

CITY OF SHAKOPEE, MINNESOTA

RESOLUTION R2024-023

RESOLUTION DENYING AN APPLICATION FOR A THC LICENSE FOR TOP STAR MARKET, LLC

WHEREAS, Sinbed Adel Manasra on behalf of Top Star Market, LLC (collectively, the “Applicant”) submitted an application for a THC License pursuant to city of Shakopee (“the City”) City Code, Sections 110.001-110.013 (General Licensing, Permit, and Inspection Procedures General Provisions) and 110.200-110.212 (Tetrahydrocannabinol Products) (“License Regulations”, which are included as Exhibit A); and

WHEREAS, the License Regulations provide the basis for denial of a license including:

- 1) City Code, Section 110.003 (E). The Council may, for any reasonable cause, refuse to grant any application, or revoke any license. No license shall be granted to a person of questionable moral character or business reputation.
- 2) City Code, Section 110.203(B)(8). The Applicant has had a Comparable License Violation in the previous 3 years.

WHEREAS, the City Council of the City of Shakopee (the “City Council”) has considered the matter and makes the following Findings of Fact and Conclusions:

FINDINGS OF FACT

Background

1. On August 16, 2022, the City Council adopted an interim ordinance establishing a moratorium on the sale of “Cannabis Products” within the City (the “Moratorium”, which is included as Exhibit B).
2. On November 17, 2022, the City conducted a compliance check and found the Applicant was selling Cannabis Products that contained THC in violation of the Moratorium. The Applicant was ordered to remove the Cannabis Products. The report of the police department is included as Exhibit C. The photo taken during the November 17, 2023 compliance check is included as Exhibit D.
3. Exhibit D shows products that are labeled as being “cannabis” and “marijuana,” which were not legal to sell in 2022, and a number of products described as “prerolls” containing THC or THC derivatives. Additionally, Exhibit D shows: (a) products that contain more than the maximum allowed amount of THC per serving and per package; and (b) edible cannabinoid products that bear a likeness or contain cartoon-like characteristics of a real or fictional person, animal, or fruit which appeals to children or are modeled after a brand of products primarily consumed by or marketed to children. All of which are violations of Minnesota Statutes, Section 151.72, subd. 5a, which is included as Exhibit E.

4. On November 30, 2022, the City conducted follow-up compliance checks and a plain-clothed enforcement official purchased products containing delta-8 and delta-10 THC that violated both the Moratorium and Minnesota Statutes, Section 151.72 (“Noncompliant Products”).
5. The Noncompliant Products were gummies containing delta-8 and delta-10 hemp-derived THC in the following amounts: 70 servings per container; 50 mg of THC per serving; and total THC of 1,750mg. See Exhibit F.

Violation of Moratorium

6. The Moratorium establishes in the recitals that edible cannabinoid products were allowed under Minnesota Statutes, Section 151.72 through Minnesota Laws 2022, Chapter 98, which was became effective July 1, 2022 (the “Act”).
7. The Moratorium provides: “A moratorium is imposed within the City regarding the sale of Cannabis Products. No business, person, or entity may sell Cannabis Products to the public within the jurisdictional boundaries of the City during the period that this Ordinance is in effect.”
8. The Noncompliant Products were subject to the Moratorium because they were edible cannabinoid products as defined in Minnesota Statutes, Section 151.72. Selling the Noncompliant Products was a violation of the Moratorium and resulted in a failed compliance check.
9. The Board of Pharmacy was the state agency designated to enforce the Act. The Board of Pharmacy’s position is that certain edible cannabinoid products were not lawful to sell prior to July 1, 2022, including specifically products that included intoxicating cannabinoids. Additionally, the Board of Pharmacy, referring to Minnesota Statutes, Section 151.72 (included as Exhibit G), concluded: “If the Legislature wished to legalize the sale and possession of products containing Δ -8 THC, which is intoxicating, those sections would also need to be modified.” See Minnesota Board of Pharmacy Report to the Legislature on Changes the Board Proposes to Make to the Controlled Substance Schedules Maintained by the Board in Minnesota Rules, which is included as Exhibit H.
10. The violation for selling Noncompliant Products was forwarded to the Scott County Attorney’s Office for prosecution as a misdemeanor. Without consulting the City, the Scott County attorney’s office moved to dismiss the case on October 9, 2023. In the pleadings submitted to the District Court, included as Exhibit I, the Applicant argued that products containing delta-8 and delta-10 THC were not subject to the Moratorium – that is not a correct statement of the law. Even if the statement was correct, the Moratorium specifically *includes* edible cannabinoid products. Additionally, the products being sold were not compliant with Minnesota Statutes, Section 151.72.
11. The City sent the Applicant a letter on December 5, 2022 informing the Applicant that the “City of Shakopee has elected NOT to impose civil penalties for violating the Moratorium however the police reports have been sent to the Minnesota Board of Pharmacy.” The letter

is included as Exhibit J. The Applicant knew that the City considered the failed compliance check a violation of the Moratorium.

Violation of State Law

12. At the time of the failed compliance check, Minnesota Statutes, Section 151.72, subd. 3 & 7 provided that an edible cannabinoid product may not contain an amount of THC that is higher than five milligrams in a single serving, or more than a total of 50 milligrams in a package. Minnesota Statutes, Section 151.72, subd. 3 and 7. The Noncompliant Product contained serving sizes of 35 milligrams (seven times greater and a 600% increase over the compliant products) and total THC of 1750 per package (35 times greater and a 3,400% increase over compliant products).
13. The manufacturer of the Noncompliant Products includes a disclaimer on its website that its products are not for sale in Minnesota. See Exhibit K.
14. The City filed a complaint with the Minnesota Board of Pharmacy on December 2, 2022. See Exhibit L. The City did not hear back from the Minnesota Board of Pharmacy. In 2023, enforcement of Minnesota Statutes, Section 151.72 transitioned to the Minnesota Department of Health.

Failed Compliance Check Results in License Denial

15. The License Regulations provide that grounds for denial include “ the applicant has had a Comparable License Violation in the previous 3 years.”
16. A Comparable License Violation is defined in the License Regulations as: “Any failure by an applicant, or an applicant's associated business that own's, holds, owned or held a license issued by a governmental entity, of a compliance check or inspection, or violation of another law (including but not limited the Moratorium on THC sales) or regulation related to the sale of THC, a THC license, or a tobacco, tobacco products, and tobacco-related devices license issued under Section 110.055, et seq.”
17. The Applicant failed compliance checks conducted by the City on November 17, 2022 and again on November 30, 2022.
18. On October 17, 2022, the Applicant failed a compliance check related to an associated business, Nicollet Tobacco, LLC (which lists Mr. Manasra as the registered agent, manager, and licensee for both Nicollet Tobacco, LLC and Top Star, LLC – See Exhibit M), for sales of tobacco, tobacco products, and tobacco-related to a minor. Pursuant to City Council Resolution No. _____, the City Council denied the THC license application for Nicollet Tobacco, LLC.
19. The Applicant sold edible cannabinoid products that were prohibited during the period of the Moratorium. The Applicant was informed during the compliance check on November 17, 2023 that the products were not allowed. The Applicant chose to continue selling

noncompliant products and sold noncompliant products to a plain-clothes officer on November 30, 2023. The Noncompliant Products that the Applicant continued to sell included more than seven times the allowed amount of THC per serving and thirty-five times the allowed amount of THC per package. The City finds that the Applicant, even after being informed of his violation continued to sell noncompliant products (the manufacturer of which states are not legal to sell in Minnesota) that included THC in amounts vastly in excess of what was allowed at the time of the violation.

20. It is clear that the Applicant sold products containing THC that were not allowed to be sold on November 30, 2022. The actions of the Scott County Attorney's office made without consulting the City and the failure of the Minnesota Board of Pharmacy to document or enforce unlawful sales of THC products should not result in a loophole through which the Applicant can now claim that a THC License must be granted.

CONCLUSIONS

21. The Applicant failed compliance checks completed by the City on November 17, 2022 and November 30, 2022. These failures are Comparable License Violations because they are violations of the Moratorium.
22. The Applicant sold edible cannabinoid products on November 30, 2022 during the period of the Moratorium when such sales were prohibited. This violation is a Comparable License Violation.
23. The Applicant sold edible cannabinoid products on November 30, 2022 that were not compliant with Minnesota Statutes, Section 151.72. This is a violation of state law.
24. The Applicant has a Comparable License Violation resulting from sales to a minor at Nicollet Tobacco, LLC, on October 17, 2022. Nicollet Tobacco, LLC is owned and operated by Sinbed Adel Manasra, the Applicant. This is a Comparable License Violation.
25. The Applicant sold Noncompliant Products that the Applicant had been informed were not allowed during the period of the Moratorium. Those products contained more than seven times the allowed amount of THC per serving and thirty-five times the allowed amount of THC per package. The serious differences between the legally allowed products and the Noncompliant Products combined with the Applicant's actual knowledge that the Noncompliant Products were not allowed to be sold constitutes reasonable cause to deny the THC License in the interest of protecting the public health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHAKOPEE that based on the above Findings of Fact and Conclusions, the Applicant's request for a THC License is DENIED.

Adopted by the City Council of the City of Shakopee, Minnesota this 20th day of February 2024.

Mayor

ATTEST:

City Clerk

GENERAL LICENSING, PERMIT, AND INSPECTION PROCEDURES GENERAL PROVISIONS

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110.001 Definitions

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICATION. A form with blanks or spaces thereon, to be filled in and completed by the applicant as a request for a license, furnished by the city, and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

BOND. A corporate surety document in the form and with the provisions acceptable and specifically approved by the City Attorney.

BUSINESS. Any activity, occupation, sale of goods or services, or transaction that is either licensed or regulated, or both licensed and regulated, by the terms and conditions of this chapter.

LICENSE. A document issued by the city to an applicant permitting the applicant to carry on and transact a business.

LICENSE FEE. The money paid to the city pursuant to an application and prior to issuance of a license to transact and carry on a business.

LICENSEE. An applicant who, pursuant to the licensee's application, holds a valid, current, unexpired, and unrevoked license from the city for carrying on a business.

SALE, SALE, SELL, and SOLD mean all forms of barter and all manner or means of furnishing merchandise to persons.

(2013 Code, § 6.01) (Ord. 1, passed 4-1-1978; Ord. 337, passed 7-23-1992)

110.002 Applications

All applications shall be made as follows.

- A. *Form.* All applications shall be made at the office of the City Administrator upon forms that have been formulated by the city for such purposes.
- B. *Fee.* All initial applications shall be accompanied by a payment of a fee as prescribed by the most recent fee resolution to cover the cost of investigation as herein provided.

C. *Contents.* All such applications must be subscribed, sworn to, and include, but not be limited to, the following:

1. Applicant's name and citizenship;
2. Applicant's present address and length of time the applicant has lived at that address;
3. Applicant's occupation and length of time so engaged;
4. Applicant's addresses and occupations for the 3 years next preceding the date of application;
5. Names and addresses of applicant's employers, if any, for the 3 years next preceding the date of application;
6. Whether or not the applicant has ever been convicted of a felony, gross misdemeanor, or misdemeanor, including violation of a municipal ordinance but excluding traffic violations, and if so, the date and place of conviction and the nature of the offense;
7. Type of license and location of premises for which the application is made;
8. At least 4 character references if the applicant has not resided in the city for 2 years next preceding the date of application; and
9. Such other information as the Council shall deem necessary considering the nature of the business for which the license application is made.

D. *False statements.* It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in such application, or any willful omission to state any information called for on such application form, shall, upon discovery of such falsehood work an automatic refusal of license, or if already issued, shall render any license or permit issued pursuant thereto, void, and of no effect to protect the applicant from prosecution for violation of this chapter, or any part hereof.

E. *Investigation.* The City Administrator shall, upon receipt of each application completed in accordance herewith, forthwith investigate the truth of statements made therein and the moral character and business reputation of each applicant for license to such extent as the City Administrator deems necessary. For such investigation, the City Administrator may enlist the aid of the Chief of Police. The Council shall not consider an application before such investigation has been completed.

F. *Renewals.* Applications for renewal licenses may be made in such abbreviated form as the Council may by resolution adopt.

(2013 Code, § 6.02) (Ord. 1, passed 4-1-1978; Ord. 337, passed 7-23-1992; Ord. 393, passed 12-15-1994) Penalty, see § 110.999

110.003 Action On Application For License

A. *Granting.* The Council may grant any application for the period of the remainder of the then current calendar year or for the entire ensuing license year. The City Clerk may grant an application for the licensing of an individual who works in a business licensed as a pawnshop, precious metal dealer, or second-hand goods dealer. All applications, including proposed license periods, must be consistent with this chapter.

B. *Issuance.*

1. If an application is approved, the City Administrator shall forthwith issue a license pursuant thereto in the form prescribed by the Council upon proof of ownership, payment of the appropriate license fee, and approval of the bond or insurance as to form and surety or carrier, if required. All licenses shall be on a calendar-year basis beginning January 1 and ending December 31. Unless otherwise herein specified, license fees shall be pro-rated on the basis of 1/12 for each calendar month, or part thereof remaining in the then current license year.
2. Licenses shall be valid only at 1 location and on the premises therein described. In order to effectuate the change in license year, the City Administrator is hereby authorized to credit the applicant for any unearned portion of a license fee, or charge a pro-rated amount only. No license shall be granted for operation on any premises upon which taxes, assessments, or installments thereof, or any financial claims of the city are owed by the applicant and are delinquent and unpaid.

C. *Transfer.* A license shall be transferable between persons upon consent of the Council and payment of the investigation fee. No license shall be transferable to a different location without prior consent of the Council and upon payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this division (C).

D. *Termination.* Licenses shall terminate only by expiration or revocation.

E. *Refusal, suspension, and revocation.* The Council may, for any reasonable cause, refuse to grant any application, or revoke any license. No license shall be granted to a person of questionable moral character or business reputation. Before revocation or suspension of any license, the Council shall give notice to the licensee and grant such licensee opportunity to be heard. Notice to be given and the exact time of hearing shall be stated in the resolution calling for such hearing.

F. *Duplicate license.* Duplicates of all original licenses may be issued by the City Administrator, without action by the Council, upon the licensee's affidavit that the original has been lost, and upon payment of a fee of \$2 for issuance of the duplicate. All duplicate licenses shall be clearly marked "DUPLICATE".

(2013 Code, § 6.03) (Ord. 1, passed 4-1-1978; Ord. 79, passed 11-26-1981; Ord. 444, passed 2-22-1996)

110.004 Carrying Or Posting

All transient merchants, peddlers, and solicitors shall at all times when so engaged, carry their license on their person. All other licensees shall post their licenses in their place of business near the licensed activity; provided, however, that in the case of machine or other device licensing, the city may provide a sticker for the current license year which shall be affixed to each machine or device requiring such sticker. All licensees shall display their licenses upon demand by any officer or citizen.

(2013 Code, § 6.04) (Ord. 1, passed 4-1-1978)

110.005 License Required

It is unlawful for any person to knowingly permit any real property owned or controlled by that person to be used, without a license, for any business for which a license is required by this chapter.

(2013 Code, § 6.05) (Ord. 1, passed 4-1-1978; Ord. 337, passed 7-23-1992) Penalty, see § 110.999

110.006 Responsibility Of Licensee

The conduct of agents and employees of a person to whom a license or permit is issued shall be deemed the conduct of the licensee.

(2013 Code, § 6.06) (Ord. 1, passed 4-1-1978; Ord. 337, passed 7-23-1992)

110.007 Conviction Of Crime; Denial Of License

A license may be denied to an applicant by the Council solely or in part due to a prior conviction of a crime by an applicant only upon a finding that such conviction directly relates to the occupation for which the license is sought, and then only after considering evidence of rehabilitation and such other evidence as may be presented, all in accordance with state statutes; provided, however, that an applicant must show that the applicant is presently fit to perform the occupation for which the license is sought.

(2013 Code, § 6.07) (Ord. 1, passed 4-1-1978; Ord. 337, passed 7-23-1992)

110.008 Conditional Licenses

Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefor, place such conditions and restrictions upon a license as it, in its discretion, may deem reasonable and justified.

(2013 Code, § 6.08) (Ord. 1, passed 4-1-1978)

110.009 Fixing License Fees

Except as otherwise herein provided, all fees for licenses under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such license fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the City Clerk, and open to inspection during regular business hours. For the purpose of fixing such fees, the Council may subdivide and categorize licenses under a specific license requirement; provided, that any such subdivision or categorization shall be included in the resolution authorized by this section.

(2013 Code, § 6.09) (Ord. 79, passed 11-26-1981)

110.010 Insurance Requirements

Whenever insurance is required by a section of this chapter, after approval by the Council, but before the license shall issue, the applicant shall file with the City Clerk a policy or certificate of public liability insurance showing:

- A. The limits are at least as high as required;
- B. Coverage is effective for at least the license term approved; and
- C. Such insurance will not be canceled or terminated without 30 days' written notice served upon the City Clerk. Cancellation or termination of such coverage shall be grounds for license revocation.

(2013 Code, § 6.10) (Ord. 199, passed 7-10-1986)

110.011 Posting And Distributing Printed Matter

- A. *On public property.* It is unlawful for any person to post or leave printed matter upon streets or other public property, including utility poles.
- B. *On motor vehicles.* It is unlawful for any person to post, attach, or leave upon, any motor vehicle not owned by that person, any printed matter, without the permission of the owner or other person in control of such property.

(2013 Code, § 6.20) (Ord. 1, passed 4-1-1978; Ord. 337, passed 7-23-1992) Penalty, see § 110.999

110.012 Scavengers

- A. *Scavenger defined.* **SCAVENGER** means a person, partnership, or corporation in the business of removing the contents or part of the contents of any privy, sink, satellite, vault, septic tank, grease, and sand trap, cesspool, or other similar facility.
- B. *Regulations.* It is unlawful for any person to follow or practice the occupation of scavenger or act as a scavenger within the city without strictly observing the following regulations.
 - 1. No discharge of waste from septic tanks or other similar facilities listed above shall be made in the city unless such discharge is made at a site previously approved by the Council, and the prescribed fee for such dumping or discharge paid to the city. The fee will be set from time to time by the Council. No discharge of any of the materials or substances listed in division (A) above shall be made into the city sewer system directly or indirectly at any time.
 - 2. No part of the contents of any such sanitary sewage facility shall be transported into and deposited within the city, nor shall the contents of any such facility be transported within or throughout the city unless it is removed and transported by means of an air-tight apparatus, pneumatic, or otherwise, so as to prevent the contents from being agitated or exposed to open air in the process of removal or transportation.
 - 3. Any tank, vehicle, or other apparatus used in the transporting of the contents from any such facility must be maintained and operated in such a manner as to avoid the emission of offensive fumes or the spilling or loss of any unsanitary offensive substance.
 - 4. It is unlawful for any person to cause or permit any vehicle used for scavenger hauling to stand or remain at or near any public building or any residence or apartment, upon any street, highway, or other public place for any longer period of time than is actually required in the loading, conveying and unloading of the contents thereof.
 - 5. Any person, partnership, or corporation violating any of the provisions hereof shall pay for any damages to the city sewer system as a result of the discharge of any of the materials above enumerated and for any of the maintenance cost in removing or flushing those materials out of the pipe and sewer system.

(2013 Code, § 6.43) (Ord. 16, passed 1-25-1978; Ord. 88, passed 2-25-1982) Penalty, see § 110.999

110.013 Lodging Tax

A. Local lodging tax adopted.

1. The Council hereby imposes a lodging tax of 3% on the gross receipts obtained from the furnishing for consideration of lodging at a hotel, motel, rooming house, tourist court, or resort, except where such facilities are leased or rented for a continuous period of 30 days or more.
2. Bed and breakfast inns are not subject to this tax.

B. Report and payment of tax.

1. Any person subject to the lodging tax imposed hereby shall report the gross receipts hereinbefore referred to the city within 15 days of the end of the month when collected and said report shall be accompanied by payment in full.
2. If the report and payment of the tax is not made within 15 days as herein provided, an automatic fine of \$100 is hereby imposed in addition to the tax and which is to be paid when the tax is paid.

C. Records preserved for inspection. Complete records of all such gross receipts, collections, and remittances shall be preserved for a period of 1 year and shall during said year be open to inspection and audit by the city.

D. Collection authorized. In addition to any other penalty, the city may collect by legal action, any delinquent tax, plus 6% interest thereon and the cost of collection, including reasonable attorney's fees.

E. Disposition of proceeds. Ninety-five percent of the gross proceeds from the tax imposed hereby shall be used by the city to fund a local convention or tourist bureau for the purpose of marketing and promoting the city as a tourist or convention center and 5% shall be used for the administration of this section.

(2013 Code, § 6.44) (Ord. 212, passed 1-15-1987; Ord. 216, passed 4-23-1987; Ord. 269, passed 8-11-1989; Ord. 283, passed 8-17-1990; Ord. 349, passed 12-15-1992; Ord. 370, passed 2-10-1994; Ord. 441, passed 12-28-1995)

TETRAHYDROCANNABINOL PRODUCTS

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110.200 Purpose And Intent

The purpose of this subchapter is to regulate the sale of any product that contains tetrahydrocannabinol and meets the requirements to be sold for human or animal consumption under M.S. § 151.72 ("THC product") for the following reasons:

- A. The city recognizes that, based on the most reliable and up-to-date scientific evidence, the introduction of legalized THC products presents a potential threat to the public health, safety, and welfare of the residents of Shakopee.
- B. The city has the opportunity to be proactive and make decisions that will mitigate this threat, reduce exposure of young people to THC products, curtail the marketing of THC products to young people, and improve retailer compliance with existing laws related to THC products.
- C. A local regulatory system for retailers of THC products is appropriate to ensure that such retailers comply with laws and business standards of the city of Shakopee to protect the health, safety, and welfare of our youth and other vulnerable residents.
- D. M.S. § 151.72 requires THC product retailers to check the identification of purchasers to verify that they are at least 21 years of age, comply with certain packaging and labeling requirements to protect children and youth, and meet certain potency and serving requirements.
- E. State law further authorizes the Minnesota Board of Pharmacy to adopt product and testing standards in part to curb the illegal sale and distribution of THC products and to ensure the safety and compliance of commercially available THC products in the State of Minnesota.
- F. State law does not preempt municipalities from adopting and enforcing local ordinances to regulate retailers of THC products, including, but not limited to, business licensing requirements.
- G. A licensing requirement for retailers that desire to sell THC products will not unduly burden legitimate business activities of such retailers who sell or distribute THC products to adults but will allow the city to effectively regulate the operation of lawful businesses and discourage violations of THC product-related laws.

In making these findings and enacting this subchapter, it is the intent of the city to facilitate responsible retail activities associated with THC products by allowing legal sale and access without promoting increases in use, and to discourage violations of THC product related laws, especially those which prohibit or discourage the marketing, sale or distribution of THC products to underage persons, as defined herein.

(Ord. O2022-027, passed 12-20-2022)

EXHIBIT A-7

110.201 Definitions And Interpretations

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates otherwise or requires a different meaning.

BUSINESS shall mean the business of selling THC products.

COMPARABLE LICENSE VIOLATION. Any failure by an applicant, or an applicant's associated business that own's, holds, owned or held a license issued by a governmental entity, of a compliance check or inspection, or violation of another law (including but not limited the Moratorium on THC sales) or regulation related to the sale of THC, a THC license, or a tobacco, tobacco products, and tobacco-related devices license issued under Section 110.055, et seq.

COMPLIANCE CHECKS The system used by the city or any other jurisdiction to investigate and ensure that those licensed to sell THC products are complying with the requirements of this subchapter or any state or federal law or regulation. **COMPLIANCE CHECKS** shall involve the use of persons under the age of 21 as authorized by this subchapter or state law. **COMPLIANCE CHECKS** shall also mean the use of persons under the age of 21 who attempt to purchase THC products for educational, research, and training purposes as authorized by state or federal law.

LICENSE HOLDER OR LICENSEE means the owner of a business licensed to sell THC products.

THC PRODUCT means any product that contains tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under M.S. § 151.72.

MOVEABLE PLACE OF BUSINESS Any business operated out of a truck, van, automobile, cart, or other vehicle or transportable shelter and not at a fixed address, store front, or other permanent structure authorized for sales transactions.

PROVISIONAL THC LICENSE. A license issued to a business that has had a Comparable License Violation in the previous 5 years, but not in the previous 3 years.

RETAIL ESTABLISHMENT means any place of business where THC Products are available for sale to the general public including but not limited to grocery stores, convenience store, gas stations, and restaurants provided that such establishments also holds a license issued by the City of Shakopee to sell electronic delivery devices, tobacco, tobacco products, and tobacco-related devices.

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

SELF-SERVICE MERCHANDISING means open displays of THC products in any manner where any person shall have access to the THC products 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 THC products between the customer and the licensee or employee. **SELF-SERVICE MERCHANDISING** does not include vending machines.

THC LICENSE. A license issued to a business that has not had a Comparable License Violation in the previous 5 years.

VENDING MACHINE means any mechanical, electric or electronic, or other type of device which dispenses THC products upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the THC product and includes any such device equipped with mechanical, electric, or electronic-locking devices.

(O2022-027, passed 12-20-2022)

110.202 License

No person may sell or offer to sell THC products without first having obtained a license to do so from the city in compliance with this subchapter.

- A. *Application.* An application for a license to sell THC products shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the city. If the City Clerk determines an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.
- B. *Action.* The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant. If the City Council approves the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.
- C. *Term.* Each license will be issued for a period of 1 calendar year. If the application is made during license year, a license may be issued for the remainder of the licensed year on a pro rata basis. Any unexpired fraction of a month shall be counted as a complete month. Every license expires on December 31 of the license year.
- D. *Revocation or suspension.* Any license issued under this subchapter may be revoked or suspended as provided for in this subchapter.
- E. *Transfers.* All licenses are valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.
- F. *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible for licensing under this subchapter.
- G. *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- H. *Renewals.* The renewal of a license issued under this subchapter shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but not more than 60 days before the expiration of the current license. The issuance of a license issued under this subchapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the licensee to an automatic renewal of the license.
- I. *Fees.* No license shall be issued under this subchapter until the appropriate license fee has been paid in full.
- J. *Issued only to Tobacco Licensed Holder.* A license to THC products will only be issued to a retail establishment that has a valid license to sell electronic delivery devices, tobacco, tobacco products, and tobacco-related devices under Section 110.057 of the City Code.

K. *Instructional program.*

1. No person shall be issued a license or renewal license to sell THC products unless an applicant or license holder has an approved program for instructing all employees regarding the legal requirements pertaining to the sale of electronic delivery devices, tobacco, tobacco products, tobacco-related devices, and THC products at the business premises for which the license was issued. The instructional program shall include, but is not limited to, reviewing the law on the sale of electronic delivery devices, tobacco-related products, and THC products and the law regarding the requirement of purchasers to establish proof of age.
2. No license shall be issued unless the applicant or license holder signs a form attesting that each employee of the applicant or license holder has received training and instruction on the sale of electronic delivery devices, tobacco, tobacco products, tobacco-related devices, and THC products and the date such training occurred. The training shall include information that the sale of such products to persons under the age of 21 is illegal, explanation of what proof of age is legally acceptable, and that a sale to persons under the age of 21 can subject the applicant or license holder and their employees to criminal and civil liability.

L. *Sale by minors.* No minor may furnish, sell, or attempt to sell electronic delivery devices, tobacco, tobacco products, and tobacco-related devices unless written consent has been obtained from the minor's parents. Such written consent must include a statement of the potential penalties that can be imposed under this subchapter.

M. *Proof of age.* Any sale of THC shall not take place unless the licensee requires any purchaser who appears to be under the age of 30 to establish proof of age by 1 of the methods established by law for the purchase of alcoholic beverages.

(O2022-027, passed 12-20-2022)

110.203 Basis For Denial Of License

- A. If a license is mistakenly issued or renewed to a person, it may be revoked upon the discovery that the person was ineligible for the license under this subchapter.

B. The following are grounds for denying the issuance or renewal of a license under this subchapter:

1. The applicant is under the age of 18 years;
2. The applicant has been convicted within the past 5 years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to THC products;
3. The applicant has had a license to sell THC products revoked within the preceding 24 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 has outstanding fines, penalties, fees or taxes owed to the city, City Public Utilities Commission, county or state;
6. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license;
7. The applicant does not hold a license to sell electronic delivery devices, tobacco, tobacco products, and tobacco-related devices in the City of Shakopee; or
8. The applicant has had a Comparable License Violation in the previous 3 years.

C. Except as may otherwise be provided by law, the existence of any particular ground for denial, however, does not mean that the city must deny the license.

D. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery of the eligibility of the applicant for the license under this subchapter.

(O2022-027, passed 12-20-2022)

110.204 Prohibited Sales

It shall be a violation of this subchapter for any person to sell or offer to sell any THC product as follows:

- A. To any person under the age of 21;
- B. By means of a vending machine;
- C. By means of self-service merchandising;
- D. Through any mobile or non-permanent structure, or
- E. By any other means, to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

(O2022-027, passed 12-20-2022)

110.205 Vending Machines

It shall be unlawful for a licensee to allow the sale of THC products by means of a vending machine.

(O2022-027, passed 12-20-2022)

110.206 Self-Service And Storage

It shall be unlawful for a licensee to allow the sale of THC products through self-service merchandising. All THC products shall either be stored behind a counter or in another area not freely accessible to customers without the intervention of a store employee. This subchapter shall not apply to retail stores that derive at least 90% of their revenue from electronic delivery devices, tobacco, tobacco products, tobacco-related devices, and THC products and where the retailers ensures that no person younger than 21 years of age is present, or permitted to enter, at any time.

(O2022-027, passed 12-20-2022)

110.207 Responsibility

All licensees shall be responsible for the actions of their employees in regard to the sale of THC products on the licensed premises. The sale of any such item by an employee shall be considered a sale by the licenses holder and shall subject the license holder to the penalties set forth in this subchapter. Nothing in this subchapter shall be construed as prohibiting the City Council from also subjecting the employee appropriate penalties under this code, state or federal law, or other applicable law or regulation.

(O2022-027, passed 12-20-2022)

110.208 Compliance Checks And Inspections

All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging persons over 17 years of age but under 21 years of age, to enter the licensed premise to attempt to purchase THC products. Minors used for the purpose of compliance checks must have written consent of their parents or guardians and shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of THC products when such items are obtained as a part of the compliance check.

(O2022-027, passed 12-20-2022)

110.209 Other Illegal Acts

Unless otherwise provided, the following acts shall be a violation of this subchapter:

- A. *Sales.* For any person to sell or attempt to sell or furnish any THC product to any person under the age of 21;
- B. *Possession.* For any person under the age of 21 to have in person's possession any THC product, excluding any minor lawfully involved in a compliance check;
- C. *Procurement.* For any person under the age of 21 to purchase or attempt to purchase or otherwise obtain any THC product; for any person to purchase or otherwise obtain any such item on behalf of a person under the age of 21; or for any person to coerce or attempt to coerce a person under the age of 21 to purchase or otherwise obtain or use THC product in a manner contrary to law, excluding any person under the age of 21 lawfully involved in a compliance check.
- D. *Use of false identification.* For any person under the age of 21 to attempt to disguise person's true age by the use of a false form of identification, whether the identification is that of another person or 1 on which the age of the person has been modified or tampered with to present an age older than the actual age of the person; and

- E. *Sampling*. For any person to consume a THC product in a licensed establishment for any purpose, including, but not limited to, the purpose of allowing a customer or potential customer to sample a THC product.

(O2022-027, passed 12-20-2022)

110.210 Violations

- A. *Notice*. The city shall issue a notice of violation to any licensee or individual suspected of violating any provision of this subchapter or any other law, regulation, or license condition related to the business holding the license under this chapter. The notice of violation shall be served personally or by mail. The notice shall contain the alleged violation and a statement concerning the right to a hearing.
- B. *Hearing*. If a person accused of violating this subchapter so requests, a hearing shall be scheduled before a hearing officer at a time and place which shall be published and provided to the accused violator.
- C. *Hearing Officer*. The City Council shall serve as the Hearing Officer in any hearing requested under this subchapter.
- D. *Decision*. Following the hearing, if the City Council determines by a preponderance of the evidence that a violation of this subchapter occurred, that decision, along with the City Council's reasons for finding a violation and the administrative penalty to be imposed under § 110.999 (C), shall be recorded in writing, a copy of which shall be provided to the violator. If the City Council finds that no violation occurred, such finding shall be recorded and a copy provided to the licensee.
- E. *Judicial review*. Any final decision by the City Council under this subchapter may be reviewed in the manner and procedure authorized by state law.
- F. *Prosecution*. Nothing in this subchapter shall prohibit the city from seeking prosecution for any alleged violation.

(O2022-027, passed 12-20-2022)

110.211 Defenses

It shall be an affirmative defense to a charge of violating this subchapter that the licensee or an employee of the licensee relied in good faith on proof of age in the manner required by state law for the purchase of alcoholic beverages.

(O2022-027, passed 12-20-2022)

110.212 Signage And Age Verification

- A. *Signage*. At each location where THC products are sold, the licensee shall display a sign in plain view to provide public notice that selling any of these products to any person under the age of 21 is illegal and subject to penalties. The notice shall be placed in a conspicuous location in the licensed establishment and shall be readily visible to any person who is purchasing or attempting to purchase these products. The sign shall provide notice that all persons responsible for selling these products must verify, by means of photographic identification containing the bearer's date of birth, the age of any person under 30 years of age.

B. *Age Verification.* At each location where THC products are sold, the licensee shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser or person attempting to make the purchase is at least 21 years of age. Verification is not required if the purchaser or person attempting to make the purchase is 30 years of age or older. It shall not constitute a defense of a violation of this section that the person appeared to be 30 years of age or older.

(O2022-027, passed 12-20-2022)

ORDINANCE NO. 2022 - 021

**AN INTERIM ORDINANCE IMPOSING A
MORATORIUM ON THE SALE OF CANNABIS PRODUCTS AND AUTHORIZING
STUDIES REGARDING SUCH PRODUCTS**

The City Council of the City of Shakopee, Minnesota ordains:

Section 1. Legislative Findings and Authority

- (A) There is a great deal of uncertainty regarding the effect of Minnesota Laws 2022, Chapter 98 amending Minnesota Statutes, section 151.72 (the “Act”) to allow the sale of edible cannabinoid products (“Cannabis Products”).
- (B) Because the proposal to allow the sale of Cannabis Products received little publicity until the Act went into effect on July 1, 2022, the City of Shakopee did not have an opportunity to study and consider the potential impacts of the Act or to engage in policy discussions regarding the potential regulation of the sale of Cannabis Products in the City.
- (C) The Act authorizes the Minnesota Board of Pharmacy to enforce the Act, but the Act does not provide for any licensing of businesses that manufacture Cannabis Products or of businesses that sell Cannabis Products and is also silent regarding the enactment of local regulations related to Cannabis Products.
- (D) The Act does not expressly prohibit or limit local regulations, but the regulations established in the Act clearly do not constitute the Legislature having occupied the field of regulation regarding the sale of Cannabis Products.
- (E) The City Council finds the uncertainties associated with the sale of Cannabis Products, as well as the options of local regulation, strongly suggests the need for a study to develop information the City Council may use related to potential regulation of the sale of Cannabis Products through the adoption of licensing and zoning controls.
- (F) Pursuant to Minnesota Statutes, section 462.355, subdivision 4(a), the City Council is authorized to adopt an interim ordinance “to regulate, restrict, or prohibit any use . . . within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective.”
- (G) The City Council is also authorized as part of its general police powers to adopt business licensing requirements related to the sale of Cannabis Products.

- (H) The Minnesota Supreme Court in *Almquist v. Town of Marshan*, 245 N.W.2d 819 (Minn. 1976) upheld the enactment of a moratorium despite the lack of express statutory authority as being a power inherent in a broad grant of power to municipalities. The enactment of business licensing requirements is based on a city's police powers, which is the broadest grant of power to cities. Inherent in that broad grant of authority is the power to place a temporary moratorium on a business to study and potentially implement licensing regulations on that business.
- (I) There are both licensing and zoning issues associated with the sale of Cannabis Products. The City Council determines that it needs time to study the matter and to consider the development and adoption of appropriate local regulations. To protect the planning process and the health, safety, and welfare of the residents while the City conducts its study and the City Council engages in policy discussions regarding possible regulations, the City Council determines it is in the best interests of the City to impose a temporary moratorium on the sale of Cannabis Products.

Section 2. Definitions. For the purposes of this Ordinance, the following words, terms, and phrases shall have the meanings given them in this section.

- (A) "Act" means 2022 Minnesota Session Laws, Chapter 98 (H.F. No. 4065), amending Minnesota Statutes, section 151.72.
- (B) "Cannabis Products" means Edible Cannabinoid Product and any other product that became lawful to sell for the first time in Minnesota effective July 1, 2022, as a result of the adoption of the Act.
- (C) "Edible Cannabinoid Product" has the same meaning given the term in Minnesota Statutes, section 151.72, subdivision 1(c).

Section 3. Study. The City Council authorizes and directs the city administrator to conduct a study regarding Cannabis Products and provide a report to the City Council on the potential regulations relating to the sale of such products. The report shall include recommendations on whether the City Council should adopt regulations and, if so, the recommended types of regulations. The study shall consider, but is not limited to, the following:

- (A) The potential impacts of the sale of Cannabis Products within the City;
- (B) Licensing the sale of Cannabis Products and related regulations; and
- (C) Zoning regulations related to the sale and distribution of Cannabis Products.

Section 4. Moratorium. A moratorium is imposed within the City regarding the sale of Cannabis Products. No business, person, or entity may sell Cannabis Products to the public within the jurisdictional boundaries of the City during the period that this Ordinance is in effect. The City shall not accept, process, or act on any application, site plan, building permit, or zoning or other

approval for a business proposing to engage in the sale of Cannabis Products during the period that this Ordinance is in effect.

Section 5. Exceptions. The moratorium imposed by this Ordinance does not apply to the sale of medical cannabis or hemp products that were lawful to sell prior to the effective date of the Act.

Section 6. Enforcement. Violation of this Ordinance is a misdemeanor. In addition, the City may enforce this Ordinance by mandamus, injunction, or other appropriate civil remedy in any court of competent jurisdiction.

Section 7. Effective Date and Term. This Ordinance is effective upon adoption and publication in the City's official newspaper. This Ordinance shall remain in effect until December 31, 2022, or until the City Council expressly repeals it or until the effective date of an ordinance amending the City Code to address Cannabis Products, whichever occurs first.

Section 8. Severability. Every section, provision, and part of this Ordinance is declared severable from every other section, provision, and part of this Ordinance. 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 in regular session of the City Council of the City of Shakopee, Minnesota held on the 16th day of August 2022.



Mayor of the City of Shakopee

Attest:



Lori Hensen, City Clerk

Published in the Shakopee Valley News on the 27th day of August, 2022.



475 Gorman Street
Shakopee, MN 55379
Phone: (952) 233-9400

ICR# 22026025	AGENCY ORI# MN0700400	JUVENILE:
Reported: 11-17-2022 0826 First Assigned: 0826 First Arrived: 0826 Last Cleared: 0827 Committed Start: Committed End: Title: Compliance Checks How Received: Officer Initiated Summary: Business is in violation of city ordinance by selling THC/CBD consumables. See report. JD67 Location(s) TOP STAR MARKET Address: 615 MARSHALL RD City: Shakopee State: MN Zip: Country:		
Officer Assigned: Davis, Josh Badge No: JD67 Primary: Yes		
Involvement: Subject Name: TOP STAR MARKET Address: (Business) 615 MARSHALL RD City: SHAKOPEE State: MN Zip: 55379 Country: US Phone: (Business) (952)233-4545		
Involvement: Suspect Name: DOB: 06-17-1991 Manasra, Sined Adel Age: 31 Address: (Residence) 1701 GOTLAND LN City: SHAKOPEE State: MN Zip: 55379 Country: Phone: (Home) (763)614-0518 Phone: (Work) (952)233-4154 Phone: (Cell) (763)614-0518		

EXHIBIT C-1

Supplemental Report**ICR:** 22026025**Last Modified:** 10-16-2023 1103**Title:** Compliance Check - JD67**Created By:** Josh Davis**SHAKOPEE POLICE DEPARTMENT****INITIAL REPORT****Sergeant Davis #67****11/17/2022**

Audio Stmt: N Photos: Y Squad Video: N - Sqd # Body Camera: N

On 11/17/2022, Shakopee Officers conducted THC (Tetrahydrocannabinol) compliance checks for businesses in the City of Shakopee.

On 8/16/2022, the Shakopee City Council adopted Resolution R2022-108 which established City Ordinance 2022-021.

Per section 4 of the city ordinance: "No business, person, or entity may sell Cannabis Products to the public within the jurisdictional boundaries of the City during the period of that this Ordinance is in effect."

Per Minnesota State Statute 151.72; Edible Cannabinoid Products are defined as "Any product that is intended to be eaten or consumed as a beverage by humans, contains a cannabinoid in combination with food ingredients, and is not a drug."

The ordinance was established on August 16th, 2022 and remains in effect until December 31st, 2022.

On 11/16/2022, I was made aware of an inspection completed by Scott County between November 7th and 11th in the City of Shakopee. According to Scott County - Top Star Market was in violation of the ordinance by actively selling THC edible products. The notes from the Scott County state: "This location is currently selling Delta 8 and Delta 9 THC gummies. Possible that they are selling more cannabinoids variant THC gummies, but did not show them. They plan to continue selling until someone enforces it"

On 11/17/2022 at approximately 0915 hours, Officer Filan, Officer Godfrey and I, Sergeant Davis went into Top Star Market and confirmed the active sales of multiple forms of THC/CBD edible products. All three Officers were wearing plain clothes. Photos were taken of the products and are attached to this report.

I identified myself as a police officer and showed the employee by badge. I provided the employee with a copy of the Ordinance and Resolution. I also provided them with my business card and case number. The male employee appeared to be the manager or owner of the establishment.

After answering questions about the ordinance, I ordered the employee to remove the products.

End of report. JD67

EXHIBIT C-2

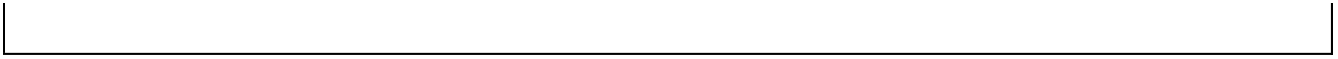


EXHIBIT C-3

Supplemental Report**ICR:** 22026025**Last Modified:** 10-16-2023 1104**Title:** Follow-up #1 - JD67**Created By:** Josh Davis**SHAKOPEE POLICE DEPARTMENT****FOLLOW UP REPORT****Sergeant Davis #67****12/2/2022****Audio Stmt: N Photos: Y Squad Video: N - Sqd # Body Camera: N**

On 11/30/2022, I, Sergeant Davis conducted follow up checks at Top Star Market. I utilized the assistance of Agent Etienne from the Southwest Metro Drug Task Force.

Agent Etienne entered the store and determined it was still in violation of the moratorium by actively selling Edible Cannabinoid Products.

At approximately 1412 hours (the receipt says 1512 hours) Agent Etienne purchased a package Urb Vegan Gummies for \$45.00. The product is derived from Delta 10 THC and Delta 8 THC and according to the packaging has 35 pieces containing 50 mg of THC per piece. The total THC in the package is 1,750 MG.

EXHIBIT C-4



Minnesota State Statute 151.72 subd 5a (f) restricts the legal dosage size as follows:

(f) An edible cannabinoid product must not contain more than five milligrams of any tetrahydrocannabinol in a single serving, or more than a total of 50 milligrams of any tetrahydrocannabinol per package.

Additionally, Chapter 171.72 subd 5 lists the labelling requirements for such a package.

Subd. 5. Labeling requirements.

- (a) A product regulated under this section must bear a label that contains, at a minimum:
- (1) the name, location, contact phone number, and website of the manufacturer of the product;
 - (2) the name and address of the independent, accredited laboratory used by the manufacturer to test the product; and
 - (3) an accurate statement of the amount or percentage of cannabinoids found in each unit of the product meant to be consumed.

EXHIBIT C-5

The packaging does not provide any of this information but instead provides a QR Code on the side of the package. The user is directed to <https://stc.scantrust.com> which is part of <https://liftedmade.com>.

The primary website of Liftedmade is a nonworking website. The original scantrust site shows some product details but does not meet most of the labeling requirements listed above or any of the laboratory requirements listed above.

The sale of this product is not only in violation of the moratorium but it is also in violation of Minnesota State Law.

On 12/2/2022, I filed a complaint with the Minnesota Board of Pharmacy. Attached to this report is a copy of that complaint form.

The products was photographed and secured into evidence at the Shakopee Police Department.

End of report. JD67

EXHIBIT C-6

Supplemental Report**ICR:** 22026025**Last Modified:** 10-16-2023 1104**Title:** Follow-up #2 - JD67**Created By:** Josh Davis**SHAKOPEE POLICE DEPARTMENT****FOLLOW-UP REPORT****Sergeant Davis #67****12/5/2022**

Audio Stmt: N Photos: N Squad Video: N - Sqd # Body Camera: N

On 12/5/2022 I, Sergeant Davis hand delivered a letter to Top Star Market. The later documented their continued violation of city ordinance and state law. I explained the state law to the male employee and again pointed out edible products on their shelves which were in violation of state law.

A copy of the letter is attached to this report.

Nothing further.

End of report. JD67

EXHIBIT C-7



CANNA RIVER



FLAVOR

NATURAL

TYPE

FULL SPECTRUM CBD

STRENGTH

5000MG

SIZE

60ML-2FL.OZ.

MADE IN USA

WARNING: CANCER AND REPRODUCTIVE HARM

WWW.P65WARNINGS.CA.GOV

GOVERNMENT WARNING: This product contains cannabis, a Schedule I controlled substance. Keep out of reach of children and animals. Cannabis products may only be possessed or consumed by persons 21 years of age or older unless the person is a qualified patient. The intoxicating effects of cannabis may be delayed up to two hours. Cannabis use while pregnant or breastfeeding may be harmful. Consumption of cannabis products impairs your ability to drive and operate machinery. PLEASE USE EXTREME CAUTION.

THIS IS A MARIJUANA PRODUCT. KEEP OUT OF REACH OF CHILDREN. Instructions for use: This is an inhalation product. Ignite, inhale, enjoy. Ingredients: 100% premium cannabis flower, premium purified extracted concentrate, 100% premium indoor kief, all-natural wrap.

WARNING: CANCER AND REPRODUCTIVE HARM - WWW.P65WARNINGS.CA.GOV

GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS PRODUCTS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION.

THIS IS A MARIJUANA PRODUCT. KEEP OUT OF REACH OF CHILDREN. INSTRUCTIONS FOR USE: THIS IS AN INHALATION PRODUCT. IGNITE, INHALE, ENJOY. INGREDIENTS: PREMIUM CANNABIS FLOWER, PREMIUM PURIFIED EXTRACTED CONCENTRATE, ALL-NATURAL TOBACCO FREE WRAP.

Mello

LIVE RESIN

Watermelon Rings

2500mg

10 pcs | 250mg each

Net. Wt. 2.64 oz / 75 g

THC LIVE RESIN 48

Mello

LIVE RESIN

Blueberry Rings

2500mg

10 pcs | 250mg each

Net. Wt. 2.64 oz / 75 g

THC LIVE RESIN 48



EXHIBIT D

151.72 SALE OF CERTAIN CANNABINOID PRODUCTS.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given.

(b) "Certified hemp" means hemp plants that have been tested and found to meet the requirements of chapter 18K and the rules adopted thereunder.

(c) "Edible cannabinoid product" means any product that is intended to be eaten or consumed as a beverage by humans, contains a cannabinoid in combination with food ingredients, and is not a drug.

(d) "Hemp" has the meaning given to "industrial hemp" in section 18K.02, subdivision 3.

(e) "Label" has the meaning given in section 151.01, subdivision 18.

(f) "Labeling" means all labels and other written, printed, or graphic matter that are:

(1) affixed to the immediate container in which a product regulated under this section is sold;

(2) provided, in any manner, with the immediate container, including but not limited to outer containers, wrappers, package inserts, brochures, or pamphlets; or

(3) provided on that portion of a manufacturer's website that is linked by a scannable barcode or matrix barcode.

(g) "Matrix barcode" means a code that stores data in a two-dimensional array of geometrically shaped dark and light cells capable of being read by the camera on a smartphone or other mobile device.

(h) "Nonintoxicating cannabinoid" means substances extracted from certified hemp plants that do not produce intoxicating effects when consumed by any route of administration.

Subd. 2. **Scope.** (a) This section applies to the sale of any product that contains cannabinoids extracted from hemp and that is an edible cannabinoid product or is intended for human or animal consumption by any route of administration.

(b) This section does not apply to any product dispensed by a registered medical cannabis manufacturer pursuant to sections 152.22 to 152.37.

(c) The board must have no authority over food products, as defined in section 34A.01, subdivision 4, that do not contain cannabinoids extracted or derived from hemp.

Subd. 3. **Sale of cannabinoids derived from hemp.** (a) Notwithstanding any other section of this chapter, a product containing nonintoxicating cannabinoids, including an edible cannabinoid product, may be sold for human or animal consumption only if all of the requirements of this section are met, provided that a product sold for human or animal consumption does not contain more than 0.3 percent of any tetrahydrocannabinol and an edible cannabinoid product does not contain an amount of any tetrahydrocannabinol that exceeds the limits established in subdivision 5a, paragraph (f).

(b) No other substance extracted or otherwise derived from hemp may be sold for human consumption if the substance is intended:

(1) for external or internal use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; or

(2) to affect the structure or any function of the bodies of humans or other animals.

(c) No product containing any cannabinoid or tetrahydrocannabinol extracted or otherwise derived from hemp may be sold to any individual who is under the age of 21.

(d) Products that meet the requirements of this section are not controlled substances under section 152.02.

Subd. 4. Testing requirements. (a) A manufacturer of a product regulated under this section must submit representative samples of the product to an independent, accredited laboratory in order to certify that the product complies with the standards adopted by the board. Testing must be consistent with generally accepted industry standards for herbal and botanical substances, and, at a minimum, the testing must confirm that the product:

(1) contains the amount or percentage of cannabinoids that is stated on the label of the product;

(2) does not contain more than trace amounts of any mold, residual solvents, pesticides, fertilizers, or heavy metals; and

(3) does not contain more than 0.3 percent of any tetrahydrocannabinol.

(b) Upon the request of the board, the manufacturer of the product must provide the board with the results of the testing required in this section.

(c) Testing of the hemp from which the nonintoxicating cannabinoid was derived, or possession of a certificate of analysis for such hemp, does not meet the testing requirements of this section.

Subd. 5. Labeling requirements. (a) A product regulated under this section must bear a label that contains, at a minimum:

(1) the name, location, contact phone number, and website of the manufacturer of the product;

(2) the name and address of the independent, accredited laboratory used by the manufacturer to test the product; and

(3) an accurate statement of the amount or percentage of cannabinoids found in each unit of the product meant to be consumed.

(b) The information in paragraph (a) may be provided on an outer package if the immediate container that holds the product is too small to contain all of the information.

(c) The information required in paragraph (a) may be provided through the use of a scannable barcode or matrix barcode that links to a page on the manufacturer's website if that page contains all of the information required by this subdivision.

(d) The label must also include a statement stating that the product does not claim to diagnose, treat, cure, or prevent any disease and has not been evaluated or approved by the United States Food and Drug Administration (FDA) unless the product has been so approved.

(e) The information required by this subdivision must be prominently and conspicuously placed on the label or displayed on the website in terms that can be easily read and understood by the consumer.

(f) The labeling must not contain any claim that the product may be used or is effective for the prevention, treatment, or cure of a disease or that it may be used to alter the structure or function of human or animal bodies, unless the claim has been approved by the FDA.

Subd. 5a. **Additional requirements for edible cannabinoid products.** (a) In addition to the testing and labeling requirements under subdivisions 4 and 5, an edible cannabinoid must meet the requirements of this subdivision.

(b) An edible cannabinoid product must not:

(1) bear the likeness or contain cartoon-like characteristics of a real or fictional person, animal, or fruit that appeals to children;

(2) be modeled after a brand of products primarily consumed by or marketed to children;

(3) be made by applying an extracted or concentrated hemp-derived cannabinoid to a commercially available candy or snack food item;

(4) contain an ingredient, other than a hemp-derived cannabinoid, that is not approved by the United States Food and Drug Administration for use in food;

(5) be packaged in a way that resembles the trademarked, characteristic, or product-specialized packaging of any commercially available food product; or

(6) be packaged in a container that includes a statement, artwork, or design that could reasonably mislead any person to believe that the package contains anything other than an edible cannabinoid product.

(c) An edible cannabinoid product must be prepackaged in packaging or a container that is child-resistant, tamper-evident, and opaque or placed in packaging or a container that is child-resistant, tamper-evident, and opaque at the final point of sale to a customer. The requirement that packaging be child-resistant does not apply to an edible cannabinoid product that is intended to be consumed as a beverage and which contains no more than a trace amount of any tetrahydrocannabinol.

(d) If an edible cannabinoid product is intended for more than a single use or contains multiple servings, each serving must be indicated by scoring, wrapping, or other indicators designating the individual serving size.

(e) A label containing at least the following information must be affixed to the packaging or container of all edible cannabinoid products sold to consumers:

(1) the serving size;

(2) the cannabinoid profile per serving and in total;

(3) a list of ingredients, including identification of any major food allergens declared by name; and

(4) the following statement: "Keep this product out of reach of children."

(f) An edible cannabinoid product must not contain more than five milligrams of any tetrahydrocannabinol in a single serving, or more than a total of 50 milligrams of any tetrahydrocannabinol per package.

Subd. 6. **Enforcement.** (a) A product regulated under this section, including an edible cannabinoid product, shall be considered an adulterated drug if:

(1) it consists, in whole or in part, of any filthy, putrid, or decomposed substance;

(2) it has been produced, prepared, packed, or held under unsanitary conditions where it may have been rendered injurious to health, or where it may have been contaminated with filth;

(3) its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;

(4) it contains any food additives, color additives, or excipients that have been found by the FDA to be unsafe for human or animal consumption;

(5) it contains an amount or percentage of nonintoxicating cannabinoids that is different than the amount or percentage stated on the label;

(6) it contains more than 0.3 percent of any tetrahydrocannabinol or, if the product is an edible cannabinoid product, an amount of tetrahydrocannabinol that exceeds the limits established in subdivision 5a, paragraph (f); or

(7) it contains more than trace amounts of mold, residual solvents, pesticides, fertilizers, or heavy metals.

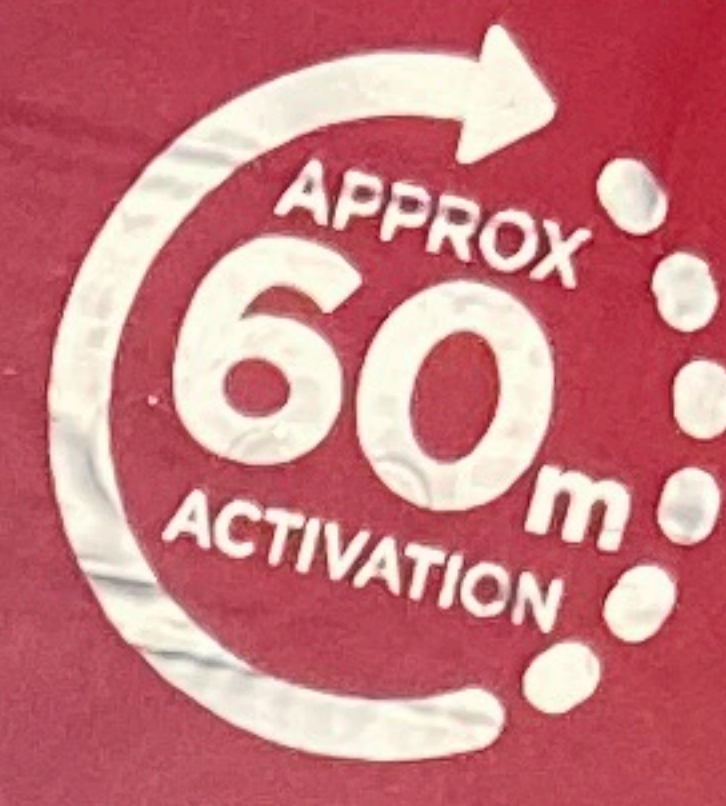
(b) A product regulated under this section shall be considered a misbranded drug if the product's labeling is false or misleading in any manner or in violation of the requirements of this section.

(c) The board's authority to issue cease and desist orders under section 151.06; to embargo adulterated and misbranded drugs under section 151.38; and to seek injunctive relief under section 214.11, extends to any violation of this section.

History: *1Sp2019 c 9 art 11 s 76; 2021 c 30 art 3 s 27; 2022 c 98 art 13 s 3-9*



TOP STAR MARKET
615 MARSHALL ROAD
SHAKOPEE, MN 55379
952-445-8628



Qty	Amount
1	45.00
Subtotal	45.00
Tax	0.00
TOTAL	45.00
CREDIT \$	45.00

Receipt
.00
Card #: *****7701
y: Chip Read
Name: VISA CREDIT
DE: Issuer
AuthNet: VISA
AID:A0000000031010
Auth #: 008708
Resp Code: 000
Stan: 0306432911
Invoice #: 328717
Shift #: 1
Store # *****

MERCHANT COPY

SIGNATURE
I agree to pay the amount stated
on this receipt.

THANK YOU
COME AGAIN!
ST# TSTAR TILL XXXX DR# 1 TRAN# 1015855
CSH: 2 11/30/22 3:12:57 PM

TOP STAR MARKET

615 MARSCHALL ROAD
SHAKOPEE, MN 55379
952-445-8628

Description	Qty	Amount
-----	---	-----
NON TAX TOBACCO	1	45.00

	Subtotal	45.00
	Tax	0.00
TOTAL		45.00
	CREDIT \$	45.00

SALE Receipt

USD\$45.00

Acct/Card #: *****7701

Entry: Chip Read

AppName: VISA CREDIT

MODE: Issuer

AuthNet: VISA

AID:A0000000031010

Auth #: 008708

Resp Code: 000

Stan: 0306432911

Invoice #: 328717

Shift #: 1

Store # *****

MERCHANT COPY

SIGNATURE

I agree to pay the amount stated
on this receipt.



Nutrition Facts

70 servings per container
Serving size 1/2 Piece (1.5g)

Amount per serving
Calories

5

	% Daily Value*
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat 0g	0%
Cholesterol 0mg	0%
Sodium 0mg	1%
Total Carbohydrate 1.5g	0%
Dietary Fiber 0g	0%
Total Sugars 1g	2%
Added Sugars 1g	2%
Protein 0g	
Full Spectrum Hemp Extract (Delta-10/8)	25mg
Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 0mg	

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.
**% Daily Value (DV) not established.

Ingredients: Sugar, Tapioca Syrup, Watermelon Natural WONF Flavor, Red No. 40 Color, Water, Pectin, Citric Acid, Hemp Delta 10 & 8 Distillate.

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*COAs included



151.72 SALE OF CERTAIN CANNABINOID PRODUCTS.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given.

(b) "Hemp" has the meaning given to "industrial hemp" in section 18K.02, subdivision 3.

(c) "Labeling" means all labels and other written, printed, or graphic matter that are:

(1) affixed to the immediate container in which a product regulated under this section is sold; or

(2) provided, in any manner, with the immediate container, including but not limited to outer containers, wrappers, package inserts, brochures, or pamphlets.

Subd. 2. **Scope.** (a) This section applies to the sale of any product that contains nonintoxicating cannabinoids extracted from hemp other than food that is intended for human or animal consumption by any route of administration.

(b) This section does not apply to any product dispensed by a registered medical cannabis manufacturer pursuant to sections 152.22 to 152.37.

Subd. 3. **Sale of cannabinoids derived from hemp.** Notwithstanding any other section of this chapter, a product containing nonintoxicating cannabinoids may be sold for human or animal consumption if all of the requirements of this section are met.

Subd. 4. **Testing requirements.** (a) A manufacturer of a product regulated under this section must submit representative samples of the product to an independent, accredited laboratory in order to certify that the product complies with the standards adopted by the board. Testing must be consistent with generally accepted industry standards for herbal and botanical substances, and, at a minimum, the testing must confirm that the product:

(1) contains the amount or percentage of cannabinoids that is stated on the label of the product;

(2) does not contain more than trace amounts of any pesticides, fertilizers, or heavy metals; and

(3) does not contain a delta-9 tetrahydrocannabinol concentration that exceeds the concentration permitted for industrial hemp as defined in section 18K.02, subdivision 3.

(b) Upon the request of the board, the manufacturer of the product must provide the board with the results of the testing required in this section.

Subd. 5. **Labeling requirements.** (a) A product regulated under this section must bear a label that contains, at a minimum:

(1) the name, location, contact phone number, and website of the manufacturer of the product;

(2) the name and address of the independent, accredited laboratory used by the manufacturer to test the product; and

(3) an accurate statement of the amount or percentage of cannabinoids found in each unit of the product meant to be consumed; or

(4) instead of the information required in clauses (1) to (3), a scannable bar code or QR code that links to the manufacturer's website.

The label must also include a statement stating that this product does not claim to diagnose, treat, cure, or prevent any disease and has not been evaluated or approved by the United States Food and Drug Administration (FDA) unless the product has been so approved.

(b) The information required to be on the label must be prominently and conspicuously placed and in terms that can be easily read and understood by the consumer.

(c) The label must not contain any claim that the product may be used or is effective for the prevention, treatment, or cure of a disease or that it may be used to alter the structure or function of human or animal bodies, unless the claim has been approved by the FDA.

Subd. 6. **Enforcement.** (a) A product sold under this section shall be considered an adulterated drug if:

(1) it consists, in whole or in part, of any filthy, putrid, or decomposed substance;

(2) it has been produced, prepared, packed, or held under unsanitary conditions where it may have been rendered injurious to health, or where it may have been contaminated with filth;

(3) its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;

(4) it contains any color additives or excipients that have been found by the FDA to be unsafe for human or animal consumption; or

(5) it contains an amount or percentage of cannabinoids that is different than the amount or percentage stated on the label.

(b) A product sold under this section shall be considered a misbranded drug if the product's labeling is false or misleading in any manner or in violation of the requirements of this section.

(c) The board's authority to issue cease and desist orders under section 151.06; to embargo adulterated and misbranded drugs under section 151.38; and to seek injunctive relief under section 214.11, extends to any violation of this section.

History: *1Sp2019 c 9 art 11 s 76; 2021 c 30 art 3 s 27*



MINNESOTA BOARD OF PHARMACY

Report to the Legislature on Changes the Board Proposes to Make to the Controlled Substance Schedules Maintained by the Board in Minnesota Rules. (In compliance with Minnesota Statutes Section 152.02, Subd. 12)

*Cody Wiberg, Pharm.D.,
M.S., R.Ph.*

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Pharmacy*

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Minneapolis, MN 55414*

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December 8, 2021

COST OF REPORT

[Minnesota Statutes §3.197](#) states that a “report to the legislature must contain, at the beginning of the report, the cost of preparing the report, including any costs incurred by another agency or another level of government”. The estimated cost of preparing this report was **\$75.00**. That is the approximate value, in terms of salary and benefits, of the time that Board staff spent preparing the report.

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Introduction

The Board of Pharmacy (Board) is submitting this report to the Legislature in compliance with Minnesota Statutes §152.02, subdivision 12. That section states, in part:

“The state Board of Pharmacy shall annually submit a report to the legislature on or before December 1 that specifies what changes the board made to the controlled substance schedules maintained by the board in Minnesota Rules, parts 6800.4210 to 6800.4250, in the preceding 12 months. The report must also specify any orders issued by the board under this subdivision. The report must include specific recommendations for amending the controlled substance schedules contained in subdivisions 2 to 6, so that they conform with the controlled substance schedules maintained by the board in Minnesota Rules, parts 6800.4210 to 6800.4250, and with the federal schedules.”

The Board reviewed and approved this report at its December 8, 2021 meeting.

2021 Scheduling Changes

The Board did not engage in rule-making to make any changes to the controlled substance schedules found in Minnesota Rules Chapter 6800 during calendar year 2021. Nor did it issue any scheduling orders in 2021.

The Board continues to occasionally receive reports from law enforcement officials or the Bureau of Criminal Apprehension Laboratory about an unscheduled and potentially abused substances that appear to be available for purchase on the streets or from Internet suppliers. In addition, law enforcement officials and healthcare providers have expressed concern to the Board concerning the increasing abuse of gabapentin – a drug approved by the United States Food and Drug Administration that acts on the same receptor system that benzodiazepines (Valium-like drugs) act on. Consequently, the Board may propose controlled substance scheduling legislation during the 2022 Session.

There is also potential scheduling issue involving delta-8 tetrahydrocannabinol (Δ -8 THC), which is an isomer and analog of delta-9 tetrahydrocannabinol (Δ -9 THC). Δ -8 THC is an intoxicating substance, although it is slightly less potent than Δ -9 THC (meaning it takes a larger quantity to make some “high”). Δ -8 THC is being produced by some individuals and companies by extracting cannabidiol (CBD) from hemp and converting the CBD to Δ -8 THC.

The producers believe that Δ -8 THC products derived from hemp are not controlled substances as long as the product contains less than 0.3% of Δ -9 THC. That is because of the following definition of industrial hemp found Minn. Stats. §18K.02, subd. 2 is (emphasis added):

“Industrial hemp” means the plant *Cannabis sativa* L. and any part of the plant, whether growing or not, including the plant's seeds, and all the plant's *derivatives*, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, ***with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Industrial hemp is not marijuana*** as defined in section 152.01, subdivision 9.

In addition, the definition of “marijuana” in Minn. Stats. §151.01 includes this sentence “Marijuana does not include hemp as defined in section 152.22, subdivision 5a.”

However, Minn. Stats §152.02, subd. 2 h. (2) makes tetrahydrocannabinols Schedule I controlled substances, *separately* from marijuana. The definitions of industrial hemp and marijuana given above make no mention of

industrial hemp **not** being tetrahydrocannabinols. In addition, Δ-8 THC is not **directly** derived or extracted from industrial hemp, it is synthesized from CBD that is extracted from hemp. Therefore, an argument can be made that Δ-8 THC synthesized from CBD that is extracted from hemp, is a Schedule I controlled substance, even if the product that contains it has less than 0.3% of Δ-9 THC.

The Minnesota State Court of Appeals appears to have reached that same conclusion in the case of [*State v. Loveless*](#), pointing out (at least for liquid products containing any amount of any tetrahydrocannabinol):

“Unlike the definition of marijuana, the inclusion of tetrahydrocannabinols in Minnesota's Schedule I does not make any exception for hemp or for a substance or mixture that has a concentration of delta-9 tetrahydrocannabinol that is 0.3 percent or less on a dry-weight basis.”

The Court acknowledges that “the legislature enacted other laws that appear to recognize or assume the lawfulness of vaporizer cartridges containing low concentrations of delta-9 tetrahydrocannabinol.” However, the Court also opined that:

“the legislature did not amend the relevant provisions of chapter 152 to make it lawful to possess a liquid mixture with a low concentration of delta-9 tetrahydrocannabinol. If a statute's language is plain and its meaning is unambiguous, a court must interpret the statute according to its plain meaning, without resorting to canons of construction or legislative history. See, e.g., *State v. Serbus*, 957 N.W.2d 84, 87 (Minn. 2021); *State v. Struzyk*, 869 N.W.2d 280, 288 n.5 (Minn. 2015). Here, the relevant provision of Schedule I is unambiguous. It states simply, "tetrahydrocannabinols," without regard for the concentration of delta-9 tetrahydrocannabinol.”

Since even CBD products that meet the requirements of Minn. Stats. §151.72 contain at least trace amounts of tetrahydrocannabinols, they would appear to be Schedule I controlled substances under this ruling. Δ-8 THC products would definitely be Schedule I controlled substances under this ruling and for the other reasons mentioned above.

If the Legislature wishes to continue allowing the sale of non-intoxicating cannabinoids derived from hemp, it appears that Minn. Stats. §151.72 will need to be amended, as will Minn. Stats. §152.02, subd. 2 h (2). If the Legislature wished to legalize the sale and possession of products containing Δ-8 THC, which is intoxicating, those sections would also need to be modified.

The Board is working with the Minnesota Departments of Agriculture, Health, and Public Safety on issues involving substances extracted from hemp and sold for human or animal consumption. A separate report will most likely be developed by the agencies involved.

STATE OF MINNESOTA
COUNTY OF SCOTT

DISTRICT COURT
FIRST JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Sined Adel Manasra,

Defendant.

**DEFENDANT’S MEMORANDUM OF
LAW IN SUPPORT OF MOTION TO
DISMISS**

Court File No. 70-CR-23-3795

Defendant Sined Manasra (“Manasra”) respectfully submits this memorandum in support of his motion to dismiss. The City has charged Manasra criminally for an alleged violation of expired Interim City of Shakopee Ordinance No. 2022 – 021 (the “2022 Ordinance”). The charge is based on an alleged sale of edible gummies containing hemp derived delta-8 and delta-10 tetrahydrocannabinol (“THC”) at Top Star Market, LLC’s store on November 30, 2022. Manasra is alleged to be the owner of Top Star Market, LLC (“Top Star Market”). The charge against Manasra must be dismissed for several reasons.

First, the hemp derived delta-8 and delta-10 tetrahydrocannabinol (“THC”) product that Top Star Market is alleged to have sold falls under an exception to the Ordinance for products that were already legal prior to Minnesota’s 2022 statutory amendment. Second, even if the 2022 Ordinance applied to hemp derived delta-8 and delta-10 THC, sale of such product would still be permitted as a prior non-conforming use pursuant to Minn. Stat. § 462.357. Third, the criminal complaint does not identify Manasra as having personally made the sale on November 30, 2022, which is the subject of the charge. Simply being the owner of Top Star Market does not make Manasra vicariously criminally liable for all sales that occur at Top Star Market. Fourth, there is no evidence of mens rea on the part of Manasra and the 2022 Ordinance should not be interpreted to impose strict criminal liability in the absence of mens rea.

I. DELTA-8 AND DELTA-9 THC FALL SQUARELY WITHIN AN EXCEPTION TO THE ORDINANCE BECAUSE THEY WERE LEGAL TO SELL BEFORE THE 2022 STATUTORY AMENDMENT

In 2022, the Minnesota legislature amended Minn. Stat. § 151.72 to allow the sale of hemp derived edible delta-9 THC products, subject to certain limitations and requirements. Minnesota Laws 2022, Ch. 98 (H.F. No. 4065) (the “2022 Act”).

In response to the 2022 Act, the City of Shakopee passed the 2022 Ordinance, which imposed a moratorium on the sale, within the City, of cannabis products that became legal to sell in Minnesota because of the 2022 Act.¹ The 2022 Ordinance expressly contained an exception for products that were already legal to sell prior to the 2022 Act. Section 5 of the 2022 Ordinance expressly provides that “The moratorium imposed by this Ordinance does not apply to the sale of medical cannabis or hemp products that were lawful to sell prior to the effective date of the Act.”

The charge is based on Top Star Market’s alleged sale of hemp derived delta-8 and delta-10 THC on November 30, 2022. These are “hemp products that were lawful to sell prior to the effective date of the act” and, therefore, fall within the exception to the 2022 Ordinance.

Even prior to the 2022 Act, the statutory definition of “marijuana” for purposes of controlled substance offenses excluded “hemp”, which is in turn defined by reference to a statute defining “industrial hemp” as having delta-9 THC concentration no greater than 0.3%. Minn. Stat. §§ 152.01, subd. 9, 152.22, subd. 5a, 18K.02, subd. 3; *see also State v. Loveless*, 987 N.W.2d 224 (Minn. 2023).

Minn. Stat. § 152.01, subd. 9 provides that “Marijuana does not include hemp as defined in section 152.22, subdivision 5a.” That statute in turn provides that “‘Hemp’ has the meaning given to industrial hemp in section 18K.02, subdivision 3.” The definition of industrial hemp in Minn. Stat. § 18K.02, subd. 3 is as follows:

¹ The 2022 Ordinance expired December 31, 2022.

‘Industrial hemp’ means the plant *Cannabis sativa* L. and any part of the plant, whether growing or not, including the plant’s seeds, and all the plant’s derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a **delta-9** tetrahydrocannabinol concentration of not more than 0.3% on a dryweight basis.

(Emphasis added).

Thus, products containing hemp derived delta-8 and delta-10 THC were legal to sell in Minnesota prior to the 2022 Act. Therefore, such products fit squarely within the exception to the 2022 Ordinance for “hemp products that were lawful to sell prior to the effective date of the Act.” (2022 Ordinance § 5).

The charge against Manasra is based on alleged sale of edible gummies containing hemp derived delta-8 and delta-10 THC on November 30, 2022. The State has provided pictures of the package of gummies on which the charge is based. Copies of pictures of the package are attached hereto as **Exhibit A**. The ingredients list on the package includes “Hemp Delta 10 & 8 Distillate.” The package indicates that the gummies contain “Full Spectrum Hemp Extract (Delta-10/8)”. However, the package does not list **delta-9** THC as an ingredient. And the State has produced no evidence that the gummies that form the basis for the charge against Manasra contain **delta-9** THC in excess of 0.3%, or that they contain any **delta-9** THC at all for that matter. Accordingly, the gummies that form the basis for the charges against Manasra are “hemp products that were lawful to sell prior to the effective date of the [2022] Act” and, therefore, exempt from the 2022 Ordinance.

Even if there were any ambiguity as to whether the 2022 Ordinance applied to hemp derived delta-8 and delta-10 THC (which it unambiguously did not), the rule of lenity would require that the ambiguity be resolved in favor of Manasra. *State v. Rick*, 835 N.W.2d 478, 485 (Minn. 2013) (“the rule of lenity ... instructs us to adopt the narrower of two reasonable interpretations of an ambiguous criminal statute and to resolve the ambiguity in favor of the criminal defendant”); *Johnson v. State*, 820 N.W.2d 24, 30 (Minn. Ct. App. 2012) (“when the

language of a criminal law is ambiguous, we construe it narrowly according to the rule of lenity"); *State v. McKown*, 461 N.W.2d 720, 725 (Minn. Ct. App. 1990) ("Application of the rule of lenity ensures that criminal statutes will provide fair warning concerning conduct considered illegal ... We should not derive criminal outlawry from some ambiguous implication.").

II. EVEN IF THE 2022 ORDINANCE HAD APPLIED TO DELTA-8 AND DELTA-10 THC, TOP STAR MARKET'S SALE OF SUCH PRODUCTS WOULD HAVE BEEN PERMITTED AS A PRIOR NON-CONFORMING USE

As noted in the 2022 Ordinance, the City's authority to pass the moratorium is pursuant to Minn. Stat. § 462.355. The statutes that allow cities to pass a moratorium is under zoning authority provided to it by the State of Minnesota. Minn. Stat. § 462.355, subd. 4(a). This zoning law further states, "any nonconformity, including the lawful use ... of premises existing at the time of adoption ... may continue." Minn. Stat. § 462.357, subd. 1e. This means that if a property owner is using the property lawfully at the time of enactment of the new zoning ordinance, the property owner may continue to use it in a legal non-conforming manner.

Top Star Market was using the store property to sell Minnesota compliant edible cannabinoid products prior to August 16, 2022, when the City passed the 2022 Ordinance. Accordingly, Top Star Market was legally allowed to continue to do so in the same manner as prior to the 2022 Ordinance. Therefore, even if the 2022 Ordinance applied to delta-8 and delta-10 THC (which it did not), Top Star Market's sale of those products would be permitted as a prior non-conforming use.

III. THE STATE HAS NOT IDENTIFIED MANASRA AS HAVING PERSONALLY MADE THE SALE ON NOVEMBER 30, 2022, AND MANASRA IS NOT CRIMINALLY LIABLE FOR ALL SALES THAT OCCUR AT TOP STAR MARKET MERELY BECAUSE HE IS THE OWNER

The criminal complaint is based on a sale of delta-8 and delta-10 THC gummies that is alleged to have occurred on November 30, 2022. However, the criminal complaint does not identify Manasra as having personally made the sale of the gummies on November 30, 2022.

The 2022 Ordinance provides that “No business, person, or entity may sell Cannabis Products to the public within the jurisdictional boundaries of the City during the period that this Ordinance is in effect.” (2022 Ordinance § 4). This provision, by its terms, applies only to a “business, person, or entity” that “sell[s]” a product prohibited by the 2022 Ordinance.

To the extent that the State interprets the 2022 Ordinance to impose vicarious criminal liability on the owners of businesses, such an interpretation would render the Ordinance unconstitutional. The Minnesota Supreme Court has rejected as unconstitutional imposition of vicarious criminal liability on the owner of a business for all sales made by the business. In *State v. Guminga*, 395 N.W.2d 344 (Minn. 1986), the Court invalidated as unconstitutional a statute that purported to impose vicarious criminal liability on an employer for sales of alcohol to underage persons by employees. The Court did so on due process grounds. *Id.* Therefore, if the 2022 Ordinance purported to impose vicarious liability on the owners of businesses, the Ordinance would be unconstitutional.

Even if Top Star Market’s sale of delta-8 and delta-10 THC gummies on November 30, 2022, were prohibited by the Ordinance (which it was not), that would not justify imposing criminal liability on Manasra individually absent proof that Manasra personally made the sale.

IV. THERE IS NO EVIDENCE OF MENS REA ON THE PART OF MANASRA

The 2022 Ordinance is silent as to what level of mens rea is required for a criminal violation. Where a criminal law is silent as to mens rea, Courts will generally read a mens rea requirement into the law.

In *State v. Arkell*, 672 N.W.2d 564 (Minn. 2003), the president of a land development company was charged under a statute that made it a misdemeanor to violate building codes regarding grading and water drainage. *Id.* The president of the company had hired subcontractors to handle the grading and water drainage. *Id.* The company president argued that he did not intend

to violate the building code, and that he thought that the subcontractors would take care of all regulatory issues. *Id.* The subcontractors failed to comply with the building codes. *Id.*

The statute in *Arkell* did not contain any specific mens rea requirement, but simply provided that “a violation of the [building] code is a misdemeanor.” However, the Court noted that “strict liability statutes are generally disfavored and legislative intent to impose strict criminal liability must be clear.” *Id.* The Court held that the criminal statute for violating building codes was not a strict liability statute, but rather required mens rea. *Id.*

Similarly in *Welfare of C.R.M.*, 611 N.W.2d 802 (Minn. 2000), the Court held that the State was required to prove that a juvenile actually knew that he possessed a knife on school property in order to convict him of possessing a knife on school property. This was notwithstanding the fact that the statute did not expressly contain any mens rea requirement.

The Minnesota Supreme Court in both the *Arkell* case and the *C.R.M.* case relied heavily on the United States Supreme Court’s decision in *Staples v. U.S.*, 511 U.S. 600 (U.S. 1994). In *Staples*, the Supreme Court reversed a conviction for unlawful possession of an unregistered machine gun under the National Firearms Act. *Id.* The Firearms Act was silent regarding mens rea. *Id.* However, the Court noted that “silence on this point by itself does not necessarily suggest that Congress intended to dispense with a conventional mens rea element” and that “some indication of congressional intent, express or implied, is required to dispense with mens rea as an element of a crime.” *Id.* The Court held that the government was required to prove that the petitioner knew that the features of the weapon brought it within the prohibitions of the Firearms Act. *Id.* The Court, in *Staples*, noted in dicta that “we would probably hesitate to conclude on the basis of silence that Congress intended a prison term to apply to a car owner whose vehicle’s emissions levels, wholly unbeknownst to him, began to exceed legal limits between regular inspection dates.” *Id.* at 614.

Even if Top Star Market's sale of delta-8 and delta-10 THC gummies on November 30, 2022, had violated the 2022 Ordinance (which it did not), Manasra would be similarly situated to the hypothetical car owner in *Staples* and the land development company president in *Arkell*. Manasra did not intend to violate the 2022 Ordinance. Accordingly, the charge must be dismissed for lack of mens rea evidence as well.

CONCLUSION

Top Star Market is alleged to have sold delta-8 and delta-10 THC product, which is expressly exempted from the 2022 Ordinance. Even if the product was within the 2022 Ordinance, the sale would still have been permissible as a prior non-conforming use. Moreover, the State has not identified Manasra as having personally made the sale and Manasra did not have mens rea. For all the foregoing reasons, the charge against Manasra must be dismissed.

WEBB LAW OFFICE, INC.

By s/Evan H. Weiner
Timothy D. Webb (271299)
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6800 France Ave S, Suite 190
Edina, MN 55435
(612) 340-7970

DATED: August 10, 2023

ATTORNEYS FOR DEFENDANT



EXHIBIT A



Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat 0g	0%
Cholesterol 0mg	0%
Sodium 0mg	1%
Total Carbohydrate 1.5g	0%
Dietary Fiber 0g	
Total Sugars 1g	2%
Added Sugars 1g	
Protein 0g	
Full Spectrum Hemp Extract (Delta-10/8) 25mg	
Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 0mg	

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.
 **% Daily Value (DV) not established.

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 Kenosha, WI 53144

PRODUCT OF USA · STORE IN COOL, DRY PLACE

www.LiftedMade.com

FOOD

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Urban pro
 America

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 by scale

*COAs in



December 5th, 2022

To Top Star Market:

On November 17th, Officers from the Shakopee Police Department conducted a compliance check for the sale of Edible Cannabinoid Products at your business. At the time of the inspection your business was found to be in violation of the City of Shakopee Moratorium that went into effect on July 1st, 2022. In addition, some of the products you were selling were in violation of Minnesota State Law. At the time of the compliance check, your staff was provided with a copy of the Moratorium.

On November 30th, Officers conducted another compliance check and found your business was still in violation of the Moratorium and in violation on Minnesota State Law.

Minnesota State Statute 151.72 subd 5a (f) restricts the legal dosage size of products that are legal to sell:

“(f) An edible cannabinoid product must not contain more than five milligrams of any tetrahydrocannabinol in a single serving, or more than a total of 50 milligrams of any tetrahydrocannabinol per package.”

At this time, the City of Shakopee has elected NOT to impose civil penalties for violating the Moratorium however the police reports have been sent to the Minnesota Board of Pharmacy.

Please contact the Shakopee Police Department if you have any questions.

Sergeant Joshua Davis #67

Shakopee Police Department

COMMUNITY PRIDE SINCE 1857

Police Department | 475 Gorman St., Shakopee MN 55379 | Phone: 952-233-9400 | Fax: 952-233-3811 | www.ShakopeeMN.gov

EXHIBIT J



HOME (HTTPS://URB.SHOP/) / DISCLAIMERS

Important Disclaimers

LAST UPDATED AUGUST 2023

By accessing Urb's website, you agree that you have read and are aware of the following disclaimers:

General Disclaimers

- Urb's products are intended for individuals aged 21 and above.
- Follow usage instructions provided on the product label.
- These products have not been evaluated by the FDA or any state or federal agency.
- Urb's products are not intended to diagnose, treat, cure, or prevent any disease or condition.
- Sales of Urb products are void where prohibited by law.
- Consume and use products responsibly.
- Using any of Urb's products may result in a positive drug test.

Delta 8 Products

- Urb's Delta-8-THC products are for individuals aged 21 and above.
- Use as directed on the label.
- These products have not been evaluated by the FDA or other agencies.
- They are not intended to diagnose, treat, cure, or prevent any condition.
- Sales are void where prohibited by law.
- Consume Delta-8-THC products responsibly.

Accessibility might result in a positive drug test for Delta-9-THC.

Legal and State Specific Information

- Urb believes certain hemp-derived Delta-8-THC products are legal under federal law as of July 31, 2020 (2018 Farm Bill) (<https://www.usda.gov/farmbill>).
- Urb believes certain hemp-derived Delta-8-THC products are legal under certain state laws as of July 24, 2020. (<https://urb.shop/my-account/>)
- Urb makes no guarantees about legality in your specific jurisdiction. (<https://urb.shop>)
- Not for sale or purchase in certain jurisdictions: Arizona, California, Colorado, Connecticut, Delaware, Idaho, Iowa, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nevada, New York, North Dakota, Oregon, Rhode Island, Utah, Vermont, Virginia, Washington.

Medical and Legal Advice

- The information on this website does not constitute medical or legal advice, and is not to be relied upon in any fashion by any person or entity for any purpose whatsoever. Don't rely on it for decisions.
- Urb and associated entities aren't liable for losses or consequences arising from product use or distribution.
- These products have not been evaluated by the FDA or other agencies.

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Accessibility

* These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

[Terms and Conditions of Use \(https://urb.shop/terms-and-conditions-of-use/\)](https://urb.shop/terms-and-conditions-of-use/)

[Shipping and Returns \(https://urb.shop/shipping-returns/\)](https://urb.shop/shipping-returns/)

[Privacy Policy \(https://urb.shop/privacy-policy/\)](https://urb.shop/privacy-policy/)

[Disclaimers \(https://urb.shop/disclaimers/\)](https://urb.shop/disclaimers/)

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Hemp-Related/Edible Cannabinoid Complaint Registration

Please read all instructions carefully prior to completing the complaint form. If the form is not properly completed and signed, it will be returned for correction.

Instructions. You may use this form to file a complaint against a hemp-related/edible cannabinoid manufacturer, distributor, or retailer. The information you provide will be evaluated to determine whether the Board will act.

Complainant's Name Sergeant Joshua Davis - Shakopee Police Department	Phone Number 952-233-9433	Email Address* jdavis2@shakopeemn.gov		
Mailing Address 475 Gorman Street	City Shakopee	State MN	Zip 55379	

Name of Manufacturer/Retailer/Distributor the Complaint Concerns Top Star Market	Phone Number 952-445-8628	Date/Time of Incident 11/30/2022 @ 1412		
Mailing Address 615 Market Street	City Shakopee	State MN	Zip 55379	

*If you would like to receive notifications concerning this complaint electronically at the email listed, check the "yes" option below. If you prefer to receive notifications through the U.S. mail, check the "no" option.

- ☒ Yes, email notifications can be sent electronically at the email address listed above. By checking "yes" you are waiving your right to confidentiality for the limited purpose of exchanging such data with the Board via your personal, unsecured, email address.
- ☐ No, I wish to receive written notifications.

Statement of Complaint (attach additional photos/documents as necessary to support the complaint)

On 11/16/2022, I was made aware of an inspection completed by Scott County between November 7th and 11th in the City of Shakopee. According to Scott County - Top Star Market was in violation of the ordinance by actively selling THC edible products. The notes from the Scott County state: "This location is currently selling Delta 8 and Delta 9 THC gummies. Possible that they are selling more cannabinoids variant THC gummies, but did not show them. They plan to continue selling until someone enforces it"

On 11/17/2022 at approximately 0915 hours, Officer Filan, Officer Godfrey and I, Sergeant Davis went into Top Star Market and confirmed the active sales of multiple forms of THC/CBD edible products. All three Officers were wearing plain clothes. Photos were taken of the products and are attached to this report.

I identified myself as a police officer and showed the employee by badge. I provided the employee with a copy of the Ordinance and Resolution. I also provided them with my business card and case number. The male employee appeared to be the manager or owner of the establishment.

On 11/30/2022 I conducted follow up checks at Top Star Market. I utilized the assistance of Agent Etienne from the Southwest Metro Drug Task Force.

Agent Etienne entered the store and determined it was still in violation of the moratorium by actively selling Edible Cannabinoid Products.

At approximately 1412 hours (the receipt says 1512 hours) Agent Etienne purchased a package Urb Vegan Gummies for \$45.00. The product is derived from Delta 10 THC and Delta 8 THC and according to the packaging has 35 pieces containing 50 mg of THC per piece. The total THC in the package is 1,750 MG.

Statement of Complaint (Cont.)

The packaging does not provide any of the required labeling information but instead provides a QR Code on the side of the package. The user is directed to <https://stc.scantrust.com> which is part of <https://liftedmade.com>. The primary website of Liftedmade is a nonworking website. The original scantrust site shows some product details but does not meet most of the labeling requirements listed above or any of the laboratory requirements listed above.

The sale of this product is not only in violation of the City of Shakopee Moratorium but it is also in violation on Minnesota State Law under Chapter 151 for both the dosage size and labeling requirements.

Signature is Required.

This information which I am not legally required to submit, is offered so that the Board may properly and thoroughly evaluate and investigate this complaint, and if necessary, submit this information in any legal proceeding. The Board may be required to release this information as a part of legal proceeding or pursuant to the Minnesota Government Data Practices Act. The Board will share this information with the Office of the Attorney General, which may help the Board investigate the complaint and which serves as the Board's legal counsel.

Signature _____

Complainant's Signature

Date

Mail, Fax, or Email this form to:

Minnesota Board of Pharmacy
335 Randolph Ave, Suite 230
Saint Paul, MN, 55102
Fax: (651) 215-0951
Email: pharmacy.board@state.mn.us

This document is available in alternative formats to individuals with disabilities. Email your request to pharmacy.board@state.mn.us or call 651-201-2828.

Business Record Details »

Minnesota Business Name

Nicollet Tobacco, LLC

Business Type

Limited Liability Company (Domestic)

MN Statute

322C

File Number

996658900030

Home Jurisdiction

Minnesota

Filing Date

1/25/2018

Status

Active / In Good Standing

Renewal Due Date

12/31/2024

Registered Office Address

185 E. First Avenue
Shakopee, MN 55379
USA

Registered Agent(s)

Sined Manasra

Manager

Sined Manasra
185 E First Ave
Shakopee, MN 55379
USA

Principal Executive Office Address

185 E First Ave
Shakopee, MN 55379
USA

Filing History

Filing History

Select the item(s) you would like to order: Order Selected Copies

☐	Filing Date	Filing	Effective Date
☐	1/25/2018	Original Filing - Limited Liability Company (Domestic) (Business Name: Nicollet Tobacco, LLC)	

	Filing Date	Filing	Effective Date
☐	3/12/2018	Registered Office and/or Agent - Limited Liability Company (Domestic)	
☐	5/8/2018	Registered Office and/or Agent - Limited Liability Company (Domestic)	

Business Record Details »

Minnesota Business Name

Top Star Tobacco and E-Cig, LLC**Business Type**

Limited Liability Company (Domestic)

MN Statute

322C

File Number

1065464100035

Home Jurisdiction

Minnesota

Filing Date

1/29/2019

Status

Active / In Good Standing

Renewal Due Date

12/31/2024

Registered Office Address1701 Gotland Lane
Shakopee, MN 55379
USA**Registered Agent(s)**

Sined Manasra

ManagerSanad Manasra
1701 Gotland Ln
Shakopee, MN 55379
USA**Principal Executive Office Address**1701 Gotland Ln
Shakopee, MN 55379
USA**Filing History****Filing History**Select the item(s) you would like to order:

☐	Filing Date	Filing	Effective Date
☐	1/29/2019	Original Filing - Limited Liability Company (Domestic) (Business Name: Top Star Tobacco and E-Cig, LLC)	

Shakopee, MN

485 Gorman St
Shakopee MN, 55379
952-233-9300

**BUSINESS LICENSE CERTIFICATE**

Business Name: Top Star Market
Business Location: 615 Marschall Road
Shakopee, MN 55379
Owner: SINED MANASRA
License Number: TOBA-001171-2023
Issued Date: 1/1/2024
Expiration Date: 12/31/2024

Mailing Address: 615 Marschall Rd S AVE
Shakopee, MN 55379
License Type: Tobacco
Classification: Tobacco License
Fees Paid: \$215.00

City Clerk

TO BE POSTED IN A CONSPICUOUS PLACE

Shakopee, MN

485 Gorman St
Shakopee MN, 55379
952-233-9300

**BUSINESS LICENSE CERTIFICATE**

Business Name: Nicollet Tobacco
Business Location: 185 1st AVE E
Shakopee, MN 55379
Owner: SINED MANASRA
License Number: TOBA-001172-2023
Issued Date: 1/1/2024
Expiration Date: 12/31/2024

Mailing Address: 185 1st Ave E AVE
Shakopee, MN 55379
License Type: Tobacco
Classification: Tobacco License
Fees Paid: \$215.00

City Clerk

TO BE POSTED IN A CONSPICUOUS PLACE