



DATE: August 28, 2023

TO: Honorable Mayor and City Councilmembers
Dave Perrault, City Administrator

FROM: Jessica Jagoe, Community Development Director

SUBJECT: Planning Case #23-014 – Public Hearing Required
Applicant: City of Arden Hills
Request: Zoning Code Amendments – Chapter 13, Sale of Lower-Potency Hemp Edibles

Budgeted Amount: N/A	Actual Amount: N/A	Funding Source: N/A
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Council Should Consider

- Hold the required public hearing for Planning Case 23-014, a proposal for Zoning Code Amendments to Chapter 13, Section 1305.04 – Zoning Code Definitions, Section 1320.05 – Land Use Chart in the B-2, B-3, B-4, and Gateway Business (GB) Zoning Districts, and Section 1325.02 – Accessory Uses. The City Council will be asked to make a formal decision regarding the application under Agenda Item 11B.

Background

On July 1, 2022, the Minnesota Legislature adopted an amendment that permits the sale of edible cannabinoid products that contain no more than 0.3% of tetrahydrocannabinol (a derivative of hemp). The amendment was enacted with very few regulations in place. Several cities adopted a moratorium in order to allow adequate time to study the matter. On August 22, 2022, the City of Arden Hills adopted Interim Ordinance 2022-006 establishing a one-year moratorium prohibiting the sale, testing, manufacturing, and distribution of products containing tetrahydrocannabinol (THC). It is important to note this moratorium does not apply to products containing THC related to the Medical Cannabis Program as administered by the Minnesota Department of Health, provided the activity is conducted in accordance with state law regarding medical cannabis. Interim Ordinance 2022-006 will expire on August 22, 2023.

As of May 31, 2023, there has also been a recent state law change relating to adult use marijuana/cannabis. This state law includes language for cities to have the authority to impose a

moratorium on the sale of full strength products until January 1, 2025 in order to allow further review and future discussions as the new law continues to be interpreted. The Office of Cannabis Management (OCM) is still taking shape and they will license retailers. Cities will be required to register local adult cannabis retailers and conduct compliance checks. Eventually, the OCM will have sample language and forms to provide to cities. The City Council directed city staff at their work session on July 17, 2023, to work with the City Attorney's Office to prepare the ordinance language for a moratorium prohibiting the sale of Adult Use Cannabis products as allowed under the state law. Staff anticipates this discussion will be reviewed by the City Council at their second regular meeting in August. For this discussion, the City Council is being asked to review and consider ordinance language as it relates solely to lower-potency THC products.

Under new State law lower-potency THC hemp products in the form of edibles or beverages could be sold anywhere in the city, including exclusive liquor stores. Without any changes to the city code after August 22, 2023, a business could begin selling lower-potency hemp products as part of their retail operations. The following explains lower-potency edible cannabinoid products (per the Minnesota Department of Health):

- Beverages can have up to a maximum of 5 mg delta-9 THC per serving and the container cannot contain more than 2 servings, with 10 mg total THC.
- If it is an edible, the package of edibles cannot contain more than 5 mg delta-8 or delta-9 THC per serving and 50 mg total THC.
 - Each serving must be scored, wrapped, or another indicator which clearly distinguishes each serving.
 - The edible products cannot contain synthetic cannabinoids or artificially derived cannabinoids (other than delta-8 or delta-9 THC).
- Edibles must be in a child-resistant, tamper-evident, and opaque package or container. The product cannot contain any ingredient not approved by the U.S. Food and Drug Administration (FDA) for use in food.
- The product cannot be a commercially available candy or snack food item where CBD or hemp-THC has been applied to or added.
- The product must not be packaged in a container that includes a statement, artwork, or design that could reasonably mislead any person to believe that the package contains anything other than an edible cannabinoid product.
- The product cannot be contaminated or have more than trace amounts of mold, residual solvents or other catalysts from processing, pesticides, fertilizers, or heavy metals. Batch testing of the product by an accredited lab must be completed to ensure the product is safe for consumption.
- Products containing nonintoxicating cannabinoids intended to be smoked or vaped are not allowed in Minnesota. Nonintoxicating cannabinoid means substances extracted from certified hemp plants that do not produce intoxicating effects when consumed by any route of administration.
- Edible cannabinoid products must not be in a shape that bears the likeness or contain cartoon-like characteristics of real or fictional person, animal, or fruit that appeals to children.
- All edible cannabinoid products must be displayed behind a checkout counter where the general public is not permitted or in a locked case, with the exception of beverages.

At your June 20th and July 17th work sessions, the City Council discussed options for how the City may move forward with regulating the sales of lower-potency hemp edibles when the moratorium expires. The general consensus of the City Council was to establish a new land use classification specific to the sale of lower-potency hemp edibles in our commercial zoning districts mainly along Lexington Avenue at the initial onset with a separation of land use from schools, day cares, parks, etc. as allowed by State Statute. Staff worked with the City Attorney's Office to prepare a draft ordinance reflective of their comments.

The City Council reviewed the first draft ordinance at the July meeting. During that discussion, the Council considered other types of land uses in addition to Retail Sales and Service that might have the potential of selling lower-potency hemp products such as a gas station or a restaurant. Staff confirmed that the draft ordinance as written would not include these types of businesses since they are a separate land use type. However, a liquor store may qualify as a retail land use. Staff provided an overview of existing retail businesses along Lexington Avenue within the B-3, General Business District as well as the area along County Road E between Lexington Avenue and Snelling Avenue that falls under the B-2, General Business Zoning District. Under the city code, Retail Sales and Service is a permitted use in the following zoning districts: B-2 - General Business, B-3 - Service Business, and B-4 - Retail Center. For the City Council, staff has included with this report several maps identifying the parcels located within each of these zoning districts (Attachment C). The new State law and any future ordinance change would apply to both existing and new businesses in Arden Hills.

The main topics of discussion during the work session were the delineation of where lower-potency hemp sales would be allowed (ex. B-2 and/or B-3 zoning districts) and regulating solely as an accessory use to a retail business. The City Council directed staff to bring forward the proposed ordinance to the Planning Commission for the first review and to hold a public hearing in order to solicit your recommendation on this language. Following the public hearing, the draft ordinance language with the recommendation of the Planning Commission would be brought to the City Council for subsequent discussion and adoption. It was noted to the Planning Commission that at the subsequent regular City Council meeting, a Councilmember commented that the upcoming lower-potency hemp discussions should also consider allowing the ability to sell as an accessory use for Service Stations and potentially within the Gateway Business District.

Overview of Ordinance Amendments

Staff has prepared a draft ordinance identifying language to be added for the City Council's review (Attachment A). The proposed ordinance would add a new land use type for the sale of lower-potency hemp edibles. As drafted based on the Planning Commission amendments, the City would allow as a conditional accessory use only to businesses with a principal Retail Sales and Service, Restaurant or Service Station land use in the B-2, B-3, B-4, and GB Zoning Districts. This means there could not be a standalone shop (i.e. principal use) exclusively selling lower-potency hemp products and any business interested in selling lower-potency products would need to come before the Planning Commission and City Council for a Conditional Use Permit.

The draft language includes a requirement for a distance separation of a lower-potency sales operation to schools, day cares, residential treatment facilities, and public parks as allowed by State Statute. With the staff report, staff has prepared maps by zoning district that show the

potential overlap of parcels which might trigger the distance separation (Attachment D). The blue outline around the parcels is the 500 or 1000-foot distance around that zoning district. The green outline is the overlap of a parcel within that zoning district that is operating either a school, day care, or public park. Only the portion of the green area that overlaps within the zoning district would not be eligible for the sale of lower-potency hemp edibles. The presence of a parcel within the specific distance operating one of those land uses would not preclude the entire district.

Planning staff has confirmed with the City Attorney that the distance for separation of uses is most often times measured from property line to property line. A rationale for administering this provision in this manner is that kids may be present on an entire property (ex. playground), not just inside a building. The City Council should discuss if this is how city staff would continue to analyze the separation of uses. As shown in Attachment D for the Gateway Business Zoning District there is a unit in Arden Manor that is operating a licensed day care. Staff has shown two examples measuring 500 feet. The first example is as measured from the structure (i.e. area owned by the day care provider), not from the underlying property line of Arden Manor. The second is the measurement from the property line to property line. In example one, staff was able to measure from the structure within Arden Manor primarily due to the fact these units have individual parcel ID's as recorded with the Ramsey County Recorder's Office. It would be challenging to measure from unit to unit in scenarios that are leased multi-tenant spaces like those along Lexington Avenue where for recorded purposes the site functions as one building. Additionally, if the separation of use was measured to the unit rather than the property line in multi-tenant leased spaces, only a portion of the building may be excluded. In this scenario, there could be the potential of a unit that is excluded from selling lower-potency hemp edibles adjacent to a unit that would comply outside of the 500 feet within the same building.

Lastly, the Planning Commission was split in their deliberation on whether or not to recommend language on allowing Lower-Potency Hemp Edible Sales as a principal use and removing the distance separation. Their motion reflects their unanimous recommendation to expand the zoning districts where lower-potency hemp edibles sales would be allowed, and to remain as an accessory use, but to also include that allowance for restaurants and service stations.

The applicable Sections to be amended are as follows:

- Section 1305.04, Zoning Code Definitions
- Section 1320.05, Land Use Chart in the B-2, B-3, B-4, and GB Zoning Districts
- Section 1325.02, Accessory Uses

Proposed Ordinance Language:

- 1) Add definitions relevant to the Sale of Lower-Potency Hemp Edibles
 - a. Hemp Concentrate
 - b. Hemp-Derived Consumer Product
 - c. Hemp Plant
 - d. Lower-Potency Hemp Edible
 - e. Lower-Potency Hemp Edible Sales
 - f. Nonintoxicating Cannabinoid

- 2) Land Use Chart within Section 1320.05 would be amended to include Lower-Potency Hemp Edible Sales:
 - a. Add a land use category for Lower-Potency Hemp Edible Sales as a Conditional and Accessory Use under the B-2, B-3, B-4, and GB Zoning Districts.
- 3) Amend Section 1325.02, Accessory Uses
 - a. Create a new Subdivision 6 that establishes the requirements and criteria for Lower-Potency Hemp Edible Sales as an accessory use on a property where the principal use is Retail Sales & Service, Restaurant, or Service Station.

Proposed language:

A. Lower-Potency Hemp Edible Sales shall be a Conditional Accessory use only permitted in the B-2 General Business, B-3 Service Business, B-4 Retail Business, and GB Gateway Business Zoning Districts.

B. Applicants for Conditional Accessory Lower-Potency Hemp Edible Sales shall follow the conditional use permit procedures prescribed in Section 1355.04, subd. 3, and Appendix A, Procedure Manual. The City shall review a site plan and specifics of the proposed lower-potency hemp edibles business and may issue the permit subject to, but not limited to, the following requirements:

1. Lower-potency hemp edible sales shall only be permitted as an accessory use on a Subject Property where the principal use is Retail Sales & Service, Restaurant, or Service Station, and when such accessory use is clearly incidental to the principal use.
2. The Subject Property shall not be located within 1,000 feet of any school.
3. The Subject Property shall not be located within 500 feet of any property providing day care or residential treatment services, or an attraction within a public park that is regularly used by minors including a playground or athletic field.
4. No lower-potency hemp edible sales shall occur between the hours of 10:00 p.m. and 8:00 a.m. the following day.

Planning Commission Review

The Planning Commission reviewed this application at the August 9, 2023 meeting. The Commission voted 6-0 (Commissioner Mitchell was absent) to recommend approval of Planning Case 23-014 with amendments. The Commission added amendments to recommend adding Lower-Potency Hemp Edible Sales as a Conditional Accessory use in the B-2, B-4 and GB Zoning Districts and to permit Lower-Potency Hemp Edible Sales as an accessory use on a Subject Property where the principal use is also a Restaurant or a Service Station. The Commission discussed allowing Lower-Potency Hemp Edible Sales as a principal use and reducing/removing the distance separation for subject properties and asked the City Council to consider these points as part of the ordinance review.

Public Notice and Comments

A Zoning Code Amendment requires a public hearing. Notice was published in the *Pioneer Press* on August 17, 2023. The City has not received any public comments regarding this case.

Attachments

- A) Draft THC Ordinance Amendment
- B) Zoning Map
- C) Maps by Zoning District
- D) Distance Separation Exhibits
- E) Planning Commission Memo
- F) Draft Planning Commission Minutes
- G) Presentation