

**CITY OF OAKDALE
ORDINANCE 885**

**AMENDING THE CODE OF ORDINANCES
FOR THE CITY OF OAKDALE,
CHAPTER 9 – TETRAHYDROCANNABINOL (THC) PRODUCTS**

The City Council of the City of Oakdale ordains:

Section 1. The Oakdale Code of Ordinances, Chapter 9 is amended to add the following Article:

ARTICLE 17. TETRAHYDROCANNABINOL (THC) CONSUMABLE PRODUCTS

Sec. 9-170. Purpose

The purpose of this Section is to regulate the sale of legalized adult-use consumable products that contain tetrahydrocannabinol (THC) and that meet the requirements to be sold for human or animal consumption under Minnesota Statutes, section 151.72 for the following reasons:

- (1) By enacting 2022 Session Law Chapter 98, Article 13, the Minnesota Legislature amended Minnesota Statutes, Sections 152.02 and 152.72 to regulate the sale of certain products containing THC.
- (2) The new law does not prohibit municipalities from adopting and enforcing local ordinances to regulate businesses selling THC Consumable Products, including local licensing requirements.
- (3) The National Academies of Science, Engineering, and Medicine note that the growing acceptance, accessibility, and use of products containing THC, including for medical purposes, have raised important public health concerns, while the lack of aggregated knowledge of cannabis-related health effects has led to uncertainty about the impact of its use.
- (4) The City recognizes that, based on the most reliable and up-to-date scientific evidence, the rapid introduction of newly legalized adult-use THC Consumable Products, presents a significant potential threat to the public health, safety, and welfare of the youth and most vulnerable residents of Oakdale.
- (5) The Minnesota Legislature recognized the danger of THC Consumable Product use among the public at large by setting potency and serving size requirements, and also recognized the danger of THC Consumable Product use among youth prohibiting the sale of any product containing THC to those under the age of 21 and requiring that THC Consumable Products be packaged without appeal to children and in child-resistant packaging or containers.

- (6) The City has the opportunity to be proactive and make decisions that will mitigate this threat and reduce exposure of young people to the products and improve compliance among THC Consumable Product retailers with laws prohibiting the sale or marketing of THC Consumable Products to children.
- (7) A local regulatory system for THC Consumable Product retailers is appropriate to ensure that retailers comply with THC Consumable Product laws and business standards of the City of Oakdale to protect the health, safety, and welfare of our youth and most vulnerable residents.
- (8) State law requires THC Consumable Product retailers to check the identification of purchasers to verify that they are at least 21 years of age (Minn. Stat. § 151.72, subd. 3(c)), comply with certain packaging and labeling requirements to protect children and youth (Id., subd. 5), and meet certain potency and serving size requirements (Id., subd. 5a).
- (9) State law authorizes the Board of Pharmacy to adopt product and testing standards in part to curb the illegal sale and distribution of THC Consumable Products and ensure the safety and compliance of commercially available THC Consumable Products in the state of Minnesota.
- (10) A requirement for a THC Consumable Product retailer license will not unduly burden legitimate business activities of retailers who sell THC Consumable Products to adults but will allow the City of Oakdale to regulate the operation of lawful businesses to discourage violations of state and local THC Consumable Product-related laws.

In making these findings and enacting this ordinance, it is the intent of the Oakdale City Council to ensure responsible THC Consumable Product retailing, allowing legal sale and access, and to prohibit or discourage the marketing, sale or distribution of THC Consumable Products to youth under 21 years of age.

Sec. 9-171. Definitions. Except as otherwise provided or clearly implied by context, all terms are given their commonly accepted definitions. For purposes of this Article, the following definitions apply unless the context clearly indicates or requires a different meaning.

- (1) **Background Investigation.** The investigation conducted by the police department of all licensed product applicants, all parties having any formal or informal ownership stake in the business, and any person(s) identified as a manager of the proposed retail establishment. The purpose of the background investigation is to determine if there are any disqualifying factors that would preclude the issuance of a license to the applicant or the proposed retail establishment location.
- (2) **Cannabinoid.** Any edible cannabinoid product or nonedible cannabinoid product authorized for sale in Minnesota Statute.

- (3) **Cannabinoid-related devices.** Any equipment, products or materials of any kind which are used, intended for use, or designed for use in repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body.
- (4) **Certified hemp.** Hemp plants that have been tested and found to meet the requirements of Minnesota Statute Chapter 18K and the rules adopted thereunder by the state of Minnesota.
- (5) **Compliance checks.** The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this article. Compliance checks will involve the use of persons under the age of 21 as authorized by this article. Compliance checks also means the use of persons under the age of 21 who attempt to purchase licensed products for educational research and training purposes as authorized by state and federal law. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to licensed products.
- (6) **Delivery sale.** The sale of any licensed products to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a retail establishment. Delivery sale includes, but is not limited to, the sale of any licensed products when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.
- (7) **THC Consumable Product.** Any product authorized for sale under Minn. Stat. 151.72, which may be amended from time to time, and including edible cannabinoid product and nonintoxicating cannabinoid product as defined therein, that is intended to be eaten or consumed as a beverage by humans, contains a THC consumable in combination with food ingredients, and is not a drug. THC consumable product does not include medical cannabis as defined in Minnesota Statutes Section 152.22, subd. 6, as may be amended from time to time.
- (8) **Exclusive Liquor Store.** An establishment that meets the definition of exclusive liquor store in Minnesota Statutes, section 340A.101, subdivision 10.
- (9) **Label.** The meaning given in Minnesota Statute Section 151.01, subdivision 18.
- (10) **Labeling.** All labels and other written, printed, or graphic matter that are:
 - a. affixed to the immediate container in which a product regulated under this article is sold;
 - b. provided, in any manner, with the immediate container, including but not limited to outer containers, wrappers, package inserts, brochures, or pamphlets.; or

- c. provided on that portion of a manufacturer's website that is linked by a scannable barcode or matrix barcode.
- (11) **Licensed product.** THC Consumable Products and Cannabinoid-related devices.
 - (12) **Licensee.** A person licensed under this Article.
 - (13) **Licensee's employee.** A person employed by a licensee to work at a sales or service counter or otherwise make sales to the licensee's customers.
 - (14) **Marijuana.** All parts of the plant of any species of the genus *Cannabis*, including all agronomical varieties, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.
 - (15) **Moveable place of business.** Any form of business operated out of a truck, van, automobile, trailer, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.
 - (16) **Nonedible Cannabinoids.** Include, but are not limited to tablets, capsules, solutions, tinctures, or other products meant for oral administration/ingestion; creams, lotions, ointments, salves, or other products meant for topical administration; products meant to be inhaled, smoked, vaped, sprayed into nostrils, or insufflated (sniffed); and hemp flowers and buds.
 - (17) **Nonintoxicating Cannabinoid.** Substances extracted from certified hemp plants that do not produce intoxicating effects when consumed by any route of administration.
 - (18) **Retail establishment.** Any place of business where licensed products are available for sale to the general public. The phrase shall include a business facility that sells goods or merchandise directly to the public at retail value, including but not limited to, grocery stores, convenience stores, restaurants and drugstores.
 - (19) **Sale.** Any transfer of goods for money, trade, barter or other consideration.
 - (20) **Sampling.** The introduction or promotion licensed products by offering single or partial servings for no or minimal fee.
 - (21) **Self-service merchandising.** Open displays of licensed product in any manner where any person shall have access to the licensed product without the assistance or intervention of the licensee or the licensee's employee. Such assistance or intervention shall involve the actual physical exchange of the

licensed product between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the licensee's employee and the customer.

- (22) **Vending machine.** Any mechanical, electric or electronic, or other type of self-service device which, upon the insertion of money, tokens or other form of payment, dispenses the licensed product and includes vending machines equipped with manual, electric or electronic locking devices.

Sec. 9-172. License Required. No person shall sell or offer to sell licensed products without first having obtained a license to do so from the city. All licenses issued under this article shall be 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.

Sec. 9-173. Application Procedures.

- (1) **License Application.** An application for a license to sell licensed products must be made on a form provided by the city and filed, along with all required fees, with the city clerk or designated licensing authority. The application shall be submitted on the city's approved form and shall contain all information that the city deems necessary. If the licensing authority determines that an application is incomplete, the application shall be returned to the applicant with notice of the information necessary to make the application complete.
- (2) **Background Investigation.** The background investigation fee is applied to the city's costs of the background investigation of the retail establishment and all persons or entities that have at least a five percent financial interest in the retail establishment, and the manager of the retail establishment. The property must be in compliance with all applicable laws and ordinances. The police department shall conduct the background investigation before consideration by the city.
- (3) **Payment of Fees.** Each application for a license must be accompanied by payment in full of the required fees, as such fees are determined by the City Council. No application will be processed until all fees have been paid.
 - a. **License fee.** Each application for a license or license renewal must be accompanied by a payment in full of the required license fee. Upon rejection of any application for license, the treasurer will refund to the applicant the amount paid for the license fee.
 - b. **Background investigation fee.** Each initial application for an initial license under this article must be accompanied by a payment in full of the background investigation fee(s). Background investigation fees are nonrefundable.

- c. **Late fee.** Each application for renewal application submitted after the given due date for such application, must be accompanied by payment in full of a late fee. Late fees are not refundable.

(4) **License Location.**

- a. **Retail Establishment.** Licensed products may only be sold within a retail establishment.
- b. **Movable Business.** No license may be issued to a moveable place of business. Only fixed location businesses shall be eligible for licensing under this article.
- c. **Exclusive Liquor Store.** No license may be issued to an exclusive liquor store, as defined by Minnesota Statute 340A.412, subd. 14, as may be amended from time to time.
- d. **Proximity to other youth-oriented activities.** No license will be issued if its location is within 500 feet of any school, licensed child care center, active youth recreation area, playground, or any other youth-oriented facility.

Sec. 9-174 Persons eligible. Grounds for denying the issuance or renewal of a license under this article are described below. However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this article. The following are grounds for denying a license or a license renewal:

- (1) The applicant is under the age of 21 years;
- (2) The applicant or any other person included on the application has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation reasonably relating to the sale of licensed products;
- (3) The applicant or any other person included on the application has had a license to sell licensed products revoked within the preceding 12 months of the date of application in this or any other jurisdiction in the United States;
- (4) The applicant or any other person included on the application has been subject to any adverse or disciplinary actions against any business license held in this or any other jurisdiction in the previous five years, regardless of whether any criminal charges were brought in connection with the alleged violation(s);
- (5) The applicant fails to provide any information required on the application, or provides false or misleading information at any stage of the application or background investigation;

- (6) The applicant or any other person included on the application is prohibited by federal, state, or other local law, ordinance, or other regulation from holding such a license;
- (7) The applicant or any other person included on the application has failed to pay any taxes or fees owed to the City of Oakdale or is in violation of Minnesota Statutes, section 270C.72;
- (8) The applicant or any other person included on the application is determined to be not of good moral character and repute; or
- (9) The business is proposed to be operated on premises on which property taxes, assessments, or other financial claims by the state, county or city are due, delinquent, and unpaid, provided the applicant or owner(s) or other entity in which the applicant or owner(s) has an interest has the legal duty to pay said taxes, assessments, or claims due and owing.

Sec. 9-175. Action on License Application.

- (1) **City Council Determination.** The City Council may either approve the license, approve the license with conditions, deny the license, or it may delay action for a reasonable period of time as necessary to complete any additional investigation of the application or the applicant it deems necessary. If the City Council approves the license, the licensing authority shall issue the license to the applicant. If the City Council approves the license with conditions or denies the license, notice of the action and the basis for the action shall be given to the applicant along with notice of the applicant's right and method to appeal the City Council's decision.
- (2) **Term.** All licenses issued under this article shall expire on June 30 of each year. Notwithstanding the foregoing, any license issued prior to June 30, 2023 shall expire on June 30, 2024.
- (3) **Transfer.** All licenses issued under this article shall be valid only on the premises for which the license was issued and only for the persons to whom the license was issued. Should the ownership of the business change at any point during the licensing period, a new application and background investigation will be required.
- (4) **Renewals.** The renewal of a license issued under this article shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license. The issuance of a license issued under this article shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.
- (5) **Revocations or Suspension.** Any license issued under this article may be revoked, suspended, or have license conditions imposed as provided in the Administrative Penalties section.

- (6) **Display.** All licenses shall be posted and displayed at or near the primary entrance to the licensed retail establishment and in plain view of the general public on the licensed premises.

Sec. 9-176 Storage and Display.

It shall be unlawful for a licensee under this Article to allow the sale of licensed products by any means whereby a customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the licensed product between the licensee or their employee and the customer. All licensed products must either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public.

Sec.9-177 Prohibited Acts.

- (1) **In general.** It shall be a violation of this article for any person to sell or offer to sell any licensed products:
- a. By means of any type of vending machine.
 - b. By means of self-service merchandising whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the licensed product.
 - c. From any form of movable place of business, or at the time and location of any special event.
 - d. Containing controlled substances as defined in Minn. Stat. Ch. 152.
 - e. By delivery sale.
 - f. To an individual under the age of 21.
 - g. By any employee under the age of 16.
 - h. To an obviously intoxicated person.
 - i. By any other means or to any other person, prohibited by federal, state, or other local law, ordinance, provision, or other regulation.
- (2) **Legal Age.** No person shall sell any licensed products to any person under the age of 21 years.
- a. Proof of age for purchasing licensed products may be established only by a valid driver's license or state identification card, a valid military identification card issued by the United States Department of Defense, or in the case of a foreign national by a valid passport.
 - b. **Signage.** Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be

provided to the licensee by the City, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase. 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.

- (3) **Samples Prohibited.** No person shall distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited.
- (4) **Self-Checkout.** No sales of licensed products may be completed through self-checkout. A licensee or licensee's employee must process each transaction at a point of sale.
- (5) **Pricing and discounts.** No person shall accept or redeem any coupon, price promotion, or the instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any licensed product to a consumer at no cost or at a price that is less than the non-discounted standard price listed by a retailer on the item or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.

Sec. 9-178. Compliance Checks and Inspections. All licensed premises must be open to inspection by the city police or other authorized city official during regular business hours. Unannounced compliance checks will be conducted at least once each calendar year at each location where licensed products are sold to test compliance. Compliance checks must involve persons over the age of 18, but under the age of 21 who attempt to purchase licensed products under the direct supervision of a law enforcement officer or an employee of the licensing authority. The Oakdale Police Department is responsible for meeting the requirements of this section. No person used in compliance checks will attempt to use a false identification misrepresenting the person's age, and all persons lawfully engaged in a compliance check must answer all questions about the person's age asked by the licensee or their employee and must produce any identification, if any exists, for which they are asked. Nothing in this article prohibits compliance checks authorized by state or federal laws for educational, research, or training purposes or required for the enforcement of state or federal law.

Sec. 9-179. Administrative Penalties; Fines Established.

- (1) **Licensees.** If a licensee, any employee of a licensee, or any other person representing the licensed premises sells licensed products to an individual under the age of 21 or violates any other provision of this article, the licensee shall be subject to an administrative penalty. If a retail establishment has its license suspended pursuant to this article, that retail establishment shall, during the period of suspension, remove all licensed products away from public view. Penalties occurring within a 24-month period will be presumed as follows:
 - a. **First violation.** Any licensee found to have violated this Chapter shall be charged an administrative penalty of five hundred dollars (\$500.00).

- b. **Second violation.** Any licensee found to have violated this Chapter two (2) times within a thirty-six (36) month period shall be subject to a one thousand dollar (\$1,000.00) administrative penalty.
- c. **Third violation.** Any licensee found to have violated this Chapter three (3) times within a thirty-six (36) month period shall be subject to a two thousand dollar (\$2,000.00) administrative penalty. In addition, a one (1) day suspension of the license shall be imposed.
- d. **Fourth violation.** Any licensee found to have violated this Chapter four (4) times within a thirty-six (36) month period shall have their license revoked.

No revocation, suspension or penalty may take effect until the licensee has received notice either personally or by mail of the alleged violation and has been afforded an opportunity for a hearing pursuant to section 9-40. The administrative penalties described above are only presumed and any violation may be subject to stricter penalties when in the judgment of the City Council it is appropriate to do so. Any violation may also be subject to lesser penalties when in the judgment of the City Council it is appropriate to do so. Other mandatory requirements may be made of any penalized establishment, including but not limited to, imposition of license conditions, meetings with the police department staff to present a plan of action to assure that the problem will not continue, mandatory education sessions with crime prevention staff, or other actions that the City Council deems appropriate.

- (2) **Individuals.** A person who sells licensed products to an individual under the age of 21 may be charged an administrative fine of \$50.00. No fine may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and was provided an opportunity for a hearing before the City Council. A decision that a violation has occurred must be in writing.
- (3) **Fines Established.** The fines for violations as listed above may be amended from time to time by the City Council.

Sec. 9-180. Criminal Penalty. In addition to any administrative penalties under this article, any person, firm, or corporation violating any of the provisions of this article shall be guilty of a misdemeanor. Nothing in this article shall prohibit the city from seeking prosecution as a misdemeanor in district court for any violation of this article, or in the case of minors, referring the matter to juvenile court.

Sec. 9-181. Defenses. It shall be an affirmative defense to the violation of this article for a person to have reasonably relied on proof of age as described by state law.

Section 2. This Ordinance shall take effect and be in full force after its adoption and publication, as provided by law. Notwithstanding the foregoing, Section 9-172 and 9-179 paragraph (1) shall take effect and be in full force on January 1, 2023.

Voting in Favor: Mayor Reinke, Council Members Ingebrigtsen, Olson, Swedberg, and Zabel;

Voting Against: None



Paul Reinke, Mayor

Adopted this 25th day of October, 2022 by the Oakdale City Council.

Attest:



Sara Ludwig, City Clerk

Published:

