

ORDINANCE NO. _____

**CITY OF WEST ST. PAUL
STATE OF MINNESOTA**

**AN INTERIM ORDINANCE AUTHORIZING A STUDY AND IMPOSING A
MORATORIUM ON THE OPERATION OF CANNABIS BUSINESSES IN THE CITY**

The City Council of the City of West Saint Paul does ordain:

SECTION 1. BACKGROUND.

- A. In February 2023, the City of West St. Paul enacted 23-004 which amended West St. Paul's City Code Section 114 regarding Intoxicating TCH Products, and 23-006 which amended Section 153.156 of West St. Paul's Zoning Code regarding Specialty Intoxicating THC retailers.
- B. Section 114.03 of the City West St. Paul's Code defines Specialty Intoxicating THC Product Retailer and states that no more than two (2) Specialty Intoxicating THC Product Retailer licenses shall be issued at any one time in the City.
- C. The Minnesota Legislature recently enacted, and THE Governor signed, 2023 Minnesota Session Laws, Chapter 63 – H.F. No. 100 (“Act”), which is comprehensive legislation relating to Cannabis including, but not limited to, the establishment of the Office of Cannabis Management (“OCM”); legalizing and limiting the possession and use of cannabis and certain hemp products by adults; providing for the licensing, inspection, and regulation of Cannabis Businesses and hemp businesses; taxing the sale of cannabis flower, cannabis products, and certain hemp products; establishing grant and loan programs; amending criminal penalties; providing for expungement of certain convictions and providing for the temporary regulation of certain edible cannabinoid products.
- D. The Act requires that on or before October 1, 2023, every person or entity selling edible cannabinoid products to consumers must register with the commissioner in a form and manner established by the commissioner. After October 1, 2023, the sale of edible cannabinoid products by a person or entity that is not registered is prohibited.
- E. With respect to entities currently licensed as THC Product Retailers in the City of West St. Paul, the City's Specialty Intoxicating THC Product Retailer licensing process set forth in Section 114 remains in effect until the earlier of October 1, 2023 registration date required by the Act or actual registration by those current licensees with the OCM. City can enforce Section 114 of West St. Paul City Code in its entirety until the registration with the State by the existing THC Product Retailers currently licensed by the City.

- F. After October 1, 2023, the provisions of Section 114 of West St. Paul City Code that are not preempted by the Act, including the limit on the number of Specialty Intoxicating THC Retailers in the City of West St. Paul, remain in effect unless or until otherwise amended or repealed by the City Council.
- G. With respect to Cannabis Businesses, which, under the Act, does not include lower-potency hemp edible manufacturer or lower-potency hemp edible retailer, the Act provides local units of government certain authority related to Cannabis Businesses, including the authority to (1) require local registration of certain Cannabis Businesses operating retail establishments, (2) adopt reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses, provided that such restrictions do not prohibit the establishment or operation of a Cannabis Businesses, (3) limit the number of certain Cannabis Businesses based on the population of the community, and (4) prohibit the operation of a Cannabis Businesses within 1,000 feet of a school, or 500 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 field.
- H. The Act requires the OCM, which will be established effective July 1, 2023, to work with local governments to develop model ordinances for reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses. The Act also requires the OCM to establish additional rules and regulations relating to the operation of Cannabis Businesses. The City will benefit from reviewing and analyzing the OCM's model ordinances, rules and regulations before making any decisions related to the regulation of Cannabis Businesses in the City.
- I. Section 342.02 et. seq. established by the Act directs the OCM to make rules, establish policy and exercise its regulatory authority over both the cannabis industry, as well as the lower potency hemp products and the hemp consumer products.
- J. Section 342.06 established by the Act requires to OCM to create and approve product categories of cannabis flower, cannabis products, lower-potency hemp edibles, and hemp-derived consumer products for retail sale.
- K. Section 342.06 established by the Act requires the OCM to establish limits on the total THC allowed of cannabis flower, in cannabis products, and in hemp-derived consumer products and prohibits approval of certain forms of cannabis product, lower-potency hemp edible, or hemp-derived consumer product.
- L. Section 342.07 established by the Act requires the OCM to establish certification, testing, and labeling requirements for the methods used to grow new cannabis plants or hemp plants, including but not limited to growth from seed, clone, cutting, or tissue culture.
- M. Section 342.07 established by the Act requires the OCM to establish best practices for: (1) the cultivation and preparation of cannabis plants; and (2) the use of pesticides, fertilizers, soil amendments, and plant amendments in relation to growing cannabis plants.

- N. Section 342.07 established by the Act requires the OCM to regulate businesses that manufacture, process, sell, handle, or store an edible cannabis product or lower-potency hemp edible and will require, for most of those businesses to obtain an edible cannabinoid product handler endorsement.
- O. Section 342.08 established by the Act requires the OCM to provide regulations establishing energy standards, disposal of waste and addressing odor.
- P. The Act amended Minnesota Statutes §340A.412, subd. 14 to allow, effective the day after the final enactment of the bill (the governor’s signature), exclusive liquor stores to sell edible cannabinoid products as that term is defined in current statute, 151.72, subd. 1.
- Q. Section 342.13 established by the Act contains a provision that allows for a City Council that plans to conduct studies that has held or is considering adoption or amendment of reasonable restrictions on the time, place, and manner of the operation of a cannabis business, to hold a hearing on and adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety, and welfare of its citizens until January 1, 2025. This provision only relates to the Cannabis Businesses, which does not include having the ability to study the lower potency hemp business or hemp consumer products, even though the newly created OCM will be issuing licenses related to the lower potency hemp products, as well as engaging in rule making related to both the lower potency hemp products and the hemp consumer products.
- R. Given the uncertainty regarding the model ordinances to be developed by the OCM and the broad scope of the changes to Minnesota law brought about by the Act, the City desires to adopt an interim ordinance for the purpose of protecting the planning process and the health, safety, and welfare of its citizens and to conduct a study for the purpose of considering the adoption or amendment of reasonable restrictions on the time, place and manner of the operation of Cannabis Businesses as well as the other regulations local units of government may adopt under the Act.
- S. On June ____, 2023, after providing at least 10 days published notice, the City Council held a public hearing regarding the consideration and adoption of an interim ordinance prohibiting the operation of Cannabis Businesses within the City for up to one year.

SECTION 2. DEFINITIONS.

For purposes of this Ordinance, the following terms shall have the meaning given them in this section.

- (a) “Act” means 2023 Minnesota Session Laws, Chapter 63 (H.F. No. 100).
- (b) “Cannabis Business” has the meaning given the term in Minnesota Statutes, section 342.01, subdivision 14.

- (c) “City” means the City of West St. Paul.
- (d) “Edible Cannabinoid Product” has the meaning given the term in Minnesota Statutes, section 151.72, subdivision 1(f).
- (e) “OCM” means the Office of Cannabis Management, established as set forth in Minnesota Statutes, section 342.02, subd. 1.
- (f) “Ordinance” means this interim ordinance, which is adopted pursuant to Minnesota Statutes, section 462 and 342.13(e).

SECTION 3. FINDINGS.

- A. The City Council finds there is a need to study (i) Cannabis Businesses and (ii) the impact of those businesses, as related to allowed land uses and zoning, in order to assess the necessity for and efficacy of regulation and restrictions in order to protect the public health, safety, and welfares of its residents.
- B. The study will allow the City Council to determine the appropriate changes, if any, that it should make to the West St. Paul City Code, including any necessary zoning changes.
- C. The time will allow for any state agency rulemaking related to licensing Cannabis Businesses; and to create its model ordinances which will further aid the Council in studying and considering restrictions on the operation of Cannabis Businesses and any changes to the City’s current provisions related to THC Specialty Providers, identified as Lower Potency Hemp Businesses in the Act.
- D. The City Council therefore finds that there is a need to adopt a city-wide moratorium on Cannabis Businesses while City staff studies the issue.
- E. The City Council finds that Section 114 of City Code remains in effect and is enforceable until October 1, 2023, or until the City Council amends or repeals Section 114 at an earlier date.
- F. The City Council finds that Section 153.156 of the City Code remains in effect, is enforceable and is not preempted by the Act.

SECTION 4. MORATORIUM.

- A. Moratorium. A moratorium is hereby imposed regarding the operation of a Cannabis Business within the City. During the term of this Ordinance, no business, person, or entity may establish or operate a Cannabis Business within the jurisdictional boundaries of the City. The City shall not accept, process, or act on any application, site plan, building permit, zoning request, or other approval, including any requested confirmation, certification, approval, or other request from the OCM or other

governmental entity requesting City review of any application or proposal for a business proposing to engage in the operation of a Cannabis Business.

- B. This moratorium does not apply to the selling, testing, manufacturing, or distributing of products related to the Medical Cannabis Program as administered by the Minnesota Department of Health, provided that such activity is done in accordance with the regulations and laws of Minnesota regarding Medical Cannabis.

SECTION 5. STUDY. The City Council hereby authorizes and directs the City Manager to have City staff conduct a study regarding the adoption or amendment of reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses, as well as the other potential local regulations allowed under the Act, and report to the City Council on the potential regulation of Cannabis Businesses. The study must include a review of the model ordinances the OCM is directed to draft under Minnesota Statutes, section 342.13(d), an analysis of potential setback regulations allowed under Minnesota Statutes, section 342.13(c), and such other matters as staff may determine are relevant to the City Council's consideration of this matter. 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.

SECTION 6. 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 and may result in the City reporting the violation to the OCM if relevant to OCM licensing. During the term of the moratorium, it is a violation of this Ordinance for any business, person, or entity to establish or operate a Cannabis Business within the City.

SECTION 7. TERM. Unless earlier rescinded by the City Council, this Ordinance shall become effective on the effective date and after adoption and publication and shall remain in effect until January 1, 2025. This Ordinance may be repealed earlier upon the effective date of an ordinance adopting or amending reasonable restrictions on the time, place and manner of the operation of a Cannabis Business within the City or by resolution of the City Council terminating this Ordinance prior to the expiration date.

SECTION 8. EFFECTIVE DATE. This Ordinance shall be in full force and effect on July 1, 2023 and after its passage and publication according to law.

SECTION 9. SEVERABILITY. Every section, provision, and part of this Ordinance is declared severable from every other section, provision, and part thereof. If any 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 section, provision, or part of this Ordinance.

Passed and adopted by the City Council of the City of West St. Paul this ____ day of ____ 2023.

By: _____

Dave Napier, Mayor

Attest: _____

Nicole Tillander, City Clerk