

CITY OF MONTROSE  
WRIGHT COUNTY, MINNESOTA  
ORDINANCE NO. 2023-05

AN ORDINANCE ADDING A NEW CHAPTER 78.01 TO THE MONTROSE CITY CODE  
LICENSING THE SALE OF EDIBLE CANNABINOID PRODUCTS WITHIN THE CITY OF  
MONTROSE

THE CITY COUNCIL OF THE CITY OF MONTROSE ORDAINS:

Section 1. The Montrose City Code is hereby amended by adding a new Chapter 78, as follows:

CHAPTER 78: EDIBLE CANNABINOID PRODUCTS

78.01 – FINDINGS AND PURPOSE

The purpose of the Section is to regulate the sale of edible cannabinoid products, as that term is defined in Minnesota Statutes, section 151.72, that contain tetrahydrocannabinol (“THC”) for the following reasons:

- A) Minnesota Statutes, section 151.72 expressly allows the sale of certain products that are intended to be eaten or consumed as a beverage by humans and which contain a cannabinoid in combination with food ingredients (“Edible Cannabinoid Products”), including Edible Cannabinoid Products which contain tetrahydrocannabinol (“THC”).
- B) 2023 Session Law Chapter 63 (the “Cannabis Act”) both amended regulations for Edible Cannabinoid Products and established a framework for adult-use cannabis in the state of Minnesota. The Cannabis Act established the Office of Cannabis Management (“OCM”) effective July 1, 2023, and the OCM will eventually issue licenses for all cannabis products and edible hemp products, such as Edible Cannabinoid Products, but does not currently require a business to obtain a license to sell Edible Cannabinoid Products.
- C) The City enacted Ordinance No. 2022-07, an interim ordinance establishing a temporary prohibition on the sale of Edible Cannabinoid Products, which will expire on August 11, 2023, thereby leaving a regulatory gap between when businesses can begin selling Edible Cannabinoid Products in the City and when businesses will be required to obtain a state-level license to sell edible hemp products.
- D) The City recognizes that, based on the most reliable and up-to-date scientific evidence, the introduction of Edible Cannabinoid Products containing THC presents a potential threat to the public health, safety, and welfare of the residents of Montrose and has determined the establishing a licensing framework for Edible Cannabinoid Products is in the best interest of the City and its residents.

- E) State law does not preempt municipalities from adopting and enforcing local ordinances to regulate retailers of Edible Cannabinoid Products including, but not limited to, establishing business licensing requirements. The Cannabis Act directs the OCM to draft administrative rules and model ordinances related to cannabis and hemp products, which may address Edible Cannabinoid Products, but the timing and details of those regulations are uncertain. Therefore, the City Council determines it is appropriate to adopt the regulations in this ordinance without delay.
- F) In making these findings and enacting this ordinance, it is the intent of the City to facilitate responsible retail activities associated with Edible Cannabinoid Products by allowing legal sale and access without promoting increases in use, and to discourage violations of Edible Cannabinoid Product-related laws, especially those which prohibit or discourage the marketing, sale, or distribution of Edible Cannabinoid Products to persons under the age of 21 years.

78.02. DEFINITIONS AND INTERPRETATIONS.

A) 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:

1) EDIBLE CANNABINOID PRODUCTS LICENSE means the license issued by the city that allows a business to sell Edible Cannabinoid Products.

2) COMPLIANCE CHECKS means the system the city uses to investigate and ensure that those authorized to sell Edible Cannabinoid Products are following and complying with the requirements of this section. Compliance checks shall involve the use of persons under the age of 21 as authorized by this section. Compliance checks shall also mean the use of persons under the age of 21 who attempt to purchase Edible Cannabinoid Products for educational, research and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations relating to Edible Cannabinoid Products.

3) MOVEABLE PLACE OF BUSINESS means any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

4) RETAIL ESTABLISHMENT means any place of business where Edible Cannabinoid Products are available for sale to the general public. The sale of Edible Cannabinoid Products is limited to establishments that are also licensed to sell tobacco or off-sale liquor. Retail establishments shall not include home occupations.

5) SALE means any transfer of goods for money, trade, barter, or other consideration.

6) SELF-SERVICE MERCHANDISING means open displays of Edible Cannabinoid Products in any manner where any person shall have access to the Edible Cannabinoid Product without the assistance or intervention of the licensee or the licensee's employee. The assistance

or intervention shall entail the actual physical exchange of the Edible Cannabinoid Product between the customer and the licensee or employee.

7) EDIBLE CANNABINOID PRODUCT has the same meaning as provided in Minnesota Statutes, section 151.72, subdivision 1 (f).

8) VENDING MACHINE means any mechanical, electric, electronic, or other type of device that dispenses Edible Cannabinoid Products upon the insertion of money, tokens, or other forms of payment directly into the machine by the person seeking to purchase the Edible Cannabinoid Product.

9) YOUTH ORIENTED FACILITY means a public or private elementary, middle, or high school, a state-licensed child or day care program with more than ten children, and any City park.

### 78.03 LICENSE REQUIRED

A) No person shall directly, by coin machine, or otherwise, keep for retail sale, sell at retail, or otherwise furnishing, any Edible Cannabinoid Products at any place in the city unless they have obtained an Edible Cannabinoid Products License.

### 78.04 APPLICATION AND ISSUANCE

A) Application for such license shall be made to the city clerk and shall state the full name and address of the applicant, the location of the building to be occupied by the applicant in the conduct of the business, the kind of business to be conducted, and such other information as the city clerk may require. The application shall be presented to the city council for its consideration, and if granted by the council, a license will be issued by the city clerk upon payment of the required fee.

### 78.05 BASIS FOR DENIAL OF LICENSE.

A) Grounds for denying the issuance of a license include, but are not limited to, the following:

- 1) The applicant is under 21 years of age.
- 2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to Edible Cannabinoid Products.
- 3) The applicant has had a license to sell Edible Cannabinoid Products suspended or revoked within the preceding 12 months of the date of application.
- 4) The applicant fails to provide any information required on the application, or provides false or misleading information.
- 5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.

- 6) Applicant is acting as an agent or pass through for another person or entity whose prior acts violated subsections A) 1, 2, 3, or 4 above or who is otherwise prohibited from holding a license under any applicable rule or law.
- 7) The applicant does not also have a license for the sale of tobacco or an off-sale liquor license.
- 8) The applicant is not located with the B-1: Central Business District or B-2 Highway Business District.
- 9) The proposed business is a movable place of business. Only fixed-location businesses are eligible to be licensed and separate licenses are required for each location.
- 10) The location of the business is within 500 feet of a Youth Oriented Facility, as measured from the principal building on the business parcel to the principal structure or building on the Youth Oriented Facility parcel.

B) However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license.

C) If a license is mistakenly issued to a person, it may be revoked upon the discovery that the person was ineligible for the license under this ordinance. Notice of the revocation will be given to the person along with information on the right to appeal.

#### 78.06 LICENSE FEE.

- A) The fee for a license is set by the City's fee schedule.

#### 78.07 TERM.

A) All licenses issued under this chapter shall be valid until March 1, 2025, or until the Office of Cannabis Management assumes licensing of Edible Cannabinoid Products.

#### 78.08 LICENSE DISPLAYED.

A) The license must be kept conspicuously posted on the premises for which the license is issued and must be exhibited to any person upon request.

#### 78.09 PROHIBITED ACTS.

- A) In General.

- 1) No person shall sell or offer to sell any Edible Cannabinoid Product:
  - i) By means of any type of vending machine.
  - ii) By means of self-service merchandising.

iii) By any other means, to any other person, on in any other manner or form prohibited by state or other local law, ordinance provision, or other regulation.

2) No person shall sell or offer for sale a product containing THC that does not meet all the requirements of Minnesota Statutes, section 151.72, except sales pursuant to a license issued by the Office of Cannabis Management.

B) Legal Age. No person shall sell any Edible Cannabinoid 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 as required in Minnesota Statutes, section 151.72.

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 Edible Cannabinoid 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) Samples Prohibited. No person shall distribute samples of any Edible Cannabinoid Product free of charge or at a nominal cost.

#### 78.10 OTHER ILLEGAL ACTS.

A) Illegal procurement. It shall be a violation of this section for any person 21 years of age or older to purchase or otherwise obtain Edible Cannabinoid Products on behalf of a person under the age of 21.

B) Use of false identification. It shall be a violation of this section for any person to attempt to disguise their true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

C) Violations of Minnesota Statutes, section 151.72. Any violation of Minnesota Statutes, section 151.72 shall also be considered a violation of this chapter.

#### 78.11 RESPONSIBILITY.

A) All licensees are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of Edible Cannabinoid Products on the licensed premises. The sale, offer to sell, or furnishing of any Edible Cannabinoid 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 civil penalties that the City deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.

## 78.12 COMPLIANCE CHECKS AND INSPECTIONS.

A) All premises licensed under this subdivision shall be open to inspection by the City during regular business hours. From time to time, the City may conduct compliance checks.

B) 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 Edible Cannabinoid 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.

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

## 78.13 VIOLATIONS AND PENALTY

A) Administrative Civil Penalties – Individuals. If a person who is not a licensee is found to have violated this article, 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 the License Term. The Council shall impose a civil fine not to exceed \$100.00.
- 3) Third Violation Within the License Term. The Council shall impose a civil fine not to exceed \$150.00.

B) Administrative Civil Penalties – Licensee. If a licensee or an employee of a licensee is found to have violated this article, 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 the License Term. 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 The License Term. 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 The License Term. 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 civil 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.

78.14 SEVERABILITY

A) 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.

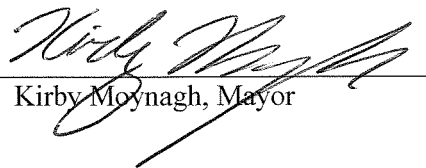
78.15 EXCEPTIONS AND DEFENSES.

A) Nothing in this chapter shall prevent the providing of an Edible Cannabinoid Product to a person under the age of 21 as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied upon proof of age.

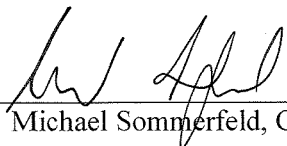
Section 2. Effective Date. This ordinance becomes effective upon passage and publication.

ADOPTED this 31st day of July, 2023 by the City Council of the City of Montrose.

CITY OF MONTROSE

By:   
Kirby Moynagh, Mayor

ATTEST:

By:   
Michael Sommerfeld, City Clerk/Treasurer