

City of Oakdale
ORDINANCE NO. 887

AMENDING ARTICLE III OF CHAPTER 9
OF THE CODE OF ORDINANCES FOR THE CITY OF OAKDALE
PERTAINING TO THE REGULATION OF TOBACCO

The City Council of the City of Oakdale ordains:

Section 1. Chapter 9, Article III Section 9-30 of the Oakdale Code of Ordinances is hereby amended as follows:

Sec. 9-30. Definitions.

Except as otherwise provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (1) **Background Investigation** shall refer to the investigation conducted by the police department of all tobacco license 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) **Cigars** shall refer to any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minnesota Statutes, section 297F.01, subd. 3 as amended from time to time.
- (3) **Compliance Checks** shall mean the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices and nicotine or lobelia delivery devices are following and complying with the requirements of this article. Compliance checks shall involve the use of minors as authorized by this article. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery devices for educational, research and training purposes as authorized by state and federal laws. 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 tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices and nicotine or lobelia delivery
- (4) **Electronic Delivery Device or Electronic Cigarette** means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device

includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

- (5) **Hookah** shall mean a pipe with a long, flexible tube by which the smoke is drawn through a jar of water and thus cooled for the use of tobacco or tobacco related products.
- (6) **Individually Packaged** shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.
- (7) **Indoor Area** shall mean all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- (8) **Licensing Authority** shall mean the Oakdale Administration Department.
- (9) **Loosies** shall mean the common term used to refer to a single or individual packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term "loosies" does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.
- (10) **Minor** shall mean any natural person who has not yet reached the age of ~~18~~ 21 years.
- (11) **Moveable Place of Business** shall mean any form of business operated out of a truck, van, automobile, kiosk, 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.
- (12) **Nicotine or Lobelia Delivery Devices** shall mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

- (13) **Public Place** shall mean any enclosed, indoor area used by the general public, including, but not limited to, restaurants; bars; any other food or liquor establishment; retail and other commercial establishments; educational facilities; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; and common areas of rental apartment buildings.
- (14) **Retail Establishment** shall mean any place of business where tobacco, tobacco products, tobacco related-devices, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery devices are available for sale to the general public. The phrase shall include, but not be limited to, grocery stores, convenience stores, restaurants and drug stores.
- (15) **Sale** shall mean any transfer of goods for money, trade, barter, or other consideration.
- (16) **Sampling** shall mean the lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic cigarettes in a retail establishment by a customer or potential customer for the purpose of sampling the product or device before a purchase.
- (17) **Self-Service Merchandising** shall mean open displays of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices, 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 tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device 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 clerk and the customer. Self-service merchandising does not include vending machines.
- (18) **Smoking** shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product or exhaling vapor from any electronic delivery device, such as vaping. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated tobacco plant product intended for inhalation.
- (19) **Smoking Lounge** shall mean a tobacco products shop which allows customers to be seated.
- (20) **Tobacco or Tobacco-Related Products** shall mean cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including by vaping, or any component, part, or accessory of a tobacco product;

cigars; pipe tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; shorts; plug and twist tobaccos; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; dipping tobaccos; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

- (21) **Tobacco Products Shop** shall mean a retail establishment with an entrance door opening directly to the outside that derives more than 90% of its gross revenue from the sale of tobacco, tobacco-related products, or tobacco-related devices and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco products department or section of any individual business establishment with any type of food, liquor or restaurant license.
- (22) **Tobacco-Related Devices** shall mean any tobacco product as well as a pipe, rolling papers, ash tray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or vaping of tobacco or tobacco products.
- (23) **Vapor Lounge** shall mean a vapor products shop which allows customers to be seated.
- (24) **Vapor Products Shop** shall mean a retail establishment with an entrance door opening directly to the outside that derives more than 90% of its gross revenue from the sale of electronic delivery devices, electronic cigarettes or related products in which the sale of other products is merely incidental. "Vapor products shop" does not include a vapor products department or section of any individual business establishment with any type of food, liquor or restaurant license.
- (25) **Vending Machine** shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco-related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco-related device.

Section 2. Chapter 9, Article III Section 9-31 of the Oakdale Code of Ordinances is hereby amended as follows:

Sec. 9-31. License.

- (1) **License Required.** No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery device 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.

- (2) **Application.** An application for a license to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery devices shall 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. 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. 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. All applications shall thereafter be considered and approved or denied by the City Council.
- (3) **Action.** The City Council may either approve, approve with conditions, ~~or~~ 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 action and the basis for the action ~~the denial~~ shall be given to the applicant along with notice of the applicant's right and method to appeal the City Council's decision.
- (4) **Term.** All licenses issued under this article shall expire on December 31 of each year.
- (5) **Revocations or Suspension.** Any license issued under this article may be revoked or suspended as provided in the Administrative Penalties section.
- (6) **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 will be required.
- (7) **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 article.
- (8) **Display and Signage.**

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.

1. 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 tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices 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.
2. Tobacco products shops must display signage at or near the primary entrance of the business directing that no person younger than ~~18~~ 21 years of age is permitted to enter the retail establishment at any time.

(9) **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.

Section 3. Chapter 9, Article III Section 9-32 of the Oakdale Code of Ordinances is hereby amended as follows:

Sec. 9-32. Fees; Late Fees. ~~No license shall be issued under this article until the appropriate license fee shall be paid in full. The fee for a license shall be determined by the City Council. If a renewal application is received after the given due date, a late fee, as determined by the City Council, shall be charged to the applicant. Late renewal applications shall not be processed until the late fee is paid in full. The late fee must be paid separately from the renewal application fee due to accounting purposes.~~

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.

- (1) **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.
- (2) **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.
- (3) **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.

Section 4. Chapter 9, Article III Section 9-33 of the Oakdale Code of Ordinances is hereby amended as follows:

Sec. 9-33. Basis for Denial of License. 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 ~~18~~ 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 relating to tobacco or tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices;
- (3) The applicant or any other person included on the application has had a license to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices 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; or
- (8) The applicant or any other person included on the application is determined to be not of good moral character and repute.

Section 5. Chapter 9, Article III Section 9-34 of the Oakdale Code of Ordinances is hereby amended as follows:

Sec. 9-34. Prohibitions.

- (1) **Prohibited Sales.** It shall be a violation of this article for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device or nicotine or lobelia delivery device:
 - (a) To any person under the age of ~~18~~ 21 years;
 - (b) By means of loosies;
 - (c) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products;
 - (d) By means of any type of vending machine except when the vending machine is in a facility that cannot be entered at any time by any person under the age of ~~18~~21 years;
 - (e) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco-related device, electronic cigarette, electronic delivery device or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device, nicotine or lobelia delivery device between the licensee, or the licensee's employee, and the customer; or
 - (f) 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.
- (2) **Smoking and Sampling Prohibitions.** Except for the exceptions listed in Minnesota Statutes, section 144.4167, smoking generally shall be prohibited and no person shall smoke in public places and places of work, including outdoor and bar areas of restaurants. Other than provided for in Minnesota Statutes, section 144.4167, subd. 4, tobacco sampling, sampling of electronic delivery devices, and products used in electronic delivery devices, is specifically prohibited in the city. To ensure that tobacco smoke or vapor electronic delivery devices does not enter public places and places of work, and that persons entering such places are not exposed involuntarily to smoke or vapor, smoking and the use of electronic delivery devices are prohibited within twenty-five feet of entrances, exits, open windows and ventilation intakes of public places and places of work. This prohibition does not apply to entrances and exits used solely in the event of an emergency and appropriately signed for that purpose.
- (3) **Smoking Lounges.** Smoking lounges, hookah lounges and vapor lounges are prohibited.
- (4) **Cigars.** No person shall sell, offer to sell or distribute cigars in an original package containing fewer than five cigars. The restrictions shall not apply to any sales, offer to

sell, or distribution of an original package consisting of one, two, three, four, or five cigars, provided that each original package has a retail sales price of at least \$2.60 per cigar and after any price promotions or discounts are taken into account and before the imposition of sales tax, but excluding retail sales tax, and tobacco products only accessible to those ~~18~~ 21 years or older. This section shall not apply to premium cigars as defined in Minnesota Statutes, section 297F.01, subd. 13a.

Section 6. Chapter 9, Article III Section 9-35 of the Oakdale Code of Ordinances is hereby amended as follows:

Sec. 9-35. Self-Service Sales. It shall be unlawful for a licensee under this article to allow the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices by any means whereby the customer may have access to those 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 tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices shall 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. A license holder who operates tobacco products shop is exempt from the self-servicing merchandising provision if the license holder prohibits anyone under ~~18~~ 21 years of age from entering the establishment or fully enclosed portion of an establishment and the license holder conspicuously displays a notice prohibiting persons under ~~18~~ 21 years of age from entering the establishment.

Section 7. Chapter 9, Article III Section 9-37 of the Oakdale Code of Ordinances is hereby amended as follows:

Sec. 9-37. 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. Pursuant to Minnesota Statutes, section 461.12, subd. 5, unannounced compliance checks shall be conducted at least once each calendar year at each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold to test compliance. Compliance checks must involve minors over the age of 15, but under the age of ~~18~~ 21, who, with prior written consent of a parent or guardian, attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products under the direct supervision of a law enforcement officer or an employee of the licensing authority. The Oakdale Police Department will be responsible for meeting the requirements of this section. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device, or nicotine or lobelia delivery devices when such items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this article shall prohibit compliance checks authorized by state

or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.

Section 8. Chapter 9, Article III Section 9-39 of the Oakdale Code of Ordinances is hereby amended as follows:

Sec. 9-39. Administrative Penalties; Fines Established.

(1) **Licensees.** If a licensee, any employee of a licensee, or any other person representing the licensed premises sells tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices to a minor 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 tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices away from public view. Penalties occurring within a ~~24~~36-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 seven (7) 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.

- ~~(a) First violation: \$75.00 fine;~~
- ~~(b) Second violation: \$200.00 fine;~~
- ~~(c) Third violation: \$250.00 fine and a license suspension for not less than seven days;~~
~~and~~
- ~~(d) Fourth violation: License revocation.~~

No revocation, suspension, imposition of conditions, 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; provided, however, that in no event will the amount of any fine or period of suspension for tobacco violations be less than the amounts and periods specified in Minnesota Statutes, section 461.12, subdivisions 2 and 3, as amended. Other mandatory requirements may be made of any penalized establishment, including but not limited to, 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 tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices to a minor shall 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.

Section 9. Upon the effective date of this ordinance as provided in Section 3 below, Ordinance No. 844, the interim ordinance adopted by the city council on February 12, 2019, establishing a licensing and planning moratorium on tobacco retailers, shall be repealed.

Section 10. This ordinance shall take effect and be in full force from and after its adoption and publication, as provided by law.

Adopted this 22nd day of November 2022 by the Oakdale City Council.

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

Voting Against: None

Paul Reinke, Mayor

Attest:

Sara Ludwig, City Clerk