

ORDINANCE NO. 2214

**CITY OF MADISON HEIGHTS
OAKLAND COUNTY, MICHIGAN**

AMENDMENT TO THE CODE OF ORDINANCES

An Ordinance to amend Ordinance No. 571, being an Ordinance codifying and adopting a new Code of Ordinances for the City of Madison Heights, by amending Chapter 17, Article VIII, Section 17-168 through 17-175 to prohibit the possession, sale, manufacture, creation, delivery and possession with intent to manufacture, create, or deliver Kratom or any Kratom derivative within the City of Madison Heights and to provide criminal penalties and business and non-business license sanctions for violation thereof.

THE CITY OF MADISON HEIGHTS ORDAINS

SECTION 1. AMENDMENT.

That Chapter 17, titled “Miscellaneous Offenses and Provisions,” Article VIII, titled “Controlled Substances,” Section 17-168 through 6-175, titled “Reserved,” of the Code of Ordinances, City of Madison Heights, Michigan, is hereby amended in its entirety, to read as follows:

Sec. 17-168. – Short Title.

This ordinance shall be known and may be cited as the “Kratom Prohibition Ordinance.”

Sec. 17-169. – Findings and Purpose.

The purpose of this ordinance is to protect the public health, safety and welfare of persons within the jurisdiction of the city by prohibiting the possession, sale, manufacture, creation, delivery, and possession with intent to manufacture, create, or deliver kratom and kratom derivatives, except as expressly provided in this ordinance and to provide methods of enforcement through the criminal justice system and the licensing system in the city. The Madison Heights City Council finds that kratom and products containing kratom pose risks to public health, safety and welfare of the public and that prohibiting activities specified in this Ordinance are necessary to protect the community, including those who reside, work and visit the city.

Sec. 17-170 – Definitions.

When used in this article, the following words and terms shall have the following meanings:

- (a) *Kratom* means any part of the plant *Mitragyna speciosa*, including its leaves, stems, roots, extracts, powders, resins, preparations, concentrates, or other material derived from or containing any part of that plant.
- (b) *Kratom derivative* means any substance, preparation, compound, extract, concentrate, mixture, product, or other material that is derived from, contains, or is manufactured, created from kratom, whether or not the substance is chemically altered from its naturally occurring form.

- (c) *Manufacture* means the production, preparation, propagation, compounding, processing, extraction, conversion, packaging, repackaging, or other creation of kratom or a kratom derivative, directly or indirectly, by natural, chemical or other means.
- (d) *Creation* means to grow, produce, prepare, formulate, compound, extract, concentrate, process, or otherwise bring into existence kratom or a kratom derivative.
- (e) *Deliver or delivery* means the actual, constructive, or attempted transfer of kratom or a kratom derivative from one person to another, whether or not there is an exchange of money or other consideration.
- (f) *Person* means any individual, natural person, corporation, limited liability company, partnership, limited partnership, limited liability partnership, association, trust, estate, joint venture, cooperative, organization, business, business establishment, entity, firm, company, nonprofit organization, governmental entity, or other legal or commercial entity, whether or not incorporated, and any other entity or combination of individuals or entities capable of owning property, entering into contracts, conducting business, or being subject to legal obligations. The definition of “Person” also includes any officer, director, manager, member, partner, agent, employee, representative, or other person acting on behalf of such entity to the extent permitted by applicable law.
- (g) *Possession* means knowingly or intentionally having actual, constructive, or joint possession of kratom or a kratom derivative.
- (h) *Sale* means any transfer of kratom or a kratom derivative for money, property, services, or anything else of value and includes an offer or attempt to sell.

Sec. 17-171. – Prohibited conduct.

Except as expressly authorized by state or federal law and subject to the exceptions in Section 7 below of this ordinance, it shall be unlawful for a person, within the jurisdiction of the city, to:

- (a) Knowingly possess kratom or any kratom derivative;
- (b) Knowingly sell or offer for sale kratom or any kratom derivative;
- (c) Knowingly manufacture kratom or any kratom derivative;
- (d) Knowingly create kratom or any kratom derivative;
- (e) Knowingly deliver kratom or any kratom derivative;
- (f) Knowingly possess kratom or any kratom derivative with the intent to manufacture, create, sell, or deliver it;
- (g) Knowingly advertise, offer, arrange, or facilitate the sale or delivery of kratom or any kratom derivative; or
- (h) Knowingly maintain or operate a location for the purpose, in part, of manufacturing, creating, storing, selling, or delivering kratom or any kratom derivative in violation of this ordinance.

Sec. 17-172. – Possession With Intent.

A person who knowingly possesses kratom or a kratom derivative under circumstances demonstrating an intent to manufacture, create, sell, or deliver kratom or kratom derivative commits a violation of this ordinance. Intent may be established through any evidence permitted by applicable law, including but not limited to the quantity or packaging of the material, communications concerning the material, financial records, equipment, transaction records, or other circumstances surrounding the possession.

Sec. 17-173. – Applicability of Ordinance.

This ordinance applies regardless of the form in which the kratom or kratom derivative exists, including powder, capsule, tablet, liquid, resin, extract, concentrate, plant material, edible product, beverage or other preparation, whether the kratom or kratom derivative is labeled or marketed as a dietary supplement, botanical product, herbal product, food, beverage, wellness product, research chemical or otherwise; whether the product is intended for human consumption; and whether the product contains naturally occurring kratom constituents or constituents that have been chemically modified or concentrated.

Sec. 17-174. – Exceptions.

This ordinance shall not prohibit conduct that is expressly authorized by applicable federal or Michigan law. Nothing in this ordinance shall prohibit possession, handling, manufacture, testing, or use of kratom or a kratom derivative by a federal, state or local governmental agency or law enforcement agency acting with the scope of its official duties; possession or handling of kratom or a kratom derivative by a person acting pursuant to a valid court order or other specific legal authorization; possession, handling, manufacturing, or testing of kratom or a kratom derivative by an appropriately authorized laboratory, educational institution, or research organization when such activity is expressly permitted by applicable law; or any other conduct that applicable state or federal law expressly exempts from local regulation.

Sec. 17-175 -- Penalties.

- (a) A person who violates this article is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both. Further, each separate act of possession, manufacture, creation, sale, delivery, or possession with intent prohibited by this ordinance shall constitute a separate violation to the extent permitted by law.
- (b) A person who violates this article and who has or possesses a business license or other license issued by the city may be subject to revocation, non-renewal, or denial of said license, subject to the provisions in the city code of ordinances.
- (c) Pursuant to lawful enforcement of this ordinance, the city police department may seize and retain any kratom or kratom derivative, which may be kept, maintained, preserved, tested or transferred to other appropriate government authorities, or otherwise disposed of or destroyed in accordance with applicable law and established evidence-handling procedures.
- (d) Nothing in this article shall prevent the city from pursuing any other remedy authorized by law.

SECTION 2. REPEALER.

All ordinances, or parts of ordinances, in conflict with this ordinance are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 3. SEVERABILITY

Should any section, subdivision, clause, or phrase of this ordinance be declared by the courts to be invalid, the validity of the ordinance, in whole or in part, shall not be affected other than the part invalidated.

SECTION 4. SAVINGS.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect, are saved and may be consummated according to the law in force when they were commenced.

SECTION 5. EFFECTIVE DATE.

This ordinance as ordered shall take effect ten (10) days after its adoption and upon publication.

SECTION 6. INSPECTION.

A copy of this ordinance may be inspected or purchased at the city clerk's office between the hours of 8:00 a.m. and 11:30 a.m. and between the hours of 12:30 p.m. and 4:30 p.m. on regular business days.