

Houston County

Interim Ordinance Placing a Moratorium on the Sale of Edible Cannabinoid Products and/or Hemp Derived Tetrahydrocannabinols (THC) Food and Beverages within the County of Houston

The County Board of Houston County ordains as follows:

SECTION I: PURPOSE AND FINDINGS

WHEREAS, this ordinance is necessary for the immediate preservation of public peace, health, morals, safety, and welfare because of the inherent risk of injury to persons related to the recently legalized (See Minn. Stat. Sec. 151.72) sale of edible cannabinoid products containing Tetrahydrocannabinol (THC) and/or hemp derived THC food and beverage products. A prohibition on the establishment of new uses or the expansion of existing uses related to the sale of such hemp derived edible cannabinoid products is necessary to ensure that the County of Houston (the "County") has sufficient time to study and implement appropriate local regulations that will protect the health and safety of the residents of Houston County. Due to the recent legislative changes to Minnesota Statute Section 151.72 that are already effective, there has not been sufficient time to engage in policy discussions regarding possible regulations or complete the ordinary process for the introduction and adoption of a County ordinance which will address the numerous concerns associated with the sale of edible cannabinoid products containing Tetrahydrocannabinol (THC) and/or hemp derived THC food and beverage products; and

WHEREAS, the County recognizes that there is significant uncertainty and public interest regarding the effect of Minnesota Statute Section 151.72, and which now makes it legal to sell certain edibles and beverages infused with tetrahydrocannabinol (THC), the cannabis ingredient extracted from hemp; and

WHEREAS, the purpose of this interim ordinance placing a moratorium on the sale of hemp derived THC food and beverages is to allow the county time to study the issue and consider licensing and rules, sales management controls for the sale of hemp derived THC food and beverages. This would include behind the sales counter controls and other regulations similar to tobacco sales and products and which include checking identifications (IDs), enforcement, labeling requirements, compliance checks, license fees, and other regulatory oversight; and

WHEREAS, based on reliable and scientific evidence, the County Board finds that the rapid introduction of newly-legalized edible THC food and beverage products ("edibles"), presents a significant potential threat to the public health, safety, and welfare of the residents of Houston County, and particularly to youth of Houston County; and

WHEREAS, the term THC includes all forms of tetrahydrocannabinols and includes Delta 8, Delta 9, and Delta 10 THC; and

WHEREAS, Houston County has the opportunity to be proactive and make decisions that will mitigate these threats and reduce exposure of young people to the hemp derived tetrahydrocannabinols (THC) food and beverages and to the marketing of said edible cannabinoid products containing Tetrahydrocannabinol (THC); and

WHEREAS, under Minnesota state law, counties are the local public health authority and have chief local jurisdiction over matters concerning safety and security of their citizens. The July 2022 legalization of hemp derived edible cannabinoid products and/or hemp derived tetrahydrocannabinols (THC) food and beverages pursuant to Minn. Stat. Sec. 151.72 introduces a new threat to the public without clearly establishing Houston County's ability to respond. There is little or no regulatory structure to track manufacturing, labeling, sales, jurisdiction, and criminalization of hemp derived edible cannabinoid products and/or hemp derived tetrahydrocannabinols (THC) food and beverages; and

WHEREAS, the Minnesota Board of Pharmacy has filed a civil lawsuit against a Minnesota manufacturer and retailer of edible Cannabis products. Under Minn. Stat. Sec. 151.72 which provides that an edible cannabinoid product sold in Minnesota must not contain more than five milligrams of any hemp derived tetrahydrocannabinol (THC) in a single serving or more than a total of 50 milligrams per package. The lawsuit alleges the retailer sold edible cannabinoid products that contain THC far in excess of five milligrams per serving and far in excess of 50 milligrams per package. Investigators allegedly found packages containing 2,500 milligrams of THC. This is 50 times the amount permitted under Minnesota law.

In addition, Minn. Stat. Sec. 151.72 states that edible cannabinoid products must not resemble or contain cartoon-like characteristics of a real or fictional person, animal, or fruit that appeals to children and must not be modeled after brands primarily consumed by or marketed to children. Investigators allegedly found products resembling characteristics of a fictional bear, as well as products that are modeled after common gummy bear candies that are primarily consumed by and marketed to children, including packages of gummy bears that contained 50 times the amount of THC permitted under Minnesota law. (See *Minnesota Board of Pharmacy vs. Northland Vapor Moorhead, LLC; Northland Vapor Bemidji; and Wonky Confections, LLC* filed in Clay County, Minnesota)

WHEREAS, the proposed moratorium would enable Houston County to actively study Minn. Stat. Sec. 151.72 and to better understand and support the safe implementation of edible cannabinoid products containing Tetrahydrocannabinol (THC) and hemp derived edibles and beverage products containing THC. Said moratorium would allow Houston County time to establish its authority over the hemp derived tetrahydrocannabinols (THC) food and beverage products, properly regulate said products, and protect public health and safety.

WHEREAS, the multitude of public health and safety concerns related to the manufacture and sale of hemp derived tetrahydrocannabinols (THC) food and beverages require consideration by health officials and policy makers before Houston County can ensure the public safety is preserved.

SECTION II: AUTHORITY AND JURISDICTION

- A. This Ordinance is enacted pursuant to Minnesota Statutes Chapters 145A which allows counties to adopt ordinances which regulate actual and potential threats to the public health.
- B. Pursuant to Minn. Stat. § 145A.05, Subd. 1, this ordinance shall apply throughout all of Houston County including all municipalities and unincorporated areas therein. Nothing in this Ordinance shall prevent other local levels of government within Houston County from adopting more stringent measures.
- C. This ordinance is also enacted pursuant to the authority in Minnesota Statute Section 394.34 which provides that if a county is conducting, or in good faith intends to conduct studies within a reasonable time for the purpose of considering or adopting an official control or an amendment, extension, addition to an official control, the board, in order to protect the public health, safety, and general welfare, may adopt an emergency measure, a temporary interim zoning ordinance. The purpose of the interim ordinance is to provide the county with the opportunity to study its comprehensive plan and official controls so that it can, in a meaningful way, consider potential amendments to its ordinances. An interim ordinance may regulate, restrict, or prohibit any use within the County for a period not to exceed one year from the effective date of the interim ordinance. Many jurisdictions have adopted interim ordinances to study the impacts of certain uses and determine whether regulations are appropriate for the purpose of protecting the public safety, health, and welfare of their citizens.

SECTION III: DURATION AND EFFECTIVE DATE

- A. This is an emergency interim ordinance which shall become effective immediately upon its approval by the Board. No prosecution based on the provisions of this Ordinance shall occur until the Ordinance has been filed with the County Auditor/Treasurer, unless the person charged with violation had actual notice of the passage of the Ordinance prior to the act or omission complained of.
- B. This interim ordinance shall be in effect for a period of twelve (12) months from the date of adoption or until the earlier of one of the following events: (a) one year from the effective date of this Ordinance or (b) the date upon which the County Board repeals this Ordinance.
- C. In the absence of state licensing, cities that establish licensing and rules, sales management controls, checking identification s (ID's), enforcement, compliance checks, license fees and address other regulatory issues may, by resolution of the city council, be exempt from this moratorium.

SECTION IV: STUDY BY THE COUNTY

- A. The County Board hereby authorizes and directs County staff to conduct a study to better understand the public health and safety issues associated with hemp derived edible cannabinoid products and/or hemp derived tetrahydrocannabinols (THC) food and beverages. County staff shall also study the issues related to the manufacture, sale, labeling, testing, licensing, and distribution of the hemp derived foods and beverages containing THC and/or edible cannabinoid products pursuant to Minn. Stat. Sec. 151.72. The moratorium will allow the County time to establish its authority to regulate said products.

SECTION V: MORATORIUM

In accordance with the findings set forth above, a moratorium is hereby established and imposed as follows:

- A. No business, person or entity may establish a use or expand an existing use authorized by Minnesota Statute Section 151.72. This prohibition includes and involves the sale, testing, manufacturing, or distribution of edible cannabinoid products or hemp derived food and beverage products which contain THC under Minn. Stat. Sec. 151.72. The moratorium shall continue for a period of up to twelve (12) months from the effective date of this Ordinance or until the Board repeals this Ordinance, whichever occurs first.
- B. During the term of this Ordinance and resulting moratorium, County 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 hemp derived cannabinoids, edible cannabinoid products or related THC food and beverage products under Minn. Stat. Sec. 151.72.
- 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 Minn. Stat. Sec. 151.72 relating to THC Products. The moratorium established by this ordinance **applies** to the sale, testing, manufacturing, or distribution of products authorized by Minn. Stat. Sec. 151.72.

SECTION VI: ENFORCEMENT

In addition to any criminal penalties allowed by law, the County may enforce this Interim Ordinance and the resulting moratorium by injunction or any other appropriate civil remedy in any court of competent jurisdiction. A violation of this Ordinance is also considered a violation of the Houston County Zoning Ordinance and shall be subject to County enforcement pursuant to the provisions of said Houston County Zoning Ordinance.

SECTION VII: 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.

NOW THEREFORE, this interim ordinance, placing a moratorium on the sale of hemp derived edible cannabinoid products , and/or hemp derived THC food and beverage products and which allows the county time to study the public health and safety concerns, licensing, rules, labeling requirements, sales controls, methods for checking identifications (ID's), compliance checks, overall enforcement, and other regulatory issues is hereby adopted by the Houston County Board of Commissioners and effective this _____ day of _____, 2023.

HOUSTON COUNTY

By _____
Dewey Severson, Chair
Houston County Board of Commissioners

Date: _____

Attested to by:

Donna Trehus
Houston County Auditor/Treasurer

Date: _____