## SECTION 21 – CANNABIS BUSINESSES

### 21.01 Purpose and Authority

The purpose of this ordinance is to implement the provisions of Minnesota Statutes, Chapter 342, which authorizes Nininger Township to protect the public health, safety, and welfare of Township residents by regulating cannabis businesses within the legal boundaries of the Township.

The Township finds and concludes that the proposed and adopted provisions are appropriate and lawful land use regulations for the Township's interest in reasonable stability in zoning for now and in the future, and that the proposed and adopted provisions are in the public interest and for the public good.

Whereas, the State of Minnesota has enacted legislation, Minnesota Statutes Chapter 342, legalizing and governing the use and sale of cannabis and related products, which is applicable throughout Minnesota, including Nininger Township. As a result, the Township recognizes that by law persons under the age of twenty-one (21) years may not purchase or otherwise obtain, possess and use intoxicating cannabis products; and that the sale of these products to persons under twenty-one (21) years of age is a violation of State and Federal laws; and because the use of intoxicating cannabis products by those underage subsequently places a financial burden on all levels of government, this section is intended to regulate the sale of intoxicating cannabis products and cannabis-related devices for the purpose of enforcing and furthering existing laws. In order to protect the public health, safety, and welfare, the Town Board deems it necessary to provide for the regulation and permitting of cannabis businesses.

Nininger Township has the authority to adopt this ordinance pursuant to:

a) Minn. Stat. §342.13(c), (attached) regarding the authority of a local unit of government to adopt reasonable restrictions of the time, place, and manner of the operation of a cannabis business provided that such restrictions do not prohibit the establishment or operation of cannabis businesses.

b) Minn. Stat. §342.22, (attached) regarding the local registration and enforcement requirements of state-licensed cannabis retail businesses and lower-potency hemp edible retail businesses.

c) Minn. Stat. §152.0263, Subd. 5, regarding the use of cannabis in public places.

d) Minn. Stat. §462.357, regarding the authority of a local authority to adopt zoning ordinances.

This Ordinance shall be applicable within the legal boundaries of Nininger Township.

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## 21.02 DEFINITIONS

For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Regardless, the definitions set forth in Minn. Stat. §342.01 shall control and any inconsistent definitions set forth herein are superseded by the definitions in §342.01.

A. ADULT-USE CANNABINOID or CANNABIS PRODUCT means any cannabinoid product authorized for sale under Minnesota State law. It includes edible cannabinoid products but not medical cannabinoid products. It does not include non-intoxicating cannabis products.

B. CANNABINOID means any of the chemical constituents of hemp plants or cannabis plants that are naturally occurring, biologically active, and act on the cannabinoid receptors of the brain. Cannabinoid includes but is not limited to the tetrahydrocannabinol and cannabidiol.

C. CANNABINOID or CANNABIS PRODUCT means any of the following:

1. Cannabis concentrate;
2. A product infused with cannabinoids, including but not limited to tetrahydrocannabinol, extracted or derived from cannabis plants or cannabis flower;
3. Any product that contains cannabis concentrate;
4. A product infused with artificially derived cannabinoids;
5. Adult-use cannabinoid products;
6. Edible cannabinoid products;

It does not include cannabis flower, artificially derived cannabinoids or hemp-derived consumer products.

D. CANNABIS means a compound of the cannabis plant known as cannabidiol.

E. CANNABIS BUSINESS means a cultivator, manufacturer, retailer, wholesaler, transporter, testing facility, event organizer, delivery service and edible retailer, of cannabis, cannabis products or cannabis related devices.

F. CANNABIS RELATED DEVICES means any equipment, products or materials of any kind which are used, intended for use, or designed for use in repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling or otherwise introducing cannabis or cannabis products into the human body.

G. CERTIFIED HEMP means hemp products that have been tested and found to meet the requirements of Minnesota Statutes, Chapter 18K (the “Industrial Hemp Development Act”), and the rules adopted thereunder by the State of Minnesota.

DRAFT

H. EDIBLE CANNABINOID or CANNABIS PRODUCT means any product that is intended to be eaten or consumed as a food or beverage, contains a cannabinoid in combination with food ingredients, and is not a drug.

I. HEMP OR INDUSTRIAL HEMP means the "Industrial Hemp" definition provided under Minnesota Statutes Section 18K.02, subdivision 3.

J. HEMP MANUFACTURING means the ability to facilitate the manufacturing of industrial hemp.

K. INTOXICATING CANNABINOID or CANNABIS means a cannabinoid, including an artificially derived cannabinoid, that when introduced into the human body impairs the central nervous system or impairs the human audio, visual, or mental processes. Intoxicating cannabinoid includes, but is not limited to, any THC.

L. MEDICAL CANNABIS means the definition provided under Minnesota Statutes Section 152.22, subdivision 6.

M. MEDICAL CANNABIS DISTRIBUTION FACILITY means a facility operated by a medical cannabis manufacturer for purposes of distributing medical cannabis in accordance with Minnesota Statutes Section 152.29, subdivision 1(a), and the requirements of the Commissioner of the Minnesota Department of Health or other applicable State law.

N. MOVABLE PLACE OF BUSINESS means any form of business operated out of a truck, van, automobile, trailer, tent, table, or booth that is transportable and not a fixed address store front or other permanent type of structure.

O. NON-INTOXICATING CANNABINOID or CANNABIS PRODUCT means products made from substances extracted from certified hemp plants that do not produce intoxicating effects when consumed by any route of administration. This may include tinctures, creams, lotions, ointments, or salves.

P. THC means tetrahydrocannabinol.

Q. RESIDENT means a landowner, full-time occupant, or a renter with a lease of a minimum duration of 12 months.

DRAFT

## 21.03 STATE LICENSE AND CONDITIONAL USE PERMIT (CUP)

A. *State License.* No person shall engage in a cannabis business directly or indirectly deal in, sell, keep for sale, deliver, manufacture, distribute, test, cultivate, grow, transport, or organize an event for any intoxicating cannabinoid or cannabis product, without first having received a license to do so from the state, if so required, and a CUP from the Township, as provided in this section. No license or CUP shall be required for a cannabis business that only sells non-intoxicating cannabis product or any medical cannabis businesses that are regulated by State law.

B. *Residency.* At least one CUP applicant must be the landowner or resident (as defined in Section 21.03 DEFINITIONS of this ordinance) of Nininger Township. The landowner on which the cannabis business is operated is fully responsible for compliance with this ordinance.

C. *Application*. An application for a CUP shall be made to the Township. The application shall contain

a) the full name of the applicant

b) the applicant's residential and business addresses and telephone numbers

c) full name and address of the landowner on which the cannabis business will be operated

d) written consent from the landowner — who is fully responsible for compliance with this ordinance — to the Conditional Use Permit and to the operation of a cannabis business on the owner's land

e) the name of the business for which the permit is sought

f) a copy of the educational materials the applicant intends to uso educate employees

g) for purposes of cannabis cultivation, an MPCA Statement as defined herein, and a ventilation plan that contains the following:

i. A complete, detailed list and description of all systems used to control the environment for the plants and how the systems operate

ii. A detailed list and description of effective ventilation systems that will mitigate noxious gases or fumes from fertilizers, pesticides, insecticides, carbon dioxide, other flammable solvents, asphyxiant gases, hazardous chemical dusts, etc. that are used or created as part of the cultivation or production process

iii. A detailed list and description of odor mitigation systems that will be used to prevent any off-premises cannabis odors. Odor control systems must be odor-neutralizing, not odor-masking, and must work properly at all times

DRAFT

h) a water management plan or operating agreement that includes the manner in which they will bring the strength of the wastewater to acceptable levels before discharge, and the name and agency of the licensed wastewater professional who will conduct the wastewater monitoring

i) for purposes of cannabis cultivation, a description and schedule (i.e., frequency and length of activity) of activities (i.e., harvest) that may increase odor to emissions

j) provide a good faith estimate of how and when traffic may increase based on business activities

k) any additional information the Township deems necessary.

Upon receipt of the completed application, the Township Clerk shall forward the application to the Planning Commission for review and recommendation to the Nininger Town Board. If the Township Clerk or Planning Commission determines an application is incomplete, the Township Clerk shall return the application to the applicant with notice of the information necessary to make the application complete.

D. *Renewal Application*. A CUP renewal application shall be completed annually by the permit holder and submitted to the Township Clerk with the renewal fee 45-60 days prior to expiration on December 31 of the year following the issuance of the CUP. The renewal application shall be handled in the same manner as the original application and shall contain all information required in the original permit application plus any alterations to operations, processes or equipment listed in the current permit; changes in business partners; updates to educational materials; and any other information the Township deems necessary.

The prior CUP shall remain outstanding until the final decision is made by the Township on the CUP renewal application.

## 21.04 CUP FEES AND CHARGES

A. *Initial registration and administrative fee.* At the time of filing an application for any CUP that can be issued under this section, the applicant shall pay the Township a registration and administrative fee of $500.00 plus other amount established by ordinance of the Township. This registration and administrative fee shall be non-refundable and shall be used to administer the application process, including investigating ordinance and legal compliance, background checks, and other services deemed necessary by the Township Board.

B. *Public hearing charge.* Within five (5) days of setting the public hearing date, the applicant shall pay the Township the public hearing charge of $1000.00. The public hearing charge shall be non-refundable and shall be used to help recover the costs associated with holding the hearing including publicizing and conducting the hearing,

DRAFT

legal fees, staff wages, law enforcement (as needed), and other costs incurred in the public hearing process.

C. *Annual renewal fee and compliance charge.* An annual renewal fee and compliance charge of $1500.00, or such other amount established by ordinance of the Township, shall be submitted to the Township along with the permit renewal application at least 45-60 days prior to expiration on December 31 each year. The renewal fee and compliance charge will help recover Township expenses incurred in the permit renewal process and administration, and the annual review and investigation of continued compliance with Township ordinances.

D. *Due date for CUP fees and charges.* No CUP application shall be considered and no permit shall be processed or issued under this chapter until the appropriate fees and charges are paid in full. The public hearing process shall cease if the public hearing charge is not paid in full within five (5) days of setting the public hearing date.

## 21.05 BACKGROUND INVESTIGATION

A. At the time of making an initial application, renewal application, or request for a new operating officer, the applicant shall file a completed application with the Township Clerk. The applicant shall authorize the Township and applicable Police and/or Sheriff Department and other departments, as deemed necessary by the Township, to investigate all information in the application and to conduct a thorough background and criminal record investigation of the applicant and others involved in the cannabis business. The applicant shall authorize the Police and/or Sheriff Department to release information received from the investigation to the Township.

B. Upon completion of the background investigation, the Township and/or involved Police and/or Sheriff Department shall file with the Township Clerk a written report of its investigation.

C. Upon receipt of the investigation results, the Township Clerk shall forward the application and any other investigative documents to the Planning Commission for review and recommendation for approval or denial of the application by the Town Board.

D. No permit will be issued or renewed if the results of the background investigation show to the satisfaction of the Town Board that issuance of a permit would not be in the public interest, subject to Minnesota Statutes Chapter 342 and Township ordinances.

E. *Renewals*. The renewal of a permit issued under this section shall be handled in the same manner as the original application. The request for renewal shall be made at least 45 days but no more than 60 days before the expiration of the current permit.

DRAFT

## 21.06 ACTION, DISPLAY, TERM, TRANSFERS, RESPONSIBILITY

e) *Action.* The Town Board may approve or deny the application for a CUP in accordance with this cannabis ordinance, the CUP ordinance, and/or other applicable ordinances, or it may delay action for 60 days or until an investigation of the application or the applicant is complete. The issuance of the CUP is a privilege and does not entitle the permit holder to an automatic renewal of the permit.

f) *Display*. All permits shall be posted and displayed in plain view of the general public on the permitted premise.

g) *Term*. All CUPs shall be for a period of one (1) year and shall expire on December 31 of the year following the issuance of the CUP. All CUPs shall be subject to an annual compliance check.

h) *No transfers*. All CUPs under this section shall be issued only for the premises to which the permit was issued and only for the person to whom the permit was issued. No transfer of any CUP to another person, business, or location, or addition of any other person or business to the permit, shall be allowed.

i) *Landowner responsibility.* The landowner is fully responsible for compliance with this ordinance.

## 21.07 BASIS FOR DENIAL OF A CUP

The following shall be grounds for denying issuance or renewal of a CUP under this section.

A. The applicant is under the age of 21 years.

B. At least one applicant is not a landowner or resident (as defined in Section 21.03 DEFINITIONS of this ordinance) of Nininger Township.

C. The applicant has been convicted within the past 5 years of any violation of a federal, state, or other law, ordinance provision, or other regulation relating to the permit or the operation of the cannabis business.

D. The applicant has a similar cannabis license or permit revoked within the preceding 12 months of the date of application in any jurisdiction.

E. The applicant fails to provide information required in the application or provides false or misleading information.

F. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation, from holding a cannabis license or such permit.

DRAFT

G. The applicant or permit holder has outstanding fines, penalties, or property taxes owed to the Township.

H. The issuance of the permit is contrary to the public interest, subject to Minnesota Statutes Chapter 342 and Township ordinances.

I. The issuance of the permit violates township zoning restrictions or other ordinance regulations, or does not comply with applicable fire code.

## 21.08 PERFORMANCE STANDARDS

A. *Location setbacks.* A cannabis business shall only operate in an authorized zoning district with an approved State license and Township CUP.

Cannabis businesses in Nininger Township are prohibited from operating within the following buffers. If any portion of a parcel falls within this buffer, the entire property parcel is ineligible.

- 500 feet of Daycare
- 1000 feet of a school (K-12)
- 500 feet of a Residential Treatment Facility
- 500 feet of a public park or trail regularly used by minors
- Cannabis cultivation, processing or manufacturing shall be at least 250 feet from a residence

B. *Number of businesses.* The Township shall limit the number of cannabis retail businesses to no fewer than one CUP registration for every 12,500 residents within the Township. If the Township has one active cannabis retail business registration or CUP for every 12,500 residents, the Township shall not be required to register or issue a CUP for additional state-licensed cannabis businesses.
As long as the population of Nininger Township is less than 12,500, no more than one adult cannabis establishment/business shall be allowed to operate within the Township at any given time.

C. *Proof of age.* Any person selling or distributing cannabis products shall require proof of age by means of government issued photographic identification from the prospective purchaser showing the purchaser is twenty-one (21) years old or older.

D. *Point of sale signage.* Signage identifying the legal sales age and the age verification requirement shall be prominently posted at the point of sale. The required signage shall be posted in a manner so that it is clearly visible to anyone who is considering or making a purchase. The sign shall provide notice that all persons responsible for

DRAFT

selling these products must verify the age of any person by means of photographic identification required in this section, containing the bearer's date of birth.

E. *Compliance.* Cannabis products must comply with the testing, labeling and packaging requirements in Minnesota State law.

F. *Hours of operation.* No sales or distribution of intoxicating cannabis products shall be allowed at the permitted premises after 9:00 p.m. or before 8:00 a.m.

G. *Access to retail cannabis*. It shall be unlawful for a retailer to allow the sale of intoxicating cannabis products or cannabis related devices by any means whereby a customer has access to such items without having to request the item from the retailer or the retailer's employee. There shall be a physical exchange of the intoxicating cannabis product or cannabis-related devices between the retailer or the retailer's employee and the customer. All intoxicating cannabis products and cannabis-related devices shall be either stored behind a counter or other area not freely accessible to customers, or in a storage unit or case not open and accessible to the general public.

H. *Security Plan.* All cultivation, manufacturing and retail establishments of intoxicating cannabis products shall have a security plan approved by the Town Board stating how the facility will address public health, welfare and safety concerns including, but not limited to, security cameras, ventilation, off-premise odors, fencing, lighting, window coverings, door placement, and landscaping, where applicable.

I. *Inspection.* All permitted premises must be open to inspection, for purposes of compliance with this ordinance and Minnesota Statutes, Chapter 342, by the local law enforcement or authorized Township officials, including Planning Commission and Township Board members, during regular business hours. Nothing in this section prohibits 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.

J. *Employees*. Access to business premises is limited to employees and those aged 21 and older.

K. *Facility.* Cannabis cultivation, manufacturing, storage, sale, microbusinesses or mezzo-businesses may not be housed in a vehicle or any movable, mobile, or temporary structure. A cannabis cultivation business must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof and doors. A cannabis cultivation structure is considered to be an accessory building. Cannabis plants and products shall not be visible from outside the building in which the cannabis business is located.

L. *Ventilation/Odor Mitigation/Air Filtration.* Cannabis businesses that cultivate, process or manufacture cannabis, shall contain effective ventilation, air filtration, and

DRAFT

odor reducing or odor eliminating filters to prevent odor, mold and mildew in all areas including adjacent premises that are or may be intended for human occupancy.

a) A cannabis CUP application must include a ventilation plan that contains the following:

i. A complete, detailed list and description of all systems used to control the environment and how the systems operate.

ii. A detailed list and description of effective ventilation systems that will mitigate noxious gases or fumes from fertilizers, pesticides, insecticides, carbon dioxide, other flammable solvents, asphyxiant gases, hazardous chemical dusts, etc. that are used or created as part of the cultivation or production process.

iii. A detailed list and description of odor mitigation systems that will be used to prevent any off-premises cannabis odors. Odor mitigation systems must be odor-neutralizing, not odor-masking, and must work properly at all times.

iv. A description and schedule (i.e., frequency and length) of activities (i.e., harvest) that may increase odor emissions.

b) *MPCA Statement.* A cannabis CUP application must contain a statement from the Minnesota Pollution Control Agency stating whether or not an 'Air Emissions State Permit' is required.

c) *Ventilation Failure Response.* A description of the business owner's course of action if the ventilation systems stop working or become ineffective (describe any backup system(s) and emergency generators that are installed and in working condition, detail how and when notification will take place to bordering neighbors, etc.) Notification to neighbors within 250 feet must take place as early as is reasonably possible and include a good faith estimate of how long repairs will take and how long they can expect odors to last. Failure to comply may result in the immediate suspension of the CUP by the Township and/or a fine to the holder of the CUP.

M. *Storage tanks.* All storage tanks used for petroleum or hazardous liquids shall be in accordance and registered with the Minnesota Pollution Control Agency.

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N. *Water use.* All sites used for cannabis operations shall have a legal and permitted water source and shall not engage in unlawful or unpermitted drawing of surface water.

O. *Sewage/Wastewater.* All sites used as a cannabis business shall have a legal and permitted sewage/wastewater disposal system onsite or through a public wastewater system and shall not permit illegal discharges of water or engage in other unlawful or unpermitted surface discharges. The permit holder must present, with their CUP application, a water management plan or operating agreement that includes the manner in which they will bring the strength of the wastewater to acceptable levels before discharge and the name and agency of the licensed wastewater professional who will conduct the wastewater monitoring. All businesses shall follow existing federal, state and local waste disposal regulations.

## 21.09 HOURS OF OPERATION

A. *Business hours.* Cannabis businesses are limited to retail sale of cannabis, cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products between the hours of 8 a.m. and 9 p.m.

B. *Deliveries and hauling.* Truck deliveries and other hauling for cannabis cultivation, processing and manufacturing businesses shall be between the hours of 7 a.m. and 7 p.m.

## 21.10 EVENTS

Temporary and other public cannabis events may not be hosted within the township; and, cannabis or cannabis products may not be sold, distributed, manufactured or processed in any way within the township as part of a "temporary cannabis event" or other cannabis event.

## 21.11 LOCAL CONTACT

Up-to-date contact information for an individual (local contact) who is responsible for responding to odor and other complaints must be on file with the Township office. The individual must be available by phone and able to respond to complaints within one (1) hour of a call during normal business hours, and three (3) hours during non-business hours.

## 21.12 PROHIBITED ACTS

A. It shall be unlawful for any person to sell, purchase, obtain or otherwise provide any intoxicating cannabis product to any person under the age of twenty-one (21).

B. It shall be unlawful for any person under the age of twenty-one (21) to possess any intoxicating cannabis product. This shall not apply to persons under the age of 21

DRAFT

lawfully involved in a compliance check on behalf of the Township or another governing body.

C. It shall be unlawful for any person under the age of twenty-one (21) to use or consume any intoxicating cannabis product, unless it is legally authorized medical cannabis.

D. It shall be unlawful for any person under the age of twenty-one (21) to attempt to disguise the person's true age by the use of a false form of identification, whether the identification is that of another person or one in which the age of the person has been modified or tampered with, to represent an age older than the actual age of the person, in order to purchase any intoxicating cannabis product.

E. No adult-use cannabinoid or cannabis product may contain more than 0.3% of THC.

F. No edible cannabis product can contain an amount of THC that exceeds the per serving or per package requirements in Minnesota State law.

G. No intoxicating cannabis product may be sold to an obviously intoxicated person or a person under the influence of a controlled substance.

H. No one under the age of twenty-one (21) shall sell intoxicating cannabis products.

I. Intoxicating cannabis products cannot be sold in vending machines, by transient merchants, peddlers, at a movable place of business, through a drive-through window, at special events home occupations, by internet sales or delivery service.

J. No sampling of intoxicating cannabis products may be completed through self-check-out. The retailer or retailer's employee must process each transaction at a point of sale.

## 21.13 VIOLATIONS AND PROSECUTION

A. *Notice*. Upon discovery of a suspected violation of this ordinance or State law, the permit holder shall be issued, either personally or by mail, a notice, complaint or citation that sets forth the alleged violation. The consequences of an alleged violation may include, but are not limited to, an administrative citation, criminal citation, administrative action such as permit suspension or revocation, informing other state regulatory agencies, or other such action as authorized by law.

B. *Findings*. If after the hearing the applicant is found to have violated this ordinance the Town Board may issue a suspension or revocation of the permit. All decisions by the Town Board shall be in writing, setting forth the violation and reasons for the findings and such writing shall be provided to permit holder.

C. *Misdemeanor Prosecution*. Nothing in this section shall prohibit the Township from seeking prosecution as a misdemeanor for any alleged violation of this ordinance, and the Township is not precluded from suspending or revoking the permit of the permit holder as provided by this section.

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