



Memorandum

To: Mayor Nelson and Members of the City Council

From: John Thames, City Attorney

Date: July 5, 2023

Subject: Cannabis, Edible Cannabinoids and Drug Paraphernalia Ordinance

As the Council is aware, the Minnesota Legislature passed a new law in 2022 which made it legal to sell certain edible cannabinoid products (a.k.a. “lower potency hemp edibles”). In response to this new law, the City of Spring Lake Park passed Ordinance 11.48 “Edible Cannabinoid Products” which created a local licensing framework for vendors who made such sales.

In 2023, the Minnesota Legislature approved Session Law Ch. 63, which expanded both the legalization of the types of THC products and the also the types of THC and Cannabis businesses permitted in the state. The same also established certain registration/licensing frameworks for edible cannabinoid vendors. The Legislature concurrently repealed MN Statute 152.092 (“Possession of Drug Paraphernalia Prohibited”) and made certain revisions to MN statute 152.025 (“Controlled Substance Crime in the Fifth Degree”), which excepts from that crime the possession of residual amounts of controlled substances which are found in drug paraphernalia. This exception was expanded to except possession of controlled substances *beyond* marijuana. (See the relevant portion of the revised law below.)

152.025 Controlled Substance Crime in the Fifth Degree

Subd. 2. Possession and other crimes.

A person is guilty of controlled substance crime in the fifth degree and upon conviction may be sentenced as provided in subdivision 4 if:

(1) the person unlawfully possesses one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV, except a small amount of marijuana or a residual amount of one or more mixtures of controlled substances contained in drug paraphernalia;

Subject to certain limitations, the 2023 laws permit cities to prohibit the public use of cannabis and cannabinoid products and also to prohibit the possession of drug paraphernalia. The City passed a moratorium at its last meeting to temporarily prohibit the operation of cannabis businesses to allow the time for the matter to be studied and for proper regulations to be established. The moratorium does not apply to edible cannabinoid products, which are currently sold pursuant to the City’s licensing process.

The state intends to begin registering vendors of edible cannabinoid products this fall. All such vendors must register with the state by October 1, 2023. It is believed that when the state begins to issue registration/licenses to such businesses, that local regulation thereof will be preempted. This will mean that the City of Spring Lake Park's Edible Cannabinoid Licensing framework must cease in favor of the state registration/licensing process. This proposed ordinance will repeal that licensing process and replace it with more basic zoning restrictions as to where such businesses may operate, in compliance with the new law. The Council will need to determine in what zoning districts these sales should be permitted and whether any restriction on the number of registrations will be imposed.

This proposed ordinance also exercises the City's authority to prohibit public use of cannabis and edible cannabinoids and prohibits the possession of drug paraphernalia within the City. The latter prohibition does not prohibit marijuana paraphernalia, but does prohibit possession of paraphernalia containing residual amounts of controlled substances *other than marijuana*. The passage of this ordinance will allow the maintenance of the status quo for law enforcement to conduct searches based on probable cause as to the possession of illegal controlled substances (e.g. methamphetamines, etc.).¹

If you have any questions, please don't hesitate to contact me at 763-561-2800. Thank you.

¹ Illustratively, in the event of detection of a controlled substance other than marijuana in a vehicle, an otherwise valid search of that vehicle can remain valid even if the search does not yield the discovery of a controlled substance beyond residue within drug paraphernalia.