

ORDINANCE 2021-1004

AN ORDINANCE OF THE CITY OF ONIDA, A POLITICAL SUBDIVISION OF THE STATE OF SOUTH DAKOTA, CREATING LICENSING PROVISIONS FOR CANNABIS ESTABLISHMENTS

BE IT ORDAINED by the Onida City Council that a new ordinance creating licensing provisions for cannabis establishments is as follows:

SECTION 1: PURPOSE AND INTENT

The City Council of Onida enacts the following licensing ordinances in order to ensure that cannabis establishments within the City operate in a manner which complies with State laws and regulations, protects the health, safety, and welfare of the general public, prevents potential conflicts and issues arising from ownership and employees, recognizes certain safety and security considerations, and minimizes risk of unauthorized use or access of cannabis by the general public.

SECTION 2: DEFINITIONS

Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for cannabis-related terms which are defined by SDCL 34-20G-1 and associated administrative rules. For the purposes of this ordinance, cannabis and medical cannabis terms will be considered interchangeable.

SECTION 3: LICENSE REQUIRED

- (a) No cannabis establishment may be located or operate within the City of Onida without the appropriate valid and current cannabis establishment license issued by the City pursuant to this article. A violation of this provision is subject to the general penalty provision in Section 16 of this ordinance. Each day of the violation constitutes a separate offense.
- (b) No cannabis establishment may be located or operate in the City of Onida without the appropriate valid and current cannabis establishment registration certificate issued by the South Dakota Department of Health pursuant to SDCL 34-20G and any administrative rules promulgated thereunder. A violation of this provision is subject to the general penalty provision in Section 16 of this ordinance. Each day of the violation constitutes a separate offense.

SECTION 04: LICENSE APPLICATION

- (a) An application for a cannabis establishment license must be made on a form provided by the City. No other application form will be considered.
- (b) The applicant must submit the following:
 - 1. Application fee of \$5,000.
 - 2. An application that will include, but is not limited to, the following:
 - i. The legal name of the prospective cannabis establishment;

- ii. The physical address of the prospective cannabis establishment that meets the requirements under the Zoning Ordinances of City of Onida, as well as any location requirements pursuant to SDCL 34-20G and the administrative rules promulgated thereunder;
- iii. The name, address, and birth date of each principal officer, owner, and board member of the proposed cannabis establishment;
- iv. A sworn statement that no principal officer, owner, or board member has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction;

SECTION 05: ISSUANCE OF LICENSE

(a) The City will issue a license unless:

1. The applicant has made a false statement on the application or submits false records or documentation;
2. Any principal officer, owner, or board member of the applicant is under the age of twenty-one (21) years;
3. Any principal officer, owner, or board member of the applicant has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction;
4. The proposed location does not meet the applicable requirements under the Zoning Ordinances of the City of Onida;
5. The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder;
6. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation;
7. Any principal officer, owner, or board member of the applicant has had a cannabis establishment license revoked by the City of Onida or a registration certificate revoked by the State of South Dakota;
8. An applicant, or a principal officer, owner, or board member thereof, is overdue in payment to the City of Onida of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment;
9. The applicant will not be operating the business for which the license would be issued.

(b) The City of Onida will reject the application if the limit on the number of cannabis establishments has been reached as established in Section 7 of this ordinance.

(c) The license must be posted in a conspicuous place at or near the entrance to the cannabis establishment so that it may be easily read at any time.

SECTION 06: CITY NEUTRALITY AS TO APPLICANTS

Upon request from the South Dakota Department of Health as to the City's preference of applicants, the City of Onida will neither support nor oppose any registration certificate application under consideration by the Department. Likewise, if inquiry is made by the Department, the City of Onida will abstain from endorsing any application as beneficial to the community but may provide information concerning site suitability or other factors.

SECTION 07: NUMBER OF CANNABIS DISPENSARIES

- (a) No (0) cannabis cultivation facility shall be allowed to operate in the unincorporated area of the City at any time.
- (b) No more than one (1) cannabis dispensary shall be allowed to operate in the unincorporated area of the City at any time.
- (c) No (0) cannabis product manufacturing facility shall be allowed to operate in the unincorporated area of the City at any time.
- (d) No (0) cannabis testing facility shall be allowed to operate in the unincorporated area of the City at any time.

SECTION 08: EXPIRATION OF LICENSE AND RENEWAL

- (a) Each license expires one year from the date of issuance and may be renewed only by making application as provided in Section 04 of this ordinance. Application for renewal must be submitted at least thirty (30) days before the expiration date. The license holder must continue to meet the licensing requirements to be eligible for a renewal.
- (b) The renewal fee is \$5,000.
- (c) Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the City may order closure of the cannabis establishment.
- (d) If a license holder has not operated an establishment for which it holds a license for at least ninety (90) days in the preceding twelve (12) months, the license will not be renewed.

SECTION 09: SUSPENSION

- (a) A license may be suspended if the license holder or an employee or agent of the license holder:
 - 1. Violates or is otherwise not in compliance with any section of this article;
 - 2. Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment;
 - 3. Knowingly dispenses or provides cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.

- (b) A license may be suspended if the license holder has its South Dakota Department of Health-issued registration certificate suspended, revoked, or not renewed by the Department or if the registration certificate is expired.
- (c) A license may be suspended if the license holder creates or allows to be created a public nuisance at the cannabis establishment.

SECTION 10: REVOCATION

- (a) A license may be revoked if the license is suspended under Section 09 of this ordinance and the cause for the suspension is not remedied.
- (b) A license may be revoked if the license is subject to suspension under Section 09 of this ordinance because of a violation outlined in that section and the license has been previously suspended in the preceding twenty-four (24) months.
- (c) A license is subject to revocation if a license holder or employee of a license holder:
 - 1. Gave false or misleading information in the material submitted during the application process;
 - 2. Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises;
 - 3. Operated the cannabis establishment or the business of the cannabis establishment for which a license is required under this article while the license was suspended;
 - 4. Repeated violations of Section 09 of this ordinance;
 - 5. Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility conducting cannabis testing functions without a cannabis testing establishment license);
 - 6. A license holder, or a principal officer, owner, or board member thereof, is delinquent in payment to the city, county, or state for any utilities, taxes, or fees related to the cannabis establishment;
 - 7. A license holder, or a principal officer, owner, or board member thereof, has been convicted of, or continues to employ an employee who has been convicted of, a disqualifying felony offense as defined by SDCL 34-20G;
 - 8. The license holder has its South Dakota Department of Health-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired;
 - 9. The license holder allows a public nuisance to continue after notice from the City of Onida.

SECTION 11: SUSPENSION AND REVOCATION PROCESS

- (a) The license holder will receive a notice of intent to suspend or notice of intent to revoke informing the license holder of the violation and the City's intention to suspend or revoke the license. The notice will be hand delivered to the license holder or an employee or agent of the license holder or sent by certified mail, return receipt requested, to the physical address of the cannabis establishment.
- (b) If the license holder disputes the suspension or revocation, the license holder has ten (10) days from the postmark date on the notice or the date the notice was hand delivered to request a hearing before a hearing panel, which will consist of the City Council, Mayor, Finance Officer, Sheriff, and City Attorney.
- (c) A suspension will be for thirty (30) days and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder exercises its right to process and appeal, in which case the suspension takes effect upon the final determination of suspension.
- (d) A revocation will be for one (1) year and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder appeals the revocation, in which case the revocation takes effect upon the final determination of revocation.
- (e) The license holder who has had the license revoked may not be issued any cannabis establishment license for one year from the date the revocation became effective.

SECTION 12: APPEAL

An applicant or license holder who has been denied a license or renewal of a license or who has had a license suspended or revoked under this article may appeal to the City Council of Onida by submitting a written appeal within ten (10) days of the postmark on the notice of denial, nonrenewal, suspension, or revocation. The written appeal must be submitted to Onida City Finance Office, 117 S. Main, PO Box 72, Onida, South Dakota 57564. The appeal will be considered by City Council at a regularly scheduled meeting within one month of the receipt of the appeal.

SECTION 13: LICENSES NOT TRANSFERRABLE

No cannabis establishment license holder may transfer the license to any other person or entity either with or without consideration, nor may a license holder operate a cannabis establishment at any place other than the address designated in the application.

SECTION 14: HOURS OF OPERATION FOR DISPENSARIES

A cannabis dispensary may only operate between the hours of 8:00 a.m. and 8:00 p.m. Monday through Thursday.

SECTION 15: LIABILITY FOR VIOLATIONS

Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee or agent of a cannabis establishment that constitutes grounds for suspension or revocation will be imputed to the cannabis establishment license holder for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director or general partner or a person who managed, supervised or controlled the operation of the cannabis establishment, knowingly allowed such act to occur on the premises.

SECTION 16: PENALTIES

Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this article is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations are punishable by a maximum fine of five hundred dollars (\$500.00). Each day a cannabis establishment so operates is a separate offense or violation.

SECTION 17: SEVERABILITY

The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.

LaJena Gruis

Attest:

Rondha Hiller, Finance Officer

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