

AN ORDINANCE RELATING TO THE SALE, POSSESSION, AND USE OF CANNABINOID PRODUCTS AND CANNABINOID-RELATED DEVICES IN THE CITY AND TO REDUCE THE ILLEGAL SALE, POSSESSION, AND USE OF SUCH ITEMS TO PERSONS UNDER THE AGE OF 21

THE CITY COUNCIL OF THE CITY OF OAK PARK HEIGHTS DOES HEREBY ORDAIN AS FOLLOWS:

1412.01

Purpose.

The purpose of this Section is to regulate the sale of legalized adult-use of cannabinoid products and that meets the requirements to be sold under Minnesota Statutes for the following reasons:

- A. The City recognizes that, based on the most reliable and up-to-date scientific evidence, the rapid introduction of newly legalized adult-use THC products, presents a significant potential threat to the public health, safety, and welfare of the residents of Oak Park Heights, and particularly to youth.
- B. 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 or to the marketing of these products and improve compliance among cannabinoid product retailers with laws prohibiting the sale or marketing of cannabinoid products to persons under the age of 21.
- C. A local regulatory system for cannabinoid product retailers is appropriate to ensure that retailers comply with cannabinoid product laws and business standards of the City of Oak Park Heights to protect the health, safety, and welfare of our youth and most vulnerable residents.
- D. State law requires cannabinoid 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).
- E. State law authorizes the Board of Pharmacy to adopt product and testing standards in part to curb the illegal sale and distribution of cannabinoid products and ensure the safety and compliance of commercially available cannabinoid products in the state of Minnesota.
- F. State law does not preempt the authority of a local jurisdiction to adopt and

enforce local ordinances to regulate cannabinoid product businesses including, but not limited to, local zoning and land use requirements and business license requirements.

- G. A requirement for a cannabinoid product retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cannabinoid products to adults but will allow the City of Oak Park Heights to regulate the operation of lawful businesses to discourage violations of state and local cannabinoid product-related laws.

In making these findings and enacting this ordinance, it is the intent of the Oak Park Heights City Council to ensure responsible cannabinoid product retailing, allowing legal sale and access without promoting increases in use, and to discourage violations of cannabinoid product-related laws, especially those which prohibit or discourage the marketing, sale or distribution of cannabinoid products to youth under 21 years of age.

1412.02

Definitions and Interpretations.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

- A. Cannabinoid. Any edible cannabinoid product or nonedible cannabinoid product authorized for sale in Minnesota Statute.
- B. Cannabidiol/CBD. Any non-intoxicating cannabidiol not containing tetrahydrocannabinol (THC).
- C. 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.
- D. 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.
- E. Compliance checks. The process or protocols the city uses to investigate and ensure that those authorized to sell Cannabinoid products are following and complying with the requirements of law. Compliance checks shall involve the use of persons under the age of 21 as authorized by this article.

Compliance checks shall also mean the use of persons under the age of 21 who attempt to purchase cannabinoid 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 cannabinoid products.

- F. Delivery sale. The sale of any cannabinoid 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 licensed retail establishment. Delivery sale includes, but is not limited to, the sale of any cannabinoid 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.
- G. Edible Cannabinoid product. Any product authorized for sale under Minn. Stat. 151.72 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.
- H. Exclusive Cannabinoid/Tobacco store. A brick and mortar retail store which derives a majority of its revenue from tobacco, tobacco products, CBD, and/or cannabinoid products and which cannot be entered at any time by persons younger than 21 years of age except as provided herein.
- I. Hemp. 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.
- J. Label. The meaning given in Minnesota Statute Section 151.01, subdivision 18.
- K. Labeling. All labels and other written, printed, or graphic matter that are:
 - (1) affixed to the immediate container in which a product regulated under this Article 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.

- L. Licensee. A human person licensed under this Article.
- M. Licensee's clerk. A person employed by a licensee to work at a sales or service counter or otherwise make sales to the licensee's customers.
- N. 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.
- O. Matrix Barcode. 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.
- P. 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.
- Q. 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.
- R. Nonintoxicating Cannabinoid. Substances extracted from certified hemp plants that do not produce intoxicating effects when consumed by any route of administration.
- S. Retail establishment. Any place of business where cannabinoid products or cannabinoid-related devices are available for sale to the general public. The phrase shall include but not limited to, grocery stores, convenience stores, restaurants and drugstores.
- T. Sale. Any transfer of goods for money, trade, barter or other consideration.
- U. 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 clerk and the customer. "Self-service merchandising" shall not include vending machines.

- V. 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.

1412.03

Scope

- A. This Article applies to the sale of any cannabinoid product.
- B. This Article does not apply to the sale of any cannabidiol/CBD product as defined by this Article.
- C. This Article does not apply to any product dispensed by a registered medical cannabis manufacturer pursuant to Minn. Stat. 152.22 to 152.37.

1412.04

License.

No person shall sell or offer to sell any cannabinoid products or cannabinoid-related devices without first having obtained a license to do so from the City.

A. Application.

An application for a license to sell cannabinoid products or cannabinoid-related devices shall be made on a form provided by the City, and filed, along with all required fees, with the City Clerk. The 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. Upon receipt of a completed application, the City Clerk shall forward the application to the Council for action at its next regularly scheduled Council meeting. If the Clerk shall determine that 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 Council may either approve the license, deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the

Council shall approve the license, the Clerk shall issue the license to the applicant. If the 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 Council's decision.

C. Term.

All licenses issued under this Ordinance shall be an annual license, expiring on December 31 of each year. Any existing business selling cannabinoid products within the City as of the effective date of this Ordinance shall file all required license applications hereunder, along with the license and investigation fees, no later than November 1, 2022.

D. Revocation or Suspension.

Any license issued under this Ordinance may be revoked or suspended as provided in the Violations and Penalties section of this Ordinance.

E. Transfers.

All licenses issued under this Ordinance 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 without the prior approval of the Council. It is the duty of each licensee to notify the City in writing of any change in ownership in the business. Any change in the ownership or control of the business shall be deemed equivalent to an attempt to transfer the license, and any such license shall be revoked 30 days after any such change in ownership or control unless the licensee has notified the City of the change in ownership by submitting a new license application for the new owners, and the City Council has approved the new license.

Any time an additional investigation is required because of a change in ownership or control of a business, the licensee shall pay an additional investigation fee to be determined by the City. The City may at any reasonable time examine the transfer records and minute books of any business licensee to verify and identify the owners, and the City may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The Council may revoke any license issued upon its determination that a change of ownership of a licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the Council on notice to the licensee.

F. Moveable Place of Business.

No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this Ordinance.

G. Display.

All licenses shall be posted and displayed in plain view of the general public on the licensed premises. All exclusive cannabinoid/tobacco store establishments shall post a notice prohibiting the entering of the store by persons under 21 years of age which notice shall be in plain view of the general public on the licensed premises. The notice shall be at least 8.5 inches by 11 inches in size.

H. Renewals.

A license may be renewed annually, provided the licensee complies with the renewal application as follows:

- (1) The licensee shall complete the renewal application materials provided by the City;
- (2) The completed renewal application materials, along with the license fee shall be filed with the City Clerk by the deadline set by the City Clerk each year;
- (3) The licensee shall provide all information regarding business ownership. If ownership interests have changed, an additional investigation fee is required.

1412.05

Fees.

No license shall be issued under this Ordinance until the appropriate license fee shall be paid in full. The license and investigation fees shall be determined by the City Council as set forth in Oak Park Heights City Ordinance 102, Master Fee Schedule. All licenses shall expire on the last day of December in each year. Each license shall be issued for a period of one year, except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro-rata fee. In computing such fee, any unexpired fraction of a month shall be counted as one month. The investigation fee will not be pro-rated.

No part of the fee paid for any license issued under this Ordinance shall be refunded except in the following instances upon application to the City within 30 days from the happening of the event. Upon written request, a pro-rata share based on the number of months the business ceases to conduct business of an annual license fee for a retail license may be refunded to the licensee or to the licensee's estate if:

- (1) The business ceases to operate because of destruction or damage;
- (2) The licensee dies;
- (3) The business ceases to be lawful for a reason other than a license revocation;
- (4) The licensee ceases to carry on the licensed business under the license; or

- (5) The business ceases to operate, or is unable to fully use its license to operate because of a declared local, state or national emergency.

1412.06

Basis for Denial of License.

The following shall be grounds for denying the issuance or renewal of a license under this Ordinance, and 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 Section.

- A. The applicant is under the age of 21 years.
- B. The applicant has been found within the past five years to have violated any federal, state, or local law, ordinance provision, or other regulation relating to cannabinoids, narcotics, alcohol, tobacco, tobacco products, or tobacco-related devices.
- C. The applicant, owner(s), the appointed on-site manager or agent of the applicant, or any person who has at least five percent interest in the proposed licensed business has a conviction for, or was charged with, but convicted of a lesser charge of a crime, or is under a stay of adjudication from a charge involving a violation of any cannabinoid and/or tobacco related regulation in any other jurisdiction, theft, felony drug offense, any crime of violence as defined by Minnesota Statutes, or any other similar crime or offense within five years of the date of application.
- D. The applicant or owner(s) has had a license to sell cannabinoid and/or tobacco products suspended or revoked, in the City of Oak Park Heights or in any other place, within the preceding 10 years of the date of application.
- E. The applicant or owners(s) fails to provide any information required on the application, or provides false or misleading information.
- F. The cannabinoid sales 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.
- G. The applicant or owner(s) was charged with a crime that if convicted would render them ineligible for a license under this chapter but entered into a plea agreement providing for the continuance of the charge for dismissal or other delayed disposition. In such case the applicant shall be disqualified and ineligible for a license under this chapter until such time as the charge is finally dismissed.

- H. The applicant or owner(s) has been denied a license under this chapter within the preceding 12 months.
- I. The applicant is a business that does not have an operating officer or manager who is eligible pursuant to this chapter.
- J. The application is for a home business or a moveable place of business.
- K. Other unforeseen circumstances or conditions exist such that the issuance of a license may unreasonably endanger the health, safety, and welfare of the public.

1412.07

Prohibited Sales.

It shall be a violation of this Ordinance for any person to sell or offer to sell any cannabinoid product or cannabinoid-related devices:

- A. To any person under the age of 21 years.
- B. By means of any type of vending machine.
- C. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of a licensed premises in order to receive the cannabinoid product, or cannabinoid-related device.
- D. Through self-checkout. A licensee or licensee's clerk must process each transaction at a point of sale.
- E. From any form of movable place of business.
- F. Containing controlled substances as defined in Minn. Stat. Ch. 152.
- G. By delivery sale.
- 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.

1412.08

Responsibility.

All licensees under this Ordinance shall be responsible for the actions of their employees in regard to the sale of cannabinoid products and cannabinoid-related devices on the licensed premises, and the sale of such a item by an employee shall

also be considered a sale by the license holder, and each can be held responsible for any criminal and/or civil penalties imposed herein.

1412.09

Storage and Display.

It shall be unlawful for a licensee under this Article to allow the sale of cannabinoid products or cannabinoid-related devices by any means where by 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 cannabinoid product or cannabinoid-related devices between the licensee or his clerk and the customer. All cannabinoid product or cannabinoid-related 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.

1412.10

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 under the age of 21 to enter the licensed premises to attempt to purchase cannabinoid products. A person under the age of 21 used for the purpose of compliance checks shall not be guilty of unlawful possession of cannabinoid products or cannabinoid-related devices when such items are obtained as a part of the compliance check. Nothing in this section shall prohibit the City from conducting compliance checks in accordance with state and federal law.

1412.11

Pricing, Discounting and Product Sampling.

Prohibition on the sale of cannabinoid products for less than the Listed Price. No cannabinoid retailer shall:

- A. Honor or accept a price reduction instrument in any transaction related to the sale of cannabinoid products to a consumer;
- B. Sell or offer for sale cannabinoid products through any multi-package discount or otherwise provide a consumer any cannabinoid products for less than the Listed Price in exchange for the purchase of any other cannabinoid product;
- C. Sell, sell at a discount, offer for sale, or otherwise provide any product other than cannabinoid products in exchange for or in consideration of the purchase of cannabinoid products;
- D. Sell for a nominal price or provide free of charge any cannabinoid product or cannabinoid-related devices;

- E. Otherwise sell, offer for sale, or provide cannabinoid products for less than the Listed Price; or
- F. Distribute samples of any licensed product free or charge or at a nominal cost. The distribution of cannabinoid products as a free donation is prohibited.

1412.12

Other Illegal Acts.

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

- A. Sales. It shall be a violation of this Ordinance for any person to sell any cannabinoid products to any person under the age of 21.
- B. Possession. It shall be a violation of this Ordinance for any person under the age of 21 to have in his or her possession any cannabinoid product. This subdivision shall not apply to person under the age of 21 lawfully involved in a compliance check on behalf of the City.
- C. Use. It shall be a violation of this Ordinance for any person under 21 years of age to use any cannabinoid product.
- D. Procurement. It shall be a violation of this Ordinance for any person under the age of 21 to purchase or attempt to purchase or otherwise obtain any cannabinoid product or cannabinoid-related device, and it shall be a violation of this Ordinance for any person to sell or otherwise provide any cannabinoid product or cannabinoid-related device to any person under the age of 21, and it shall further be a violation for any person to coerce or attempt to coerce a person under the age of 21 to illegally purchase or otherwise obtain or use any cannabinoid product or cannabinoid-related device. This subdivision shall not apply to persons under the age of 21 lawfully involved in a compliance check on behalf of the City.
- E. Use of False Identification. It shall be a violation of this Ordinance for any person under the age of 21 years to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person. This subdivision shall not apply to persons under the age of 21 lawfully involved in a compliance check on behalf of the City.

1412.13

Violations and Penalties.

- A. Criminal Penalty.

Misdemeanors. Nothing in this Article shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this Article.

B. Civil Penalties.

The provisions of the City of Oak Park Heights Civil Penalty Ordinance, Chapter 208, shall apply to any and all licenses issued hereunder. If a retail establishment has its cannabinoid license suspended pursuant to a hearing conducted under the City's Civil Penalty Ordinance, that retail establishment shall, during the period of suspension, remove all cannabinoid or cannabinoid-related devices away from public view.

(1) The following designated civil penalties shall constitute advisory guidelines for City Council action in cases of violation by licensees of City issued cannabinoid licenses. It is understood the City Council may deviate from these advisory guidelines based upon compelling circumstances presented in individual cases.

- a. First Offense: Five Hundred Dollars (\$500) civil fine.
- b. Second Offense: One Thousand Dollars (\$1,000) civil fine and one five-day license suspension (Monday through Friday).
- c. Third Offense: One Thousand Five Hundred Dollars (\$1,500) civil fine and a ten-day license suspension [to include at least one weekend day (Friday or Saturday)].
- d. Fourth or Subsequent Offense: Revocation, fines, and suspension at City Council Discretion.

(2) The above sanctions shall be issued and calculated as against all offenses occurring within a 24-month consecutive period counting back from the date of the most recent violation. Any violations having occurred beyond 24 consecutive months prior to the most recent violation shall not be counted in terms of imposing the sanctions noted above.

(3) Any license holder who has had their license or permits suspended or revoked pursuant to City action shall not be allowed to operate the activity which required the license until the license is reinstated. Any operation during a period of suspension or revocation shall be deemed to be an additional violation of the City's Cannabinoid License Ordinance and of state law subject to additional civil penalties, up to and including permanent license revocation.

1412.14 Severability and Savings Clause.

If any section or portion of this Ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a Court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provisions of this Ordinance.

1412.15 Effective Date.

This Ordinance shall take effect from and after its passage and publication as required by law.

Adopted by the City Council October 11, 2022.