

**ORDINANCE MCO - 16 - 2023**

**An Ordinance Amending  
Chapter 31 Entitled “Business Licensing, Regulation and Registration”  
to Add Article XXV entitled “Transfer or Sale of THC Acetate Ester (THCO) Prohibited”  
to the Municipal Code of Ordinances of the City of Elmhurst, Illinois**

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**WHEREAS**, the City of Elmhurst (the “City”) is a home-rule unit of local government under Article VII, Section 6 of the 1970 Illinois Constitution and, except as limited by such Section, it may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, the City is authorized by the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.*) to adopt necessary ordinances to protect the health, safety, and general welfare of the citizens of the City; and

**WHEREAS**, Delta-8 tetrahydrocannabinol, also known as Delta-8 TCH (“Delta-8”), and Delta-9 tetrahydrocannabinol, also known as Delta-9 THC (“Delta-9”) are psychoactive substances typically manufactured from hemp-derived cannabidiol (“CBD”): and

**WHEREAS**, Delta-8 and Delta-9 are becoming widely available for purchase due to the 2018 Agricultural Improvement Act allowing hemp-derived products containing less than .3% THC on a dry-weight basis; and

**WHEREAS**, Delta-8 has not been approved or evaluated by the United States Food and Drug Administration for safe use in any context; and

**WHEREAS**, the United States Drug Enforcement Agency has opined that synthetically derived Delta-8 and Delta-9 are illegal controlled substances; and

**WHEREAS**, it is unlawful to sell controlled substances unless otherwise authorized by law; and

**WHEREAS**, the City of Elmhurst (the “City”) has a Commission on Youth. The Commission on Youth has requested that the City Council prohibit the sale or possession of Delta-8 and Delta-9; and

**WHEREAS**, the City’s Public Affairs & Safety Committee has recommended that the City amend its Municipal Code to prohibit the sale to or possession of Delta-8 and Delta-9; and

**WHEREAS**, the corporate authorities of the City find it desirable and in the best interest of the City to amend Chapter 31 Entitled “Business Licensing, Regulation and Registration” by adding Article XXV entitled “Transfer or Sale of THC Acetate Ester (THCO) Prohibited” of the Municipal Code of the City of Elmhurst.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and City Council of the City of Elmhurst, DuPage and Cook Counties, Illinois, as follows:

**Section 1:** The foregoing recital clauses to this Ordinance are adopted as the findings of the corporate authorities of the City of Elmhurst and are incorporated herein by specific reference.

**Section 2:** That Chapter 31 Entitled “Business Licensing, Regulation and Registration” is hereby amended by adding Article XXV entitled “Transfer or Sale of THC Acetate Ester (THCO) Prohibited” to the Municipal Code of the City of Elmhurst to read as follows:

**“Article XXV – Transfer or Sale of THC Acetate Ester (THCO) Prohibited:**

31.600           Definition.

THC acetate ester (THCO), which includes Delta-8-THCO and Delta-9-THCO, is a synthetic tetrahydrocannabinol having similar chemical structures and pharmacological activities to those contained in the Cannabis plant, according to the U.S. Department of Justice as of February 2023.

31.601            Transfer or Sale Prohibited.

It shall be unlawful for any person, including any licensee, to sell, offer for sale, give away or deliver any product that contains THC acetate ester (THCO). The provisions of this Section shall have no bearing or effect on Cannabis Business Establishments licensed by: (1) the City; and (2) the State of Illinois pursuant to the Compassionate Use of Medical Cannabis Program Act or Cannabis Regulation and Tax Act, if any.

31.602            Penalty.

Any person or licensee convicted of a violation of any of the provisions of this Section shall be subject to a fine of not less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5,000.00). The fine provided for in this Section shall be in addition to any suspension or revocation pursuant to Section 31.603 below.

31.603            Revocation or Suspension of License

In addition to the penalties outlined in Section 31.602 above, the Mayor may revoke or suspend any license issued under the City Code, if he determines that the licensee has violated any of the provisions of this Section. However, no such license shall be revoked or suspended except after a public hearing by the Mayor with a seven (7) day written notice to the licensee affording the licensee an opportunity to appear and defend the charges contained in such notice. The seven (7) day notice provision shall begin the day following delivery by certified or registered mail or by personal service.

The Mayor shall within seven (7) days after such hearing, if he determines after such hearing that the license should be revoked or suspended, and/or that the licensee should be fined, state the reason for such determination in a written order and include the amount of the fine, the period of suspension and/or that the license has been revoked. A copy of such order shall be served within the seven (7) days upon the licensee.

Any licensee determined by the Mayor to have violated any of the provisions of this Section shall pay to the City the costs of the hearing before the Mayor on such violation. The Mayor shall determine the costs incurred by the City for said hearing, including, but not limited to: court reporter's fees, the costs of transcripts or records, attorneys' fees, the cost of preparing and mailing notices and orders and all other miscellaneous expenses incurred by the City.

The licensee shall pay said costs to the City within thirty (30) days of notification of the costs by the Mayor. Failure to pay said costs within thirty (30) days of notification is a violation of this Section."

**Section 3:**        That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 4:** This Ordinance shall be in full force and effect after its passage, approval and publication in the manner provided by law.

ADOPTED this 20th day of November, 2023, pursuant to a roll call vote as follows:

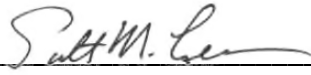
AYES: 14

NAYS: 0


ABSENT: 0

ABSTENTION: 0

APPROVED by me this 20th day of November, 2023.

  
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Scott M. Levin, Mayor of the City of Elmhurst,  
DuPage and Cook Counties, Illinois

ATTESTED and filed in my office,  
this 20th day of November, 2023.

  
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Jackie Haddad-Tamer, City Clerk of the City of  
Elmhurst, DuPage and Cook Counties, Illinois

## **COUNCIL ACTION SUMMARY**

**SUBJECT:** An Ordinance Amending Chapter 31 entitled “Business Licensing, Regulation and Registration” by Adding Article XXV entitled “Transfer or Sale of TCH Acetate Ester (THCO) Prohibited” of the Municipal Code of the City of Elmhurst.

**ORIGINATOR:** City Attorney

### **DESCRIPTION OF SUBJECT MATTER:**

Pursuant to the recommendation of the Public Affairs & Safety Committee, City Attorney prepared an ordinance amending the City’s municipal code to prohibit the transfer or sale of Delta-8 tetrahydrocannabinol (“Delta-8”) or Delta-9 tetrahydrocannabinol (“Delta-9”) as the United States Drug Enforcement Agency has opined that Delta-8 and Delta-9 are illegal controlled substances.