

Bill No. 4721

Ordinance No. _____

Requested by: Joe Cronin, Joe Brazil, Mike Elam, Dave Hammond,
Mike Klinghammer

Sponsored by: Joe Cronin, Joe Brazil, Mike Elam, Dave Hammond,
Mike Klinghammer

AN ORDINANCE CREATING A NEW CHAPTER 237 IN THE ORDINANCES OF ST. CHARLES COUNTY, MISSOURI (“OSCCMo.”) IN ORDER TO REGULATE THE SALE OF KRATOM AND REQUIRE A KRATOM SELLER PERMIT.

WHEREAS, Kratom is a plant grown naturally in Southeast Asian countries including Thailand and Malaysia; and

WHEREAS, natural Kratom comes from the mitragyna speciose, a tropical evergreen tree in the coffee family native to Southeast Asia whose leaves have been used for centuries as an herbal supplement in traditional medicines; and

WHEREAS, leaves from the plant have long been used for pain relief in traditional medicines, and it has been gaining popularity around the globe; and

WHEREAS, Kratom comes from the coffee family, but its compounds are suggested by some to help alleviate the opioid epidemic; and

WHEREAS, it is estimated 5 million Americans are taking Kratom; and

WHEREAS, on November 20, 2018, the American Kratom Association established Good Manufacturing Practice

Standards for the purpose of enhancing the safety of Kratom products offered to consumers; and

WHEREAS, Article II, Section 2.529 of the Charter of St. Charles County provides that the County Council shall have the power to exercise legislative power pertaining to public health and welfare, Police and traffic, building construction, and planning and zoning, in the part of the County outside incorporated Cities, Towns, and Villages, and on such other subjects as may be authorized by the Constitution or by applicable law; and

WHEREAS, Section 192.300 RSMo. authorizes counties to enact ordinances to enhance the public health in all areas of the county, whether unincorporated or incorporated; and

WHEREAS, the Missouri appellate courts have upheld that power belongs to charter counties as well, in addition to their charter powers; and

WHEREAS, the County Council in this ordinance declares the existence of a public health emergency that constitutes an emergency affecting the immediate preservation of the public peace, health safety and welfare as set out herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF ST. CHARLES COUNTY, MISSOURI, AS FOLLOWS:

Section 1. A new Chapter 237 OSCCMo. is hereby created and reads as follows:

Chapter 237 REGULATING THE SALE OF KRATOM AND RELATED PRODUCTS

Section 237.020 Scope.

The provisions of this Chapter shall apply within and throughout all parts of St. Charles County, Missouri.

Section 237.100 Definitions

For the purposes of this Chapter, the following definitions shall apply:

DEPARTMENT: St. Charles County Department of Public Health.

DIRECTOR: Director of the St. Charles County Department of Public Health.

FOOD: A food, food product, food ingredient, dietary ingredient, dietary supplement, or beverage for human consumption.

KRATOM PRODUCT: A food product or dietary ingredient containing any part of the leaf of the plant *Mitragyna speciosa*.

PERSON: Any person or persons, or entity including, but not limited to, a corporation, partnership, unincorporated association or joint venture.

SELLER: A person who sells, prepares, or maintains kratom products, or advertises or represents or holds himself or herself out as selling, preparing, or maintaining kratom products. Such person may include, but not be limited to, a manufacturer, wholesaler, store, restaurant, hotel, catering facility, camp, bakery, delicatessen, supermarket, grocery store, convenience

store, nursing home, or food or drink company. Such a person need not receive any payment or item of pecuniary value in exchange for the kratom product.

Section 237.200 Kratom Regulation.

A. A Seller who prepares, distributes, sells, or exposes for sale a food that is represented to be a kratom product shall disclose on the product label the factual basis upon which that representation is made.

B. A Seller shall not prepare, distribute, sell, or expose for sale a food represented to be a kratom product that does not conform to the disclosure requirement under subsection A of this subsection.

C. A Seller shall not prepare, distribute, sell, or expose for sale any of the following:

1. A kratom product that is adulterated with a dangerous non-kratom substance.

A kratom product shall be considered to be adulterated with a dangerous non-kratom substance if the kratom product is mixed or packed with a non-kratom substance and that substance affects the quality or strength of the kratom product to such a degree as to render the kratom product injurious to a consumer;

2. A kratom product that is contaminated with a dangerous non-kratom substance. A kratom product shall be considered to be contaminated with a dangerous non-kratom

substance if the kratom product contains a poisonous or otherwise deleterious non-kratom ingredient including, but not limited to, any substance listed in Section 195.017, RSMo., as amended;

3. A kratom product containing a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than two percent of the alkaloid composition of the product;
 4. A kratom product containing any synthetic alkaloids, including synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compounds of the plant *Mitragyna speciosa*; or
 5. A kratom product that does not include on its package or label the amount of mitragynine and 7-hydroxymitragynine contained in the product.
- D. A Seller shall not distribute, sell, or expose for sale a kratom product to an individual under eighteen years of age.

Section 237.400. Kratom Seller Permit Requirements

- A. No person shall become a Seller of any kratom product without first having obtained a valid Kratom Seller Permit from the Department as provided by this Section. Each location where any kratom product is prepared, distributed, sold, or exposed for sale shall require its own Kratom Seller Permit.

- B. Any Person desiring to receive a Kratom Seller Permit shall make written application to the Department in a format prescribed by the Director. If a Person desires to receive a Kratom Seller Permit for more than one location, a separate application shall be required for each individual location.

- C. An application for a Kratom Seller Permit must submit the following:
 - 1. A completed Kratom Seller Permit Application;
 - 2. Sample labels for every kratom product that will be available at the location that comply with the requirements set forth by the Director;
 - 3. A written policy with procedures that will be implemented to ensure compliance with Section 237.200.D;
 - 4. A permit fee of three hundred eighty-five dollars (\$385.00).

- D. Kratom Seller Permit Approval. When a person has successfully met all of the requirements for issuance of a Kratom Seller Permit, the Director shall issue such Kratom Seller Permit. Such permit shall be valid for one (1) year from the date of issuance.

- E. Consent by License or Permit. The Department may require permittees to consent to access for inspections as part of their license or permit. Failure to allow access for inspections as set out in the Kratom Seller Permit may result in the suspension or revocation of the license or permit.

- F. Suspension and Revocation Procedure for a Kratom Seller Permit.
 - 1. The Director may suspend a Kratom Seller Permit for a period of up to ninety (90) days if he or she finds one (1) or more of the following:
 - a. Intentional misstatement or misleading statements of fact in the application not discovered until after the issuance of said license;
 - b. Violation of any of the requirements of this Chapter or any other applicable provisions of OSCCMo.

 - 2. In the event that the Director suspends a Kratom Seller Permit, the Director shall provide notice of the reason(s) for the suspension in writing sent by certified mail or hand delivered to the Seller. The Seller, upon request, shall be entitled to a hearing before the Director or his or her designee within five (5) business days from the request to provide information or evidence that the Seller meets each of the requirements for a Kratom Seller Permit. The decision of

the Director after the hearing and the reasons therefore shall be sent by certified mail or hand delivered to the holder of the Kratom Seller Permit.

3. Upon proof shown that the basis for suspension has been cured, the Director may reinstate the Seller's Kratom Seller Permit and shall provide written notice sent by certified mail or hand delivered to the holder of the Kratom Seller Permit.
4. Failure to cure the violation(s) within the 90-day suspension period shall result in the revocation of the Kratom Seller Permit. Such notice of revocation shall be sent by certified mail or hand delivered to the Seller.

Section 237.500. Labeling Requirements

The Department of Public Health shall promulgate rules to implement the provisions of this Chapter including, but not limited to, the requirements for the format, size, and placement of the disclosure label required under Subsection A of Section 237.200 and for the information to be included in the disclosure label.

Section 237.900 Violations and Penalties.

- A. Any person who violates any provision of this Chapter is guilty of a misdemeanor and shall be fined up to five hundred dollars (\$500.00) for the first offense and up to one thousand dollars (\$1,000.00) for the second or subsequent offense.

Each and every day that such violation continues shall constitute a separate offense.

- B. A Seller does not violate Subsection B of Section 237.200 or Subsection C of Section 237.200 if a preponderance of the evidence shows that the Seller relied in good faith upon the representations of a manufacturer, processor, packer, or distributor of food represented to be a kratom product.

Section 237.910 Enforcement.

The Office of the County Counselor shall be responsible for prosecuting these cases or pursuing other legal remedies for the violations of the ordinance.

Section 2.

This ordinance is subject to penalty provisions for its violation and therefore, for penal purposes, shall be effective thirty-one (31) days after its posting in six public places, its publication in full on the web site of St. Charles County, and the publication of its title and the location in St. Charles County where it may be viewed in its entirety in a legal publication or a newspaper of general circulation in St. Charles County.

DATE PASSED

DATE APPROVED BY COUNTY EXECUTIVE

CHAIR OF THE COUNCIL

COUNTY EXECUTIVE

ATTEST:

COUNTY REGISTRAR