

**ORDINANCE O2022-027**

**AN ORDINANCE OF THE CITY OF SHAKOPEE, MINNESOTA,  
AMENDING CHAPTER 110 OF THE SHAKOPEE CITY CODE BY  
ADDING PROVISIONS PERTAINING TO SALES OF  
TETRAHYDROCANNABINOL PRODUCTS**

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

Section 1. Chapter 110 of the Shakopee City Code is amended by adding the following Sections:

***TETRAHYDROCANNABINOL PRODUCTS***

<u>110.200</u>	<u>Purpose and Intent</u>
<u>110.201</u>	<u>Definitions &amp; Interpretations</u>
<u>110.202</u>	<u>License</u>
<u>110.203</u>	<u>Basis for Denial of License</u>
<u>110.204</u>	<u>Prohibited Sales</u>
<u>110.205</u>	<u>Vending Machines</u>
<u>110.206</u>	<u>Self-Service and Storage</u>
<u>110.207</u>	<u>Responsibility</u>
<u>110.208</u>	<u>Compliance Checks And Inspections</u>
<u>110.209</u>	<u>Other Illegal Acts</u>
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<u>110.211</u>	<u>Defenses</u>
<u>110.212</u>	<u>Signage and Age Verification</u>

**110.200 Purpose and Intent**

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

- A. The city recognizes that, based on the most reliable and up-to-date scientific evidence, the introduction of legalized THC products presents a potential threat to the public health, safety, and welfare of the residents of Shakopee.
- B. The city has the opportunity to be proactive and make decisions that will mitigate this threat, reduce exposure of young people to THC products, curtail the marketing of THC products to young people, and improve retailer compliance with existing laws related to THC products.

- C. A local regulatory system for retailers of THC products is appropriate to ensure that such retailers comply with laws and business standards of the city of Shakopee to protect the health, safety, and welfare of our youth and other vulnerable residents.
- D. Minn. Stat. § 151.72 requires THC product retailers to check the identification of purchasers to verify that they are at least 21 years of age, comply with certain packaging and labeling requirements to protect children and youth, and meet certain potency and serving size requirements.
- E. State law further authorizes the Minnesota Board of Pharmacy to adopt product and testing standards in part to curb the illegal sale and distribution of THC products and to ensure the safety and compliance of commercially available THC products in the State of Minnesota.
- F. State law does not preempt municipalities from adopting and enforcing local ordinances to regulate retailers of THC products, including, but not limited to, business licensing requirements.
- G. A licensing requirement for retailers that desire to sell THC products will not unduly burden legitimate business activities of such retailers who sell or distribute THC products to adults but will allow the city to effectively regulate the operation of lawful businesses and discourage violations of THC product-related laws.

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

### **110.201 - Definitions And Interpretations**

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

**BUSINESS** shall mean the business of selling THC products.

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

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

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

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

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

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

**SELF-SERVICE MERCHANDISING** means open displays of THC products in any manner where any person shall have access to the THC products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the THC products between the customer and the licensee or employee. **SELF-SERVICE MERCHANDISING** does not include vending machines.

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

#### **110.202 License**

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

- A. *Application.* An application for a license to sell THC products shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the city. If the City Clerk determines an application incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.
- B. *Action.* The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant. If the City Council approves the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.
- C. *Term.* Each license will be issued for a period of 1 calendar year. If the application is made during the license year, a license may be issued for the remainder of the licensed year on a pro rata basis. Any unexpired fraction of a month shall be counted as a complete month. Every license expires on December 31 of the license year.

- D. *Revocation or suspension.* Any license issued under this subchapter may be revoked or suspended as provided for in this subchapter.
- E. *Transfers.* All licenses are valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.
- F. *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible for licensing under this subchapter.
- G. *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- H. *Renewals.* The renewal of a license issued under this subchapter shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but not more than 60 days before the expiration of the current license. The issuance of a license issued under this subchapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the licensee to an automatic renewal of the license.
- I. *Fees.* No license shall be issued under this subchapter until the appropriate license fee has been paid in full.
- J. *Issued only to Tobacco License Holder.* A license to sell THC products will only be issued to a retail establishment that has a valid license to sell electronic delivery devices, tobacco, tobacco products, and tobacco-related devices under Section 110.057 of the City Code.
- K. *Instructional program.*
1. No person shall be issued a license or renewal license to sell THC Products unless an applicant or license holder has an approved program for instructing all employees regarding the legal requirements pertaining to the sale of electronic delivery devices, tobacco, tobacco products, tobacco-related devices, and THC Products at the business premises for which the license was issued. The instructional program shall include, but is not limited to, reviewing the law on the sale of electronic delivery devices, tobacco-related products, and THC Products and the law regarding the requirement of purchasers to establish proof of age.
  2. No license shall be issued unless the applicant or license holder signs a form attesting that each employee of the applicant or license holder has received training and instruction on the sale of electronic delivery devices, tobacco, tobacco products, tobacco-related devices, and THC Products and the date such training occurred. The training shall include information that the sale of such products to persons under the age of 21 is illegal, explanation of what proof of age is legally acceptable, and that a sale to persons under the age of 21 can subject the applicant or license holder and their employees to criminal and civil liability.

- L. *Sale by minors.* No minor may furnish, sell, or attempt to sell electronic delivery devices, tobacco, tobacco products, and tobacco-related devices unless written consent has been obtained from the minor's parents. Such written consent must include a statement of the potential penalties that can be imposed under this subchapter.
- M. *Proof of age.* Any sale of TCH shall not take place unless the licensee requires any purchaser who appears to be under the age of 30 to establish proof of age by 1 of the methods established by state law for the purchase of alcoholic beverages.

#### **110.203 Basis for Denial of License**

- A. If a license is mistakenly issued or renewed to a person, it may be revoked upon the discovery that the person was ineligible for the license under this subchapter.
- B. The following are grounds for denying the issuance or renewal of a license under this subchapter:
  - 1. The applicant is under the age of 18 years;
  - 2. The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to THC products;
  - 3. The applicant has had a license to sell THC products revoked within the preceding 24 months of the date of application;
  - 4. The applicant fails to provide any information required on the application, or provides false or misleading information;
  - 5. The applicant has outstanding fines, penalties, fees or taxes owed to the city, City Public Utilities Commission, county or state;
  - 6. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license;
  - 7. The applicant does not hold a license to sell all electronic delivery devices, tobacco, tobacco products, and tobacco-related devices in the City of Shakopee; or
  - 8. The applicant, or another business the applicant owns or holds a license for, has failed a compliance check related to a THC license or a tobacco, tobacco products, and tobacco-related devices license issued under Section 110.055, et seq. in the previous 5 years or failed a compliance check during the term of the lawfully imposed city THC moratorium.
- C. Except as may otherwise be provided by law, the existence of any particular ground for denial, however, does not mean that the city must deny the license.
- D. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery of the ineligibility of the applicant for the license under this subchapter.

### **110.204 Prohibited Sales**

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

- (1) To any person under the age of 21;
- (2) By means of a vending machine;
- (3) By means of self-service merchandising;
- (4) Through any mobile or non-permanent structure, or
- (5) 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.

### **Section 110.205 Vending Machines**

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

### **Section 110.206 Self-Service Merchandising**

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

### **Section 110.207 Responsibility**

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

### **Section 110.208 Compliance Checks And Inspections**

All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging persons over 17 years of age but under 21 years of age, to enter the licensed premise to attempt to purchase THC products. Minors used for the purpose

of compliance checks must have the written consent of their parents or guardians and shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of THC Products when such items are obtained as a part of the compliance check.

### **Section 110.209 Other Illegal Acts**

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

1. *Sales.* For any person to sell or attempt to sell or furnish any THC Product to any person under the age of 21;
2. *Possession.* For any person under the age of 21 to have in person's possession any THC Product, excluding any minor lawfully involved in a compliance check;
3. *Procurement.* For any person under the age of 21 to purchase or attempt to purchase or otherwise obtain any THC Product; for any person to purchase or otherwise obtain any such item on behalf of a person under the age of 21; or for any person to coerce or attempt to coerce a person under the age of 21 to purchase or otherwise obtain or use THC Product in a manner contrary to law, excluding any person under the age of 21 lawfully involved in a compliance check;
4. *Use of false identification.* For any person under the age of 21 to attempt to disguise person's true age by the use of a false form of identification, whether the identification is that of another person or 1 on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person; and
5. *Sampling.* For any person to consume a TCH product in a licensed establishment for any purpose, including, but not limited to, the purpose of allowing a customer or potential customer to sample a THC Product.

### **Section 110.210 Violations**

1. *Notice.* The city shall issue a notice of violation to any licensee or individual suspected of violating any provision of this subchapter. The notice of violation shall be served personally or by mail. The notice shall contain the alleged violation and a statement concerning the right to a hearing.
2. *Hearing.* If a person accused of violating this subchapter so requests, a hearing shall be scheduled before a hearing officer at a time and place which shall be published and provided to the accused violator.
3. *Hearing Officer.* The City Council shall serve as the Hearing Officer in any hearing requested under this subchapter.
4. *Decision.* Following the hearing, if the City Council determines by a preponderance of the evidence that a violation of this subchapter occurred, that decision, along with the

City Council's reasons for finding a violation and the administrative penalty to be imposed under § 110.999(C), shall be recorded in writing, a copy of which shall be provided to the violator. If the City Council finds that no violation occurred, such finding shall be recorded and a copy provided to the licensee.

5. *Judicial review.* Any final decision by the City Council under this subchapter may be reviewed in the manner and procedure authorized by state law.
6. *Prosecution.* Nothing in this subchapter shall prohibit the city from seeking prosecution for any alleged violation.

### **Section 110.211 Defenses**

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

### **Section 110.212 Signage and Age Verification**

1. *Signage.* At each location where THC Products are sold, the licensee shall display a sign in plain view to provide public notice that selling any of these products to any person under the age of 21 is illegal and subject to penalties. The notice shall be placed in a conspicuous location in the licensed establishment and shall be readily visible to any person who is purchasing or attempting to purchase these products. The sign shall provide notice that all persons responsible for selling these products must verify, by means of photographic identification containing the bearer's date of birth, the age of any person under 30 years of age.
2. *Age Verification.* At each location where THC Products are sold, the licensee shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser or person attempting to make the purchase is at least 21 years of age. Verification is not required if the purchaser or person attempting to make the purchase is 30 years of age or older. It shall not constitute a defense of a violation of this section that the person appeared to be 30 years of age or older.



Section 2. Effective Date. This ordinance becomes effective from and after its adoption and publication.

*Passed in regular session of the City Council of the City of Shakopee, Minnesota held on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.*

\_\_\_\_\_  
Mayor of the City of Shakopee

Attest:

\_\_\_\_\_  
Lori Hensen, City Clerk

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