

ORDINANCE NO. 205
CITY OF MOTLEY
COUNTIES OF MORRISON & CASS
STATE OF MINNESOTA

**AN ORDINANCE REGULATING THE SALE OF
TETRAHYDROCANNABINOL (THC) PRODUCTS IN THE CITY OF MOTLEY**

The City Council of the City of Motley, Minnesota does ordain as follows:

SECTION ONE: Purpose and Intent.

The purpose of this ordinance is to regulate the sale of legalized adult-use of any product that contains tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under Minn. Stats. § 151.72. The City of Motley desires to regulate the sale of THC products inside city limits to protect the health, safety, and welfare of its residents for the following reasons:

- (a) By enacting 2022 Session Law Chapter 98, Article 13, the Minnesota Legislature amended Minnesota Statutes, section 151.72 to allow the sale of certain products containing tetrahydrocannabinol (THC).
- (b) The law does not prohibit municipalities from adopting and enforcing local ordinances to regulate THC product businesses including, but not limited to, local zoning and land use requirements and business license requirements.
- (c) The City of Motley recognizes the danger THC use presents to the health, welfare, and safety of youth in Motley.
- (d) The Minnesota Legislature recognized the danger of THC product use among the public at large by setting potency and serving size requirements.
- (e) The Minnesota Legislature recognized the danger of THC product use among youth by prohibiting the sale of any product containing THC to those under the age of 21, requiring that edible THC products be packaged without appeal to children and in child-resistant packaging or containers.
- (f) State law authorizes the Board of Pharmacy to adopt product and testing standards in part to curb the illegal sale and distribution of THC products and ensure the safety and compliance of commercially available THC products in the state of Minnesota. Page 2 of 8.
- (g) The City has the opportunity to be proactive and make decisions that will mitigate this threat and reduce exposure of young people to the products or to the marketing of these products and improve compliance among THC product retailers with laws prohibiting the sale or marketing of THC products to youth.

- (h) A local regulatory system for THC product retailers is appropriate to ensure that retailers comply with THC product laws and business standards of the City of Motley to protect the health, safety, and welfare of our youth and most vulnerable residents.
- (i) A requirement for a THC product retailer license will not unduly burden legitimate business activities of retailers who sell or distribute THC products to adults but will allow the City of Motley to regulate the operation of lawful businesses to discourage violations of state and local THC Product-related laws.
- (j) In making these findings and enacting this ordinance, it is the intent of the Motley City Council to ensure responsible THC product retailing, allowing legal sale and access without promoting increases in use, and to discourage violations of THC Product-related laws, especially those which prohibit or discourage the marketing, sale or distribution of THC products to youth under 21 years of age.

SECTION TWO: Definitions.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

- (a) **COMPLIANCE CHECKS.** The system the City uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this article. COMPLIANCE CHECKS shall involve the use of persons under 21 as authorized by this ordinance. COMPLIANCE CHECKS may also be conducted by the City or other units of government for educational, research, and training purposes, or for investigating or enforcing Federal, State, or local laws and regulations relating to licensed products.
- (b) **EXCLUSIVE LIQUOR STORE.** An establishment that meets the definition of EXCLUSIVE LIQUOR STORE in Minn. Stats. § 340A.101, subd. 10.
- (c) **LICENSED PRODUCT OR THC PRODUCT.** Any product that contains tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under Minn. Stats. § 151.72, as may be amended from time to time. LICENSED PRODUCT does not include medical cannabis as defined in Minn. Stats. § 152.22, subd. 6, as may be amended from time to time.
- (d) **MOVABLE PLACE OF BUSINESS.** Any form of business operated out of a kiosk, truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address storefront or other permanent type of structure authorized for sales transactions.

- (e) RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public, including, but not limited to, grocery stores, tobacco products shops, CBD stores, convenience stores, gasoline service stations, bars, and restaurants.
- (f) SALE. Any transfer of goods for money, trade, barter, or other consideration.
- (g) SELF-SERVICE MERCHANDISING. Open displays of licensed products in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee. Assistance or intervention means the actual physical exchange of the licensed product between the customer and the licensee or employee.
- (h) VENDING MACHINE. Any mechanical, electric, or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed product.

SECTION THREE: State Law Adopted.

Except as further restricted or regulated by this ordinance, the provisions of Minn. Stat. §151.72 relating to the definition of terms, licensing, and all other matter pertaining to the retail sale, distribution, and consumption of cannabinoid products are adopted and made a part of this ordinance as if set out in full. Whenever there is an inconsistency between the provision of Minn. Stat. §151.72, as amended, and the provisions of this section, the more restrictive provision shall govern.

SECTION FOUR: License.

- (a) *License Required.* No person shall sell, or offer to sell, directly or indirectly, on any pretense or by any device, any licensed product of a retail commercial transaction within the corporate limits within the City without first having obtained a license to do so from the City.
- (b) *Application.* An application for a license to sell licensed products shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the City deems necessary. Upon receipt of a completed application, the City Clerk-Treasurer shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Clerk-Treasurer determines that an application is incomplete, they shall return the application to the applicant with notice of the information necessary to make the application complete.

(c) *Business Information.* A business applicant, at the time of application, shall furnish the City with a list of all persons that have an interest of five percent or more in the business. The list shall name all owners and show the interest held by each, either individually or beneficially for others. It is the duty of each business licensee to notify the City Clerk-Treasurer in writing of any change in ownership in the business. Any change in the ownership or control of the business shall be deemed equivalent to a transfer of the license, and any such license shall be revoked 30 days after any such change in ownership or control unless the licensee has notified the Council of the change in ownership by submitting a new license application for the new owners, and the Council has approved the transfer of the license by appropriate action. Any time an additional investigation is required because of a change in ownership or control of a business, the licensee shall pay an additional investigation fee to be determined by the City. The City may at any reasonable time examine the transfer records and minute books of any business licensee to verify and identify the owners, and the City may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The Council may revoke any license issued upon its determination that a change of ownership of a licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the Council on notice to the licensee.

(d) *Background Check.* The City shall conduct a background investigation on all new applications and applications to transfer a license. The investigation shall consider all facts and information bearing upon the question of the applicant's fitness to receive the license and to perform the duties imposed by this ordinance. The City may conduct a background and financial check on an application for a renewal of a license if it is in the public interest to do so. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this article, and the City shall provide the person with a notice of revocation, along with information on the right to appeal.

(e) *Action.* The City Council may either approve or deny the application for a license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council approves the license, the City Clerk-Treasurer shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision. If a license application is denied, the earliest an applicant may reapply is 12 months from the date the license is denied.

(f) *Term.* All licenses issued under this article shall expire on June 30th and need to be renewed annually.

(g) *Revocation or Suspension.* Any license issued under this article may be revoked or suspended.

- (h) *Transfers.* All licenses issued under this article shall be valid only on the premises for which the license was issued and only for the person or business to whom the license was issued. The transfer of any license to another location, business, or person is prohibited.
- (i) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premises.
- (j) *Renewals.* The renewal of a license issued under this article shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days, but no more than 60 days, before the expiration of the current license.
- (k) *Issuance as Privilege and Not a Right.* The issuance of a license issued under this article is a privilege and does not entitle the license holder to automatic renewal of the license.
- (l) *Proximity to Certain Places.* No license will be granted to any person for a retail establishment under this ordinance that is within 1,000 feet of a school, or 300 feet of a day care, residential treatment facility, or an attraction within a public park that is regularly used by minors, including a playground or athletic fields, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a school, day care, residential treatment facility, or an attraction within a public park that is regularly used by minors. This restriction does not apply to an existing retail establishment that has been selling cannabinoid products for at least one year before this section was enacted.

SECTION FIVE: Fees.

No license shall be issued under this ordinance until the appropriate license fee is paid in full. The fee for a license under this ordinance shall be established in the City's Ordinance Establishing Fees and Charges, and may be amended from time to time.

The license fee may be prorated for licenses issued for less than a full year. The license fee shall be in addition to any fee required by any applicable state agency. No part of any license or investigation fee shall be refunded unless an application is withdrawn before any action is taken thereon.

SECTION SIX: Ineligibility and Basis for Denial of License.

- (a) Ineligibility.

- (1) A moveable *place of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.

(2) *Exclusive Liquor Store.* No license shall be issued to an exclusive liquor store as defined in Minn. Stat. § 340A.101, subd. 10.

(b) *Grounds for Denial.* Grounds for denying the issuance or renewal of a license under this ordinance include, but are not limited to the following:

- (1) The applicant is under twenty-one (21) years of age.
- (2) The applicant has knowingly misrepresented or falsified information on the license application. Any false statement on an application, or any willful omission of any information called for on such application form, shall cause an automatic refusal of license, or if already issued, shall render any license issued pursuant thereto void and of no effect to protect the applicant from prosecution for violation of this ordinance, or any part thereof.
- (3) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.
- (4) The applicant has been convicted within the past five (5) years of any violation of a federal, state, or local law, ordinance provision or other regulation relating to the licensed products.
- (5) The applicant has had a license to sell licensed products suspended or revoked during the 12 months preceding the date of application, or the applicant has or had an interest in another premises authorized to sell licensed products, whether in the City or in another jurisdiction, that has had a license to sell licensed products suspended or revoked during the same time period, provided the applicant had an interest in the premises at the time of the revocation or suspension, or at the time of the violation that led to the revocation or suspension.
- (6) The applicant is a business that does not have an operating officer or manager who is eligible pursuant to the provision of this ordinance.
- (7) The applicant is the spouse of a person ineligible for a license pursuant to the provision of Subsections (b)(3) and (4) of this section or who, in the judgement of the Council, is not the real party in interest or beneficial owner of the business to be operated, under the license.

(c) No license shall be granted or renewed for operation on any premises on which real estate taxes, assessments, or other financial claims of the City or of the State are due, delinquent, or unpaid. If an action has been commenced pursuant to the provisions of Minnesota Statutes, Chapter 278, questioning the amount or validity of taxes, the Council may, on application by the licensee, waive strict compliance with this provision; no waiver may be granted, however, for taxes, or any portion

thereof, which remain unpaid for a period exceeding one year after becoming due unless such one-year period is extended through no fault of the licensee.

SECTION SEVEN: Prohibited Acts.

- (a) No person shall sell or offer to sell any licensed product:
 - (1) By means of any type of vending machine.
 - (2) By means of self-service merchandising.
 - (3) By any other means, to any other person, or in any other manner or form prohibited by state or other local law, ordinance provision, or other regulation.
- (b) No person shall sell any licensed product to any person under the age of 21.
 - (1) *Age verification.* Licensees shall verify by means of government issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
 - (2) *Signage.* Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the City, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- (c) No minor shall be employed to sell licensed products in any establishment holding a license issued pursuant to this article.
- (d) No person may distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited.
- (e) No person may sell any edible THC product that is not in compliance with the requirements of Minn. Stats. § 151.72, including but not limited to the packaging, labeling, and other requirements for edible cannabinoids provided by Minn. Stats. § 151.72, subdivisions 4, 5, and 5a.

SECTION EIGHT: Additional Requirements.

All licensed products shall either be stored behind a counter or other area not freely accessible to customers.

SECTION NINE: Responsibility.

All licensees are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee. Nothing in this section shall be construed as prohibiting the City from also subjecting the employee to any penalties that the City deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.

SECTION TEN: Underage Possession/Use.

No person under the age of 21 may purchase, have in their possession, or use licensed products. Any person under the age of 21 in possession of a licensed product may be subject to a petty misdemeanor, and may have it confiscated by a law enforcement officer.

SECTION ELEVEN: Compliance Checks and Inspections.

All premises licensed under the City shall be open to inspection by the City during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks.

No person used in compliance checks shall attempt to use a false identification misrepresenting their age. All persons lawfully engaged in a compliance check shall answer all questions about their age asked by the licensee or their employee, and produce any identification, if any exists, for which they are asked. The City will conduct a compliance check that involves the participation of a person at least 18 years of age, but under the age of 21, to enter the licensed premises to attempt to purchase the licensed products. Persons used for the purpose of compliance checks shall be supervised by law enforcement or other designated personnel. Nothing in this article shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

Additionally, from time to time, the City will conduct inspections to determine compliance with any or all other aspects of this ordinance.

SECTION TWELVE: Violations, Enforcement, and Penalties.

(a) *Administrative Civil Penalties—Individuals.* If a person who is not a licensee is found to have violated this ordinance, the person shall be charged an administrative penalty as follows:

- (1) *First Violation.* The Council shall impose a civil fine not to exceed \$50.00.
- (2) *Second Violation Within 12 months.* The Council shall impose a civil fine not to exceed \$100.00.

(3) *Third Violation Within 12 months.* The Council shall impose a civil fine not to exceed \$150.00.

(b) *Administrative Penalties—Licensee.* If a licensee or an employee of a licensee is found to have violated this ordinance, the licensee shall be charged an administrative penalty as follows:

- (1) *First Violation.* The Council shall impose a civil fine of \$500.00 and suspend the license for not less than 1 day.
- (2) *Second Violation Within 36 Months.* The Council shall impose a civil fine of \$1,000.00 and suspend the license for not less than 3 consecutive days.
- (3) *Third Violation Within 36 Months.* The Council shall impose a civil fine of \$2,000.00 and suspend the license for not less than 10 consecutive days.
- (4) *Fourth Violation Within 36 Months.* The Council shall revoke the license for at least one year.

(c) *Administrative Penalty Procedures.* Notwithstanding anything to the contrary in this section:

- (1) Any of the administrative penalties set forth in this section that may be imposed by the Council, may in the alternative be imposed by an administrative citation.
- (2) If one of the foregoing penalties is imposed by an action of the Council, no penalty shall take effect until the licensee or person has received notice (served personally or by mail) of the alleged violation and of the opportunity for a hearing before the Council, and such notice must be in writing and must provide that a right to a hearing before the Council must be requested within 10 business days of receipt of the notice or such right shall terminate.

(d) *Misdemeanor Prosecution.* Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this article.

SECTION THIRTEEN: Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

SUMMARY PUBLICATION: This ordinance may be published by summary publication in accordance with Minn. Stats. § 331A.01, subd. 10.

EFFECTIVE DATE: This ordinance becomes effective after passage and publication according to state law. This ordinance shall be placed on file at the City of Motley City Hall for public review.

Passed by the City Council of the City of Motley, Minnesota on this 11th day of September, 2023.

CITY OF MOTLEY

ATTEST:



Mike Schmidt

Mayor



Darci Odden

Darci Odden
Clerk-Treasurer