



STAFF REPORT

DATE: 08/10/2022

TO: City Council
FROM: Julie Johnson, City Clerk
AGENDA ITEM: Regulation of THC Edibles
REVIEWED BY: Kristina Handt, City Administrator

INTRODUCTION:

The Minnesota Legislature recently enacted a new law allowing the sale of certain edible and beverage products infused with tetrahydrocannabinol (THC). Some cities have enacted a temporary moratorium banning sale of these products while the city drafts an ordinance regulating these products.

ISSUE BEFORE THE CITY COUNCIL:

Should the City consider an ordinance amendment regulating the sale of THC products through zoning and/or licensing?

DETAILS/ANALYSIS:

The new law expands the authority to include nonintoxicating cannabinoids, including edible cannabinoid products, provided they do not contain more than 0.3% of any THC. An edible cannabinoid product also cannot exceed more than five milligrams of any THC in a single serving, or more than a total of 50 milligrams of any THC per package. The new law does not restrict where these products can be sold, but state liquor licensing laws would prohibit sale of these products at a liquor store.

A memo from the City Attorney regarding regulation of THC edibles along with ordinances enacted by other Minnesota communities are attached.

FISCAL IMPACT:

Potential licensing fees for sale of THC products.

ATTACHMENTS:

- July 15, 2022 Memo from Kennedy & Graven
- City of Edina Interim Ordinance
- City of Robbinsdale Interim Ordinance
- City of Stillwater Interim Ordinance
- City of White Bear Lake Interim Ordinance



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To: Kristina Handt

From: Rachel Tierney, Acting City Attorney
Joseph L. Sathe, Assistant City Attorney

Date: July 15, 2022

Re: Regulation of THC Products

This memorandum provides information on ways the city can potentially regulate the newly legalized products that contain up to 5mg of tetrahydrocannabinol (“THC”) derived from certified hemp. We have addressed local government enforcement of the requirements of the law legalizing these products, Minnesota Statutes, section 151.72 (the “Act”), in a separate memo.

I. BACKGROUND

Beginning on July 1, 2022, it became legal to sell certain products containing delta-9 THC (“THC Products”) in Minnesota. The Act allows THC Products to be sold if certain requirements are met including that there are not more than 5mg of THC per dose and 50mg of THC per container; the purchaser is at least 21 years old; and the products are not marketed towards children.

The Minnesota Board of Pharmacy (“Board”) is the state agency with oversight of THC Products.

There is currently no state-level license required in order to sell THC Products and the Board does not test or approve products prior to their sale.¹

II. LOCAL REGULATION

The Act neither explicitly allows nor explicitly prohibits local regulation of the sale of THC Products. Therefore, to determine whether a municipality can regulate the sale of THC Products, the municipality must have the authority to regulate the sale of THC products and must not be preempted by state law.

A municipality could rely upon its general police and general welfare power to regulate the sale of THC products. The two most applicable avenues through which the municipality can regulate the sale of THC Products is through its licensing or zoning authority.

A. The Act Does Not Expressly Preempt Local Regulation

The Act does not expressly require a city to allow the sale of THC Products, nor does it restrict a city’s ability to regulate such facilities through additional zoning or licensing requirements.

¹ [Hemp Derived Products Frequently Asked Questions](#), page 5

Nevertheless, a city cannot enact a local regulation if it conflicts with state law or if the state law fully occupies a particular field of legislation so that there is no room for local regulation.

Any local regulations must not create an irreconcilable conflict with state law, but instead must be merely additional and complementary or in aid and furtherance of the Act. Also, local regulations must not exceed a city's lawful licensing or zoning powers.

Two recent Minnesota Supreme Court cases indicate a deference for local ordinances that provide greater protections than state statutes.² Additional licensing and zoning requirements adopted for the purpose of protecting the general welfare and ensuring the sale of THC Products are being conducted in accordance with the Act, including that THC Products are not being sold to individuals under the age of 21, for example, would be considered greater protections than those included in the Act.

B. Licensing

A city may license a business or activity, either (1) when expressly allowed to do so by state statute; or (2) when implied by statute, such as when a license is necessary for a city to perform its general statutory powers (like preventing public nuisance or protecting the general welfare).

Since there is no express authority for a city to license a business selling THC Products a city must look to an implied authority. The authority granted under the “general welfare” clause allows a city to provide “for the suppression of vice and immorality, the prevention of crime, the protection of public and private property, the benefit of residence, trade, and commerce, and the promotion of health, safety, order, convenience, and the general welfare by such ordinances not inconsistent with the Constitution and laws of the United States or of this state as it shall deem expedient.”³

The Act contains very little regulatory structure, consumer protection, or general control of the sale of THC Products. Cities very clearly have an interest in ensuring the THC Products are being sold in the manner provided for in the Act, and individual cities may each want to study the impact of the sale of THC Products in each community and determine what additional regulation is warranted to protect the general welfare of the city.

A licensing ordinance must be reasonable in its terms and conditions and cannot place unnecessary, unreasonable, or oppressive restrictions that conflict with the state or federal constitution. A licensing ordinance could include application requirements such as:

- terms;
- qualifications;
- bond and insurance requirements;
- hours of operation;
- reasons for denial, including no criminal conviction or license revocations related to controlled substances;

² *Minnesota Chamber of Commerce v. City of Minneapolis*, 944 N.W.2d 441 (Minn. 2020); and *Graco v. City of Minneapolis*, 937 N.W.2d. 756 (Minn. 2020).

³ Minn. Stat. 412.221, subd. 32

- revocation and suspension of license;
- transferability; license fees;
- limiting the number of licenses;
- Requiring licensees to ID purchasers;
- Requiring THC products to be sold from behind a counter; and
- Identify how the city will conduct compliance checks.

C. Zoning

Zoning controls generally relate to uses of property and not the sale of individual products, so using the city’s zoning authority alone may not be an effective way to regulate the sale of THC Products. However, cities may use a combination of zoning and licensing provisions to regulate the sale of THC Products.

i. Outright Prohibition

A city could probably prohibit the sale of THC Product sales if it defines such sale as a “use” in its zoning ordinance and has legitimate planning and zoning grounds for the ban. There is no “right” to sell THC Products and cities have broad discretion in establishing zoning requirements. An outright ban would likely need to be combined with other general business regulations (e.g., licensing) since the sale of THC Products is currently not a primary use of land but can be sold at any retail store.

ii. Expressly Authorize THC Product Sales

A city could expressly authorize THC Product sales at dedicated locations, establish the sale of THC Products as a dedicated permitted or conditional use, and consider imposing additional regulations on those operations that it does authorize.

Some examples of zoning-type regulations might include:

- Restricting such uses to certain zoning districts;
- Capping the total number of THC-related land uses within the City or within certain zoning districts;
- Requiring that THC-related facilities not produce noxious odors;
- Requiring a minimum distance from certain land uses in addition to schools, such as child-care facilities; places of worship and other religious institutions; health care practitioners. and chemical dependency, alcohol and drug treatment facilities;
- Requiring a minimum distance between other THC-related uses;
- Requiring a minimum distance from liquor stores and bars; and
- Additional restrictions on signage and advertising.

Instead of including these traditional zoning provisions in the zoning code, a city could consider including similar provisions as part of a licensing regulatory scheme (e.g., only issue a license to an THC Product business that is located within particular zoning districts). This approach would be more appropriate if a city chooses not to require THC Product sales at dedicated business locations.

III. MORATORIUM/INTERIM ORDINANCE

A city may establish a moratorium on the sale of THC Products.

Cities have the authority to place moratoria on zoning matters for up to one year under Minnesota Statutes, section 462.355, subd. 4. Cities have also relied on the city's police power to enact moratoria on activities to be licensed by the city so long as the moratorium is limited in duration and enacted in good faith and without discrimination.⁴

Before adopting a moratorium, a city will first decide that it does want to regulate the sale of THC Products in some manner. A moratorium would be for the purpose of studying licensing or zoning regulations related to the sale of THC Products and prohibiting such sales in the city until the study is completed.

IV. CONCLUSIONS

The state law legalizing the sale of THC Products includes minimal regulation and cities are left to establish individual regulations that can be tailored to the local needs of the community. Cities can rely on implied authority granted through its general welfare and police powers to regulate the sale of THC Products even though the Act does not contain express authority for such regulation.

A city could choose to use its licensing and/or zoning authority to restrict the sale of THC Products, and/or could issue a moratorium on the sale of THC Products to study the impacts of THC Product sales and develop appropriate restrictions.

A comprehensive approach to regulating THC Products could include both licensing and zoning aspects to ensure sales are in compliance with state law and any locally established regulations as well as regulating where within the city products can be sold.

It is also important to keep in mind that the Minnesota Legislature may act, either during a special or regular session, to regulate the sale of THC Products which could impact how a city is able to regulate THC products.

⁴ *Almquist v. Town of Marshan*, 245 N.W.2d 819 (Minn. 1976).

ORDINANCE NO. 2022-06

AN INTERIM ORDINANCE PROHIBITING THE SALE, TESTING, MANUFACTURING, AND DISTRIBUTION OF THC PRODUCTS

NOW, THEREFORE , the City Council of the City of Edina does ordain:

SECTION 1. BACKGROUND.

1. By enacting 2022 Session Law Chapter 98, Article 13, the Minnesota Legislature amended Minn. Stat. §151.72 and permitted the sale of edible and nonedible cannabinoid products that contain no more than 0.3 % of Tetrahydrocannabinol, commonly known as THC ("THC Products").
2. The new law does enact some requirements for labeling and testing, but the law provides no parameters regulating production, compliance checks, or sales of THC Products. The new law does not prohibit local regulation.
3. Pursuant to Minn. Stat. § 462.355, subd. 4, the City is authorized to enact by ordinance a moratorium to regulate, restrict or prohibit any use within the jurisdiction to protect the public health, safety, and welfare. Specifically, the City is authorized to enact a moratorium ordinance to allow it to undertake a study to determine whether to adopt any regulations or restrictions, including siting and location of uses, related to the sales, testing, manufacturing, and distribution of THC Products.
4. Pursuant to its general police powers, including but not limited to, Minn. Stat. § 421.221, subd. 32, the City may enact and enforce regulations or restrictions on THC Products within the City to protect the public safety, health, and welfare, including restrictions and a moratorium on the use of sales, testing, manufacturing, and distribution, during the pendency of a study to determine the need for police power regulations, including but not necessarily limited to licensing and permitting.

SECTION 2. FINDINGS.

1. The City Council finds there is a need to study THC Products and uses and businesses related thereto, in order to assess the necessity for and efficacy of regulation and restrictions relating to the sales, testing, manufacturing, and distribution of THC Products, including through licensing or zoning ordinances, in order to protect the public health, safety, and welfares of its residents.
2. The study will allow the City Council to determine the appropriate changes, if any, that that it should make to City ordinances.
3. The City Council, therefore, finds that there is a need to adopt a City-wide moratorium of the sale, testing, manufacturing, and distribution of THC Products within the City while City staff studies the issue.

SECTION 3. MORATORIUM .

1. No individual, establishment, organization, or business may sell, test, manufacture, or distribute THC Products for twelve (12) months from the effective date of this ordinance.

2. The City shall not issue any license or permit related to THC Products or twelve (12) months from the effective date of this ordinance. No license or permit application, of any kind, by any individual, establishment, organization, or businesses involved in the proposed sale, testing, manufacturing, or distribution of THC Products within the City of Edina shall be accepted or considered for twelve (12) months from the effective date of this ordinance.
3. Planning or zoning applications related to THC Products or applications from individuals, establishments, organizations, or businesses involved in the proposed sale, testing, manufacturing, or distribution of THC Products within the City of Edina shall not be accepted or considered for twelve (12) months from the effective date of this ordinance.

SECTION 4. STUDY. The City Council directs City staff to study the need for local regulation regarding the sale, testing, manufacturing, or distribution of THC Products within the City of Edina. Staff must also study the need for creating or amending zoning ordinances, licensing ordinances, or any other ordinances to protect the citizens of Edina from any potential negative impacts of THC Products. Upon completion of the study, the City Council, together with such commission as the City Council deems appropriate, or as may be required by law, will consider the advisability of adopting new ordinances or amending its current ordinances.

SECTION 5. ENFORCEMENT. The City may enforce this Ordinance by mandamus, injunctive relief, or other appropriate civil remedy in any court of competent jurisdiction. The City Council hereby authorizes the City Manager, in consultation with the City Attorney, to initiate any legal action deemed necessary to secure compliance with this Ordinance. A violation of this Ordinance is also subject to the City's general penalty in City Code § Sec. 1-18 subd. (b).

SECTION 6. TERM. Unless earlier rescinded by the City Council, the moratorium established under this Ordinance shall remain in effect until twelve (12) months from its effective date, at which point, it will automatically expire.

SECTION 7. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage by the City Council.

This ordinance is effective upon adoption.

First reading: July 19, 2022

Second reading: August 3, 2022

ATTEST:

Sharon Allison, City Clerk

James B. Hovland, Mayor

Please publish in the Edina Sun Current on:
Send two affidavits of publication
Bill to Edina City Clerk

Member Selman moved and Member Webb seconded a motion that the following ordinance be adopted on this 19th day of July, 2022.

ORDINANCE NO. 22-09

**AN EMERGENCY INTERIM ORDINANCE PROHIBITING THE
ESTABLISHMENT OF NEW USES OR THE EXPANSION OF EXISTING
USES RELATED TO SALES, TESTING, MANUFACTURING AND
DISTRIBUTION OF THC PRODUCTS**

THE CITY OF ROBBINSDALE DOES ORDAIN:

PREAMBLE: The following ordinance is necessary for the immediate preservation of the public peace, health, morals, safety, and welfare because of the inherent risk of injury to persons related to the recently legalized sale of edible cannabinoid products containing Tetrahydrocannabinol (THC). A prohibition on the establishment of new uses or the expansion of existing uses related to the sale of such products is necessary to ensure that the City has sufficient time to study potential regulations that will protect the health and safety of the residents of Robbinsdale. There is insufficient time to complete the ordinary procedure for introduction and adoption of a city ordinance as required by City Charter and Code.

Section 1. Authority and Findings.

- A. The Minnesota Legislature recently amended Minnesota Statutes, section 151.72 relating to the sale of certain cannabinoid products. The new law permits the sale of edible cannabinoid products, provided that a product sold for human or animal consumption does not contain more than 0.3% of tetrahydrocannabinol and an edible cannabinoid product does not contain an amount of any tetrahydrocannabinol that exceeds more than five milligrams of any tetrahydrocannabinol in a single serving, or more than a total of 50 milligrams of any tetrahydrocannabinol per package ("THC Products"). Sales of THC Products became legal on July 1, 2022.
- B. The new law allows sales and establishes some labeling and testing requirements, but it does not establish any licensing criteria or parameters for compliance by retailers. The new law does not prohibit local regulation.
- C. Minnesota Statutes, section 462.355, subd. 4 provides that if a municipality is conducting studies or has authorized a study to be conducted for the purpose of considering adoption or amendment to an official control, the City Council may adopt an interim ordinance for the purpose of protecting the planning process and the health, safety, and welfare of its citizens. An interim ordinance may regulate, restrict, or prohibit any use within the city for a period not to exceed one year from the effective date of the interim ordinance. Many cities have adopted interim ordinances to study the impacts of certain uses and determine whether regulations are appropriate for the purpose of protecting the public health, safety, and welfare of their citizens; and

- D. The City Council believes that authorizing a study regarding the types of uses that involve the sales, testing, manufacturing and distribution of THC Products is necessary to evaluate the regulatory options available to the City and is for the purpose of protecting the health and safety of Robbinsdale's residents.

Section 2. Study. The City Council hereby authorizes and directs City staff to conduct a study of the issues relating to the sales, testing, manufacturing, and distribution of THC Products. Staff will then make a recommendation to the City Council about whether the City should amend its zoning, business-licensing, or other general Code provisions related to these types of uses to better protect the residents of Robbinsdale.

Section 3. Moratorium. In accordance with the findings set forth herein, a moratorium is established as follows:

- A. No business, person or entity may establish a new use or expand an existing use that includes or involves the sale, testing, manufacturing, or distribution of THC Products, for a period of twelve (12) months from the effective date of this Ordinance or until the Council repeals this Ordinance, whichever occurs first.
- B. During the term of this Ordinance, the City staff will not issue any license or permit, nor will it accept or process any applications for uses related to the sale, testing, manufacturing, or distribution of THC Products.
- C. The moratorium established by this Ordinance does not apply to the sale, testing, manufacturing, or distribution of products that were lawful prior to enactment of the new law relating to THC Products.

Section 4. Enforcement. In addition to any criminal penalties allowed by law, the City may enforce this Interim Ordinance by injunction or any other appropriate civil remedy in any court of competent jurisdiction. A violation of this Ordinance is also subject to the City's general penalty in Section 115 of the Robbinsdale City Code.

Section 5. Severability. Every section, subsection, provision, or part of this Ordinance is declared severable from every other section, subsection, provision, or part. If any section, subsection, provision, or part of this interim ordinance is adjudged to be invalid by a court of competent jurisdiction, such judgment shall not invalidate any other section, subsection, provision, or part.


Section 6. Effective Date; Duration. Pursuant to sections 3.06 and 3.09 of the City Charter, this emergency ordinance shall become effective immediately upon its unanimous approval by all members of the Council; however no prosecution based on the provisions of this Ordinance shall occur until twenty-four hours after the Ordinance has been filed with the city clerk and posted in the three conspicuous places or until the ordinance has been published, unless the person charged with violation had actual notice of the passage of the Ordinance prior to the act or omission complained of. It shall be effective until the earlier of the following events: (a) one year from the effective date of this Ordinance or (b) the date upon which the City Council adopts an ordinance repealing this Ordinance.

Section 7. Summary. That the following summary clearly informs the public of the intent and effect of the Ordinance and is approved for publication: "The purpose of this Ordinance is to authorize a study related to the sales, testing, manufacturing, and distribution of recently legalized consumable cannabinoid products. Staff will then make a recommendation to the City Council about whether the City should amend its zoning, business-licensing, or other general Code provisions related to these types of products and associated uses to better protect the residents of Robbinsdale. During the term of this Ordinance, no business, person, or entity may establish a new use or expand an existing use that includes or involves the sale, testing, manufacturing, or distribution of consumable cannabinoid products that were legalized on July 1, 2022, by the Minnesota Legislature's amendment of Minnesota Statutes, section 151.72."

Passed by the City Council this 19th day of July, 2022.


William A. Blonigan, Mayor

ATTEST:


Dustin Leslie, City Clerk
(SEAL)

ORDINANCE NO. _____

**CITY OF STILLWATER
WASHINGTON COUNTY, MINNESOTA**

**AN INTERIM ORDINANCE PROHIBITING ACCEPTANCE OR
CONSIDERATION OF APPLICATIONS FOR NEW CANNABIS AND CANNABIDIOL
SALES, TESTING, MANUFACTURING AND DISTRIBUTION FOR ONE YEAR**

WHEREAS, many cities have adopted interim ordinances or regulations on aspects of planning and zoning regulations to study their impacts and determine whether the regulations are appropriate in order to protect the public health, safety and welfare of their citizens; and

WHEREAS, the City is undertaking a study to effectuate changes to the Zoning Ordinance and City Code that would regulate the sales, testing, manufacturing and distribution of cannabis and cannabidiol (CBD) for medical, recreational and other purposes and may implement many of the suggestions from the study.

NOW, THEREFORE, pursuant to Minnesota Statutes, Section 462.355 subdivision 4, the City Council of Stillwater does ordain:

SECTION 1. No applications related to the license, use, development, variances, conditional use permits or any other planning or licensing applications that involves the sales, testing, manufacturing or distribution of cannabis, medical or recreational, in any way, and cannabidiol products shall be accepted or considered for twelve (12) months from the effective date of this ordinance or until ordinances regulating such uses become effective, whichever occurs first.

SECTION 2. City Staff is directed to conduct a study to gather information and make a recommendation to determine how the Zoning Ordinance and City Code need to be amended regarding this use to better protect the citizens of Stillwater.

SECTION 3. SUMMARY PUBLICATION. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

The City will be undergoing a study regarding CBD and cannabis uses. No zoning or licensing applications will be accepted until the City adopts regulations regarding these uses, or for a period of one year, whichever occurs first.

SECTION 4. EFFECTIVE DATE AND EXPIRATION DATE. This ordinance shall be in full force and effect from and after its passage and publication according to law and shall expire upon adoption of ordinances regulating such uses or 12 months from its effective date, whichever comes first.

Approved this _____ day of _____, 2021.

Ted Kozlowski, Mayor

ATTEST:

Beth Wolf, City Clerk

ORDINANCE NO.

**AN INTERIM ORDINANCE AUTHORIZING STUDIES AND IMPOSING A
MORATORIUM ON THE SALE OF CANNABIS PRODUCTS AND
ON THE ESTABLISHMENT OR EXPANSION OF TOBACCO SHOPS**

The City Council of the City of White Bear Lake does ordain as follows:

ARTICLE I. Legislative Findings

- (a) There is a great deal of uncertainty regarding the effect of Minnesota Laws 2022, Chapter 98 amending Minnesota Statutes, section 151.72 ("Act") to allow the sale of edible cannabinoid products ("Cannabis Products").
- (b) Because the proposal to allow the sale of Cannabis Products received little publicity until the Act went into effect on July 1, 2022, the City of White Bear Lake ("City") did not have an opportunity to study and consider the potential impacts of the Act on the City. Nor did the City Council have sufficient time to engage in policy discussions regarding the regulations the City Council may elect to impose on the sale of Cannabis Products.
- (c) The Act authorizes the Minnesota Board of Pharmacy to enforce the Act, but the Act does not provide for any licensing of manufacturers or of those who sell Cannabis Products. The Act is also silent regarding the enactment of local regulations related to Cannabis Products.
- (d) The Legislature did not expressly prohibit or limit local regulations, and the regulations established in the Act clearly do not constitute the Legislature having occupied the field of regulation regarding the sale of Cannabis Products.
- (e) The City Council finds the uncertainties associated with sale of Cannabis Products, and the options for local regulation, compels the need for a study to develop information the City Council can rely on as it engages in policy discussions related to potential regulation of Cannabis Products through the adoption of licensing and zoning controls.
- (f) The City Council also determines there is a need to study its regulations regarding retailers with a significant portion of their products and sales being of tobacco-related products ("Tobacco Shops").
- (g) The City currently does not expressly regulate Tobacco Shops as a separate use. The City has experienced businesses who have started a retail business, but have become a Tobacco Shop even though that use is not recognized as a permitted use in the City's zoning regulations.

- (h) The City also recognizes a need to update its tobacco regulations to keep pace with recent changes in both federal and state laws.
- (i) The City Council is authorized to adopt an interim ordinance “to regulate, restrict, or prohibit any use . . . within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective.” Minnesota Statutes, section 462.355, subdivision 4(a).
- (j) The City Council is also authorized as part of its general police powers to adopt business licensing requirements related to the sale of Cannabis Products and tobacco-related products.
- (k) The Minnesota Supreme Court in *Almquist v. Town of Marshan*, 245 N.W.2d 819 (Minn. 1976) upheld the enactment of a moratorium despite the lack of express statutory authority as being a power inherent in a broad legislative grant of power to municipalities. In most cases, the enactment of business licensing requirements is based on a city’s police powers, which is the broadest grant of power to cities. Inherent in that broad grant of authority is the power to temporarily place a moratorium on a business activity to study and potentially implement licensing regulations on that business activity.
- (l) There are both business licensing and zoning issues associated with the sale of Cannabis Products the City Council determines it needs time to study to consider the development and adoption of appropriate local regulations. In order to protect the planning process and the health, safety, and welfare of the residents while the City conducts its study and the City Council engages in policy discussions regarding possible regulations, the City Council determines it is in the best interests of the City to impose a temporary moratorium on the sale of Cannabis Products.
- (m) In order to protect the planning process and the health, safety, and welfare of the residents while the City conducts a study of Tobacco Shops and the sale of tobacco-related products, the City Council determines it is in the best interests of the City to impose a temporary moratorium on the establishment and expansion of Tobacco Shops to allow the City time to complete its study, determine how such sales and uses should be regulated under the City Code, and to draft and enact such legislative updates as needed.

ARTICLE II. Definitions. For the purposes of this Ordinance, the following words, terms, and phrases shall have the meanings given them in this Article.

- (a) “Act” means 2022 Minnesota Session Laws, Chapter 98 (H.F. No. 4065), amending Minnesota Statutes, section 151.72.

- (b) "Cannabis Products" means Edible Cannabinoid Product and any other product that became lawful to sell for the first time in Minnesota effective July 1, 2022, as a result of the adoption of the Act.
- (c) "City" means the City of White Bear Lake.
- (d) "City Code" means the Municipal Code of White Bear Lake, Minnesota.
- (e) "Edible Cannabinoid Product" has the same meaning given the term in Minnesota Statutes, section 151.72, subdivision 1(c).
- (f) "Electronic Delivery Device" means an electronic product that is designed to use, or that uses, liquids or pre-loaded cartridges to simulate smoking in the delivery of nicotine or any other substance through inhalation of the aerosol or vapor produced from the substance.
- (g) "Expand" means, with respect to a Tobacco Shop, increasing the amount of shelf space or floor area within an existing store used to display or sell Tobacco-Related Products. The term also includes increasing the size of the building or space in which the Tobacco Shop is located.
- (h) "Tobacco" means and includes cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
- (i) "Tobacco-Related Products" mean Tobacco and related materials and devices used in rolling, smoking, or storing Tobacco. The term includes Electronic Delivery Devices and the substances sold for use by such devices.
- (j) "Tobacco Shop" means a retail establishment with sales, or projected sales, of Tobacco-Related Products constituting at least 40% of the establishment's total sales in any month.

ARTICLE III. Study. The City Council hereby authorizes and directs the City Manager to have City staff conduct a study on the following matters:

- (a) Cannabis Products. The City shall conduct a study regarding Cannabis Products and provide the City Council a report on the potential regulations of such products. The report shall include the City staff's recommendations on whether the City Council should adopt regulations and, if so, the recommended types of regulations. The study shall consider, but is not limited to, the following:
 - (1) The potential impacts of the sale of Cannabis Products within the City;
 - (2) Licensing the sale of Cannabis Products and related regulations; and
 - (3) Zoning regulations related to the sale, manufacture, and distribution of Cannabis Products as uses within the City.
- (b) Tobacco Shops. The City shall conduct a zoning study regarding Tobacco Shops and the sale of Tobacco-Related Products to determine whether Tobacco Shops should be expressly allowed under the City Code, if so, in which zoning districts, and the types of performance standards and other restrictions that should be enacted to regulate the use.

ARTICLE IV. Moratorium. A moratorium is hereby imposed within the City on the following:

- (a) Cannabis Products. No business, person, or entity may offer for sale or sell Cannabis Products to the public within the jurisdictional boundaries of the City. The City shall not accept, process, or act on any application, site plan, building permit, or other zoning approval for a business proposing to engage in the sale of Cannabis Products; and
- (b) Tobacco Shops. No business, person, or entity shall establish or expand a Tobacco Shop within the City. The City shall not accept, process, or act on any tobacco license application, site plan, building permit, or zoning approval for a new or expanded Tobacco Shop.

ARTICLE V. Violations. During the period of the moratorium, it is a violation of this Ordinance to do any of the following within the City:

- (a) Offer for sale or sell Cannabis Products;
- (b) Establish a new Tobacco Shop; or
- (c) Expand an existing Tobacco Shop.

ARTICLE VI. Exceptions. The moratorium imposed by this Ordinance does not apply to the following:

- (a) The sale of medical cannabis or hemp products that were lawful to sell prior to the effective date of the Act;
- (b) Renewal of a tobacco license for a Tobacco Shop lawfully existing prior to the effective date of this Ordinance; and
- (c) The continued operation of a Tobacco Shop lawfully existing prior to the effective date of this Ordinance.

ARTICLE VII. Enforcement. A violation of this Ordinance shall be a misdemeanor. In addition, the City may enforce this Ordinance by mandamus, injunction, other appropriate civil remedy in any court of competent jurisdiction, or through the City's administrative penalties program under Section 205 of the City Code.

ARTICLE VIII. Effective Date and Term. This Ordinance shall be effective upon the first day of publication after adoption and shall have a term of 12 months. This Ordinance shall remain in effect until the expiration of the 12 month term, until it is expressly repealed by the City Council, or until the effective date of an ordinance amending the City Code to address Cannabis Products and Tobacco Shops, whichever occurs first. The City Council may elect to repeal this Ordinance with respect to either the sale of Cannabis Products or the establishment or expansion of Tobacco Shops without affecting the restrictions imposed by this Ordinance on the other matter.

ARTICLE IX. General Provisions.

- (a) Not Codified. This Ordinance is transitory in nature and shall not be codified into the City Code.
- (b) Severability. Every section, provision, and part of this Ordinance is declared severable from every other article, section, provision, and part thereof. If any article, section, provision, or part of this Ordinance is held to be invalid by a court of competent jurisdiction, such judgment shall not invalidate any other article, section, provision, or part of this Ordinance.

Adopted this ____ day of _____ 2022.

Dan Louismet, Mayor

ATTEST:

City Clerk

Date of Publication: _____