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**DATE:** August 9, 2023

**TO:** Planning Commission Chair and Commissioners

**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

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### **Requested Action**

The City of Arden Hills is proposing ordinance language in the Zoning Code to define and allow for the accessory sales of lower-potency hemp edible sales as a conditional use within the B-3, Service Business Zoning District. The proposed amendments to City Zoning Code Chapter 13 are within the following Sections:

- Section 1305.04, Zoning Code Definitions
- Section 1320.05, Land Use Chart in the B-3, Service Business Zoning District
- Section 1325.02, Accessory Uses

### **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 Planning Commission 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 their June 20<sup>th</sup> and July 17<sup>th</sup> 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 their 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 Planning Commission, 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. If the Commission has any suggested change(s) to the draft language that should be brought forward as part of the motion language.

It should be noted 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 Planning Commission's review (Attachment A). The proposed ordinance would add a new land use type for the sale of lower-potency hemp edibles. As drafted, the City would allow as a conditional accessory use only to businesses with a principal Retail Sales and Service land use in the B-3 Zoning District. This means there could not be a standalone shop 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 would require a distance separation of a lower-potency sales operation to schools, day cares, residential treatment facilities, and public parks as allowed by State Statute. The applicable Sections to be amended are as follows:

- Section 1305.04, Zoning Code Definitions
- Section 1320.05, Land Use Chart in the B-3, Service Business Zoning District
- 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-3 Zoning District.
  
- 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.

*Proposed language:*

A. Lower-Potency Hemp Edible Sales shall be a Conditional Accessory use only permitted in the B-3 Service Business District.

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, 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.

An ordinance amendment to the Zoning Code does require a public hearing before the Planning Commission.

### **Findings of Fact**

The Planning Commission must make a finding as to whether or not the proposed application would adversely affect the surrounding neighborhood or the community as a whole based on the aforementioned factors. Staff offers the following findings for consideration:

#### *General Findings:*

1. The City of Arden Hills is proposing to amend ordinance language to allow for lower-potency hemp edible sales in the zoning code as a conditional accessory use within the B-3 Zoning District.
2. The proposed ordinance will include amendments to the language of Chapter 13 – Zoning Code, Sections 1305.04 - Definitions, 1320.05 – Land Use Chart, and 1325.02 – Accessory Uses of the City Code.
3. The proposed ordinance amendments will allow lower-potency hemp edible sales as a conditional accessory use where the principal use is Retail Sales & Service.
4. The proposed ordinance amendments are consistent with State law for the City’s authority to regulating the sale of lower-potency hemp edibles under the zoning code.
5. Amendments to the Zoning Code regulations require a public hearing prior to action by the City Council.
6. If the zoning amendments were approved, an Applicant would be required to submit a land use application that would be subject to the formal review process.

### **Options and Motion Language**

Staff has provided the following options and motion language for this case. The Planning Commission should consider providing additional findings of fact as part of the motion to support their recommendation for approval or denial.

- Recommend Approval: Motion to recommend *approval* of Planning Case 23-014 for a Zoning Code Amendment to Chapter 13 of the Arden Hills City Code to allow the Sale of Lower-Potency Hemp Edibles as a Conditional Accessory Use in the B-3, Service Business Zoning District, based on the findings of fact and as presented in the August 9, 2023 Report to the Planning Commission.

- Recommend Approval with Amendments: Motion to recommend *approval* of Planning Case 23-014 for a Zoning Code Amendment to Chapter 13 of the Arden Hills City Code to allow the Sale of Lower-Potency Hemp Edibles as a Conditional Accessory Use in the B-3, Service Business Zoning District, based on the findings of fact and August 9, 2023 Report to the Planning Commission with amendments: *a specific reason should be included with all amendments.*
- Recommend Denial: Motion to recommend *denial* Planning Case 23-014 for a Zoning Code Amendment to Chapter 13 of the Arden Hills City Code to allow the Sale of Lower-Potency Hemp Edibles as a Conditional Accessory Use in the B-3, Service Business Zoning District, based on the following findings: *findings to deny should specifically reference the reasons for denial and why those reasons cannot be mitigated.*
- Table: Motion to *table* Planning Case 23-014 for a Zoning Code Amendment to Chapter 13 of the Arden Hills City Code to allow the Sale of Lower-Potency Hemp Edibles as a Conditional Accessory Use in the B-3, Service Business Zoning District: *a specific reason and information request should be included with a motion to table.*

### **Notice**

A Zoning Code Amendment requires a public hearing. Notice was published in the *Pioneer Press* on July 28, 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) Land Use Chart