved in a compliance check or to employees of a licensee who are at least 18 years of age and are acting in the course and scope of their employment for a licensee.



- B. **Illegal Use.** It shall be a violation of this ordinance for any person under the age of 21 to consume or otherwise use any licensed product.
  - C. **Illegal Procurement.** It shall be a violation of this ordinance for any person under 21 years of age to purchase or attempt to purchase or otherwise obtain any licensed product, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a person under 21 years of age. It shall further be a violation for any person to coerce or attempt to coerce a person under 21 years of age to illegally purchase or otherwise obtain or use any licensed product. This subpart shall not apply to persons under 21 years of age who are lawfully involved in a compliance check.
  - D. **Use of False Identification.** It shall be a violation of this ordinance for any person under 21 years of age to attempt to disguise his or her true age by the use of any form of false identification, including but not limited to an identification card of another real or fictional person and 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.
  - E. **Tampering with Package.** No licensee shall directly or through any other person alter or tamper with the contents of any original package so as to change its composition or THC content while in the original package. Possession on the premises by the licensee of any licensed product in a package differing in composition or THC content in the product when received from the manufacturer or wholesaler from whom it was purchased, shall be prima facie evidence that the contents of the original package has been changed or tampered with. It shall be the licensee's burden to prove, by the preponderance of the evidence, that the contents have not been tampered with.
  - F. **Restrictions on Consumption and Use.** No person shall consume or possess licensed products on a public street, highway, sidewalk, park, public or private school property, or in any public facility, on any form of public transportation or transit, at any other public place, or at any location where medical cannabis possession and use are prohibited by Minn. Stat. § 152.23, as the same may be amended from time to time. Provided, however, that nothing herein shall prohibit any person from possessing a licensed product while using a public street, highway, or sidewalk to travel directly from the point of a lawful purchase to a place of lawful use.
  - G. **Other City-Issued Licenses.** No person shall possess, use, distribute, or be under the influence of any licensed product while performing any task for which any license has been issued by the City. A violation of this subpart shall be grounds for suspension, revocation, or non-renewal of any such license.
- Subd. 8. **Storage.** Unless the licensee restricts access to the entire licensed premises to persons age 21 or older, 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.

Subd. 9. **Responsibility.** All licensees are responsible for the actions of their employees, agents, and other representatives 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 or other representative of a licensee shall be considered an act of both the employee or representative and the licensee. Nothing in this section shall be construed as prohibiting the City from also subjecting a licensee's employee, agent, or other representative to any civil penalties or criminal prosecution that the City deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.

Subd. 10. **Compliance Checks and Inspections.**

- A. All premises licensed under this subdivision shall be open to inspection by the City during regular business hours. The City shall conduct compliance checks at its discretion.
- B. 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 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.
- C. Additionally, from time to time, the City will conduct inspections to determine compliance with any or all other aspects of this ordinance.

Subd. 11. **Violations and Penalty.**

- A. **Administrative Civil Penalties – Individuals.** If a person who is not a licensee is found to have violated this section, the person shall be charged an administrative penalty as follows:
  - i. **First Violation.** The City shall impose a civil fine not to exceed \$ 100.00.
  - ii. **Second Violation Within 12 months.** The Council shall impose a civil fine not to exceed \$ 200.00.
  - iii. **Third Violation Within 12 months.** The Council shall impose a civil fine not to exceed \$ 300.00.
- B. **Administrative Civil Penalties – Licensee.** If a licensee or an employee or representative of a licensee is found to have violated this section, the licensee shall be charged an administrative penalty as follows:

- i. First Violation. The City shall impose a civil fine of \$500.00 and suspend the license for not less than 2 consecutive business days.
    - ii. Second Violation Within 36 Months. The Council shall impose a civil fine of \$1,000.00 and suspend the license for not less than 5 consecutive business days.
    - iii. Third Violation Within 36 Months. The Council shall impose a civil fine of \$2,000.00 and suspend the license for not less than 10 consecutive days.
    - iv. Fourth Violation Within 36 Months. The Council shall revoke the license for not less than one year.
  - C. Administrative Penalty Procedures. Notwithstanding anything to the contrary in this section:
    - i. If one of the foregoing penalties is imposed by the City, no penalty shall take effect until the licensee or person has been served with notice (served personally or by mail delivered to the business address of the licensee) 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 15 business days of mailing or personal service of the notice or such hearing 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 section.
  - E. Continuing Violations. Each day that a violation of this section continues shall be considered a separate offense.
- Subd. 12. **Medical Cannabis Manufacture, Dispensing, and Use.** Nothing herein shall be construed to prohibit, prevent, impede, or otherwise change any person's right to lawfully manufacture, obtain, dispense, distribute, possess, prescribe, or use medical cannabis in compliance with state law. Provided, however, that nothing herein shall be construed to grant or expand those rights.
- Subd. 13. **Severability.** If any part 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.
- Subd. 14. **Provisions of State Law Adopted.** The provisions of Minn. Stat. § 151.72, relating to licensed products are adopted and made a part of this ordinance as if set out in full.
- Subd. 15. **Effective Date.** This ordinance becomes effective upon its final passage and publication or January 1, 2023, whichever is later.

**ADOPTED** by the City Council of the City of Perham this 12<sup>th</sup> day of December 2022.

  
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Mayor

ATTEST:

  
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City Manager