

**CITY OF WEST ST. PAUL
DAKOTA COUNTY, MINNESOTA**

ORDINANCE NO. 23-

**AN ORDINANCE AMENDING THE WEST ST. PAUL CITY CODE
SECTION 114 REGARDING INTOXICATING THC PRODUCTS**

The City Council of West Saint Paul does ordain:

SECTION 1. AMENDMENT. West St. Paul City Code Chapter 114 is hereby amended as follows:

CHAPTER 114: INTOXICATING THC PRODUCTS

§ 114.01 PURPOSE.

Because the city recognizes that persons under the age of 21 years may purchase or otherwise obtain, possess and use intoxicating THC products; and the sale of these products to persons under 21 years of age are violations of state and federal laws; and because the use of intoxicating THC products by those underage subsequently places a financial burden on all levels of government, this chapter is intended to regulate the sale of intoxicating THC products for the purpose of enforcing and furthering existing laws.

§ 114.02 DEFINITIONS.

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

CBD. A compound of the cannabis plant known as cannabidiol.

CBD PRODUCTS. Includes industrial hemp products and hemp derived products.

EDIBLE INTOXICATING THC PRODUCT. A product or substance defined as an “edible Cannabinoid Product under MN Statutes 151.72 (2022) and/or any intoxicating THC product that is intended to be eaten, swallowed or consumed as a beverage, contains intoxicating THC in combination with food ingredients, and is not a drug.

HEMP or INDUSTRIAL HEMP. Refers to the “Industrial Hemp” definition provided under Minn. Stat. § 18K.02 subd. 3, as may be amended.

HEMP MANUFACTURING. The ability to facilitate the manufacturing of industrial hemp.

INTOXICATING THC PRODUCTS. Products made from substances extracted from certified hemp plants that produce intoxicating effects when consumed by any route of administration and have more than a trace amount of THC. Intoxicating THC products include but are not limited to products made with Delta-8 THC, Delta-9 THC, Delta-10 THC, THC-O , THC-P (Tetrahydrocannabinol) and HHC (Hexahydrocannabinol).

MEDICAL CANNABIS. Refers to the “Medical cannabis” definition provided under Minn. Stat. § 152.22, subd. 6, as may be amended.

MEDICAL CANNABIS DISTRIBUTION FACILITY. A facility operated by a medical cannabis manufacturer for purposes of distributing medical cannabis in accordance with Minn. Stat. § 152.29, subd. 1(a), as may be amended, and the requirements of the commissioner of Minnesota department of health or other applicable state law.

NONINTOXICATING CANNABINOID (CBD) PRODUCT. Products made from substances extracted from certified hemp plants that do not produce intoxicating effects when consumed by any route of administration.

SCHOOL. Any property owned, leased, or controlled by a school district or an organization operating a nonpublic school, as that term is defined in Minn. Stat. § 123B.41, subdivision 9, where an elementary, middle, secondary school, secondary vocational center or other school providing educational services for any grade Kindergarten through grade 12 is located, or any property owned, leased or used as a community education program by a school district or districts for children and their caregivers, relatives or parents for the ages from birth to kindergarten, excluding properties exclusively used for the remote or online delivery of educational programming.

SPECIALTY INTOXICATING THC PRODUCT RETAILER. A business that sells intoxicating THC products and derives more than 10% of its gross revenue OR dedicates more than 10% of its retail space from the sale of any intoxicating THC products or related devices.

THC. Tetrahydrocannabinol.

§ 114.03 LICENSE REQUIRED.

- (A) *General Rule.* No person or retail establishment may sell Intoxicating THC Products without first having obtained a license from the city.
- (B) *Application.* In addition to the application information requirements of § 110.03, the applicant shall submit a copy of the educational materials the applicant uses to educate employees as part of its instructional program.
- (C) *License Fee.* The applicant shall submit the license fee pursuant to Chapter 110.
- (D) *Investigations.*
 - (1) For all new and renewal applicants, a background investigation will be conducted on the applicant listed on the application, pursuant to § 110.03(C)(5). If more than one background investigation is required, the applicant shall pay a background investigation fee for each background investigation conducted. For applicants who have an existing Intoxicating THC license and want to add an additional location at any time other than annual renewal, a background investigation will be required.
 - (2) For applicants who are applying for a license for more than one location, only one background investigation and background investigation fee shall be required.
- (E) *License Term.* The license term begins on January 1 and terminates on December 31. License fees will not be prorated.

- (F) *Non-Transferability.* A license is non-transferable. All licenses issued under this section are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location, business or person is prohibited. If there is a change in the ownership of the retail establishment, a new license is required and the applicant shall be required to submit to a background investigation as a new applicant.
- (G) *Instructional Program.* No person shall be issued a license or renewal license to sell licensed products unless an applicant or licensee has a program for instructing all employees regarding the legal requirements pertaining to the sale of licensed products at the retail establishment for which the license was issued. The instructional program shall include, but is not limited to, reviewing the law on the sale of licensed products, requiring employees to request identification from every customer who is under 27 years of age, providing information that the sale of licensed products to anyone under 21 is illegal, explaining what kind of proof of age is legally acceptable, and that a sale to a person below the legal sales age can subject the applicant or licensee and its employees to criminal and/or civil liability.
- (H) *Age verification device and digital security video.* All license holders shall be required to install or possess age verification devices and digital security video at the licensed location. The Police Department shall confirm that the devices have been installed prior to approval of the license.
- (I) *Moveable place of business.* No license shall be issued to a movable place of business. Only fixed retail establishment locations shall be eligible to be licensed under this section.
- (J) *Secure display of Intoxicating THC Products.* All Intoxicating THC Products and 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. This requirement does not apply to specialty intoxicating TCH product retailers, who must prohibit access to anyone under the age of 21.
- (K) *Signage.* Notice of the legal sales age and age verification requirements must be posted at each location where licensed products are offered for sale. The required signage, which shall 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.
- (L) *Zoning compliance.* No Intoxicating THC Product license shall be granted until all applicable zoning requirements are met or until all conditions for approval of the use have been satisfied.
- (M) *Limit on licenses.* No more than two (2) licenses shall be issued to businesses meeting or exceeding the definition of Specialty Intoxicating THC Product Retailer at any one time. In the event that more than two applications are submitted at the same time, then a point system shall be used to determine which businesses are issued the two (2) licenses, with one point for each of the criteria below:
 - (1) It is an existing business that has been established at the location for more than 6 months or it is a business applying for a renewal application.
 - (2) The establishment location is a legal conforming use.
 - (3) The applicant/owner is a West St. Paul resident
 - (4) The applicant is a member of a historically disadvantaged community

- (5) A completed application was submitted that complies with all information required and fees paid.

The two applications with the highest number of points shall be issued a license. In case of a tie, the licenses shall be determined through a drawing by the Mayor.

- (N) *Exceptions.* No license shall be required for the following:

- (1) Medical marijuana distribution facilities licensed or approved by the State.
- (2) The sale of non-intoxicating CBD products, which may be sold in any business establishment in the B-2, B-3, or B-4 zoning districts.

- (O) *Basis for denial, revocation or suspension of license.* In addition to the grounds enumerated in § 110.12 (B), any one of the following reasons are grounds for denying, revoking or suspending a license under this section; however, except as may otherwise be provided by law. If a license is mistakenly issued or renewed, it will be revoked upon the discovery that the applicant was ineligible for the license under this subdivision.

- (1) The applicant is under the age of 21 years.
- (2) The applicant is prohibited by federal, state or other local law, ordinance or other regulation, from holding such a license.
- (3) The applicant is applying for a location in an area that is prohibited for such use by state law or the city zoning Code or where the property line is within ~~1,000~~1,500 feet of a school ~~or 500 feet of a daycare facility.~~

- (P) *Renewals.* The renewal of a license issued under this section must be handled in the same manner as the original application. The request for a renewal must be made at least 60 days before the expiration of the current license.

§ 114.04 PERFORMANCE STANDARDS.

All intoxicating THC product license holders must meet the following conditions:

- (A) Intoxicating THC Products and edible intoxicating THC products may be sold for human or animal consumption only if all of the packaging requirements of Minn. Stat. § 151.72 subd. 3, or as may be amended.
- (B) No intoxicating THC product may contain more than 0.3% of THC.
- (C) No edible intoxicating THC product can contain an amount of any TCH that exceeds 5 mg per serving or 50 mg per package.
- (D) No intoxicating THC product may be sold to anyone under the age of 21.
- (E) No one under 21 shall be allowed to enter a specialty intoxicating THC product retailer.
- (F) Any person selling or distributing licensed products shall require proof of age by means of government issued photographic identification from the prospective purchaser showing purchaser is 21 years old or older.
- (G) Signage identifying the legal sales age and the age verification requirement shall be posted at the point of sale. The required signage shall be posted in a manner so that it is clearly visible to anyone who is considering or making a purchase.

- (H) No one under 21 shall sell intoxicating THC products.
- (I) Intoxicating THC products must comply with the testing requirements in Minn. Stat. § 151.72 subd. 4, as may be amended.
- (J) Intoxicating THC products must comply with the labeling and packaging requirements of Minn. Stat. § 151.72 subd. 5 and 5a, as may be amended.
- (K) Intoxicating THC products cannot be sold in vending machines, by transient merchants, peddlers, by a moveable place of business, through a drive-through.
- ~~(L) Intoxicating THC products cannot be sold at exclusive liquor stores.~~
- ~~(M)(L)~~ No sampling is allowed.
- ~~(N)(M)~~ No flavored inhaled intoxicating THC products may be sold.
- ~~(O)(N)~~ Retailers selling intoxicating THC products by internet sales or delivery service must utilize an independent third party age verification system.
- ~~(P)(O)~~ Retailers qualifying as a bar or restaurant that offer on-site dining or hold a liquor license of any type may sell intoxicating THC products for on-site consumption provided:
 - (1) Products are served to patrons un-opened,
 - (2) No patron may be served non-THC product alcoholic beverages while also being served intoxicating THC products,
 - (3) No more than two (2) servings of intoxicating THC products are served to any one patron per hour, and
 - (4) Opened intoxicating THC products are not permitted outside the premise.

§ 114.05 COMPLIANCE CHECKS.

- (A) All licensed retail establishments shall be open to inspection by the Police Department or other delegated law enforcement officers or agencies and city code enforcement officials during regular business hours.
- (B) From time to time, but at least once per year, a law enforcement officer shall conduct unannounced compliance checks to ensure compliance with the provisions of this chapter.
- (C) Compliance checks shall utilize persons 17 years old but less than 21 years old, to enter the retail establishments to attempt to purchase licensed products. Prior written parental or guardian consent is required for any person under the age of 18 who participates in a compliance check.
- (D) Persons used for the purpose of compliance checks shall be supervised by designated law enforcement officers.
- (E) Nothing in this chapter shall prohibit other 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.

§ 114.06 OTHER PROHIBITED ACTS.

Unless otherwise provided, the following acts shall be a violation of this chapter.

- (A) *Legal age.* It shall be unlawful for any person to sell or otherwise provide any licensed product to any person under the age of 21.
- (B) *Illegal purchase on behalf of persons under 21.* It shall be unlawful for any person to distribute Intoxicating THC licensed products to a person under the age of 21 in a public place, public meeting, on public transportation or in places of employment. It shall be unlawful for any person to purchase for, or otherwise obtain licensed products on behalf of a person under the age of 21. 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 to coerce or attempt to coerce a person under the age of 21 to obtain or use any licensed product. ~~or otherwise obtain or use any licensed product.~~
- (C) *Use of false identification.* It shall be unlawful for any person under the age of 21 to attempt to disguise the person's 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.
- (D) *Illegal possession.* It shall be unlawful for any person under the age of 21 to possess any intoxicating THC product ~~unless it is legally authorized medical marijuana or occurring in a private residence.~~ unless it is legally authorized medical marijuana or occurring in a private residence. This chapter shall not apply to persons under the age of 21 lawfully involved in a compliance check.
- (E) *Illegal use.* It shall be unlawful for any person under the age of 21 to use any intoxicating THC product, unless it is legally authorized medical marijuana or occurring in a private residence.
- (F) No person under 21 may furnish, sell or attempt to sell licensed products on behalf of a licensee.

§ 114.07 LICENSE DENIAL, SUSPENSION OR REVOCATION.

- (A) *Grounds for denial, suspension or revocation.* The City Council may deny, revoke or suspend a license for violating a provision of this chapter or for any of the reasons enumerated in § 110.12(A). In addition, the City Council shall impose a civil penalty for each violation pursuant to the city's fee schedule.
- (B) *Notice.* Notice must be provided pursuant to § 110.12(D)(1).
- (C) *Hearing.* A hearing will be conducted pursuant to § 110.12(D). It is not necessary that criminal charges be brought in order to support a determination of a license violation nor does the dismissal or acquittal of such a criminal charge operate as a bar to adverse license actions under this chapter.
- (D) *Final decision.* Following the hearing, the Council may deny, revoke, suspend or not renew the license for the retail establishments or may grant or continue the license upon such terms and conditions as it deems reasonable and necessary to accomplish the purposes of this chapter. The decision by the City Council following a hearing is final.
- (E) *Non-exclusive remedy.* Enforcement actions provided in this chapter are not exclusive, and the Council may take any action with respect to a licensee, employee or the retail establishments as is authorized by the city code, state or federal law.
- (F) *Re-application.* Upon revocation of a license, the owner must re-apply for a new license and comply with all the provisions of § 113.03.

§ 114.08 PENALTIES.

Any license issued under this section may be revoked or suspended. In addition, any person who violates any provision of this ordinance is subject to the general penalties section of city code section 10.99.

SECTION 2. FIRST YEAR LICENSE TERM. Any initial license issued after adoption of this ordinance shall be for a term from the date of issue through December 31, 2023. No application shall be accepted before November 14, 2022.

SECTION 3. SUMMARY PUBLICATION. Pursuant to Minn. Stat. § 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

The ordinance requires a license for the sale of all intoxicating THC products and establishes certain performance standards surrounding the sale of such products. Only 2 specialty intoxicating TCH product retailers (stores with more than 10% of retail floor space or 10% of its gross revenue from such products), will be allowed in the City.

SECTION 4. INTERIM ORDINANCE TERMINATION. Upon the Effective Date of this Ordinance, Ordinance 22-010 - An Interim Ordinance Establishing a Moratorium on CBD and Hemp Products for Six Months shall automatically terminate.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed by the City Council of the City of West St. Paul, Minnesota, this 13th day of March, 2023.

Attest:

David J. Napier, Mayor

Nicole Tillander, City Clerk