

ONEIDA INDIAN NATION CANNABIS ORDINANCE

Ordinance No.: O-22-01

Pursuant to the authority vested in the Oneida Indian Nation (the “Nation”) by virtue of its sovereignty and inherent powers of self-government, the Nation adopts and enacts this Cannabis ordinance, for the purpose of ensuring, facilitating and encouraging the safe and responsible use and possession of Cannabis and operation of Cannabis activities on Nation lands within the Oneida Reservation.

Article I – General Provisions

1. This Ordinance, and any rules and regulations promulgated under this Ordinance, shall govern the use, possession, growing, cultivation, processing, distribution and sale of Cannabis and/or Cannabis Product occurring on Nation Land in order to promote the welfare and security of the Nation and its Members and protect public health and safety.
2. This Ordinance further amends the Penal Code and the Vehicle and Traffic Code as such codes relate to Cannabis as set forth in Article IV and Article V below.
3. The Nation Representative(s) shall interpret and implement this Ordinance and shall promulgate rules and regulations to fulfill the Nation’s interest in promoting and encouraging safe and responsible Cannabis activities on Nation Lands.

Article II – Definitions

Unless otherwise expressly stated in this Ordinance, including in the Penal Code as amended by this Ordinance, the following terms shall have the meanings set forth below:

1. “Cannabis” means all parts of the plant of the genus Cannabis, whether growing or not; the seeds of such plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, but excluding the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted from the stalk), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination, and also excluding hemp, cannabinoid hemp or hemp extract, each of which shall be defined in regulations promulgated under this Ordinance.
2. “Cannabis Product” means Cannabis, Concentrated Cannabis, and Cannabis Infused Products for use by a Cannabis consumer (as defined in the Regulations promulgated pursuant to Article III below).
3. “Cannabis Infused Product” means products that have been manufactured and contain either Cannabis or Concentrated Cannabis and other ingredients that are intended for use or consumption.
4. “Concentrated Cannabis” means (a) the separated resin, whether crude or purified, obtained from Cannabis; or (b) a material, preparation, mixture, compound or other substance which contains more than the Total THC concentration limit(s) as set forth in the regulations promulgated under this Ordinance, which such concentration limit(s) may be modified from time to time by regulations promulgated under this Ordinance.

5. "Nation Lands" means lands possessed by the Nation within the Oneida Reservation.
6. "Penal Code" means the Oneida Indian Nation Penal Code, as amended by this Ordinance.
7. "Commission" or "Cannabis Commission" means the Oneida Indian Nation Cannabis Commission established by this Ordinance.
8. "THC" means Delta-9-tetrahydrocannabinol; Delta-8-tetrahydrocannabinol; Delta-10-tetrahydrocannabinol and the optical isomer of such substances.
9. "Total THC" means the sum of the percentage by weight or volume measurement of tetrahydrocannabinolic acid multiplied by 0.877, plus, the percentage by weight or volume measurement of THC, which such calculation may be modified from time to time by regulations promulgated under this Ordinance.
10. "Vehicle and Traffic Code" means the Oneida Indian Nation Vehicle and Traffic Code, as amended by this Ordinance.

Article III –Authorized Cannabis Activities

1. The introduction, cultivation, processing, distribution, sale or possession of Cannabis and Cannabis Product shall be unlawful on Nation Lands unless such activities are authorized by, and in compliance with the terms of, this Ordinance, the regulations promulgated under this Ordinance and such other applicable laws of the Nation, including, without limitation, the Penal Code.
2. The Nation Representative(s) shall have the authority to promulgate regulations, standards, rules and administrative guidelines as the Nation Representative(s) deems appropriate in order to carry out the purposes of this Ordinance (the "**Regulations**"), which shall include, without limitation, authorized Cannabis activities, licensure of Cannabis activities, taxation of Cannabis activities and other standards and requirements as deemed necessary.
3. Notwithstanding anything to the contrary contained in this Ordinance, no person(s) may plant, cultivate, harvest, dry, process or possess Cannabis within, or on the grounds of, a residence located on Nation lands, unless such activities are authorized by the Regulations, which shall be enacted, and enforced, to regulate the actions and conduct set forth in Section 729 of the Penal Code (the "**Cannabis Home Possession Regulations**"). The Cannabis Home Possession Regulations shall not, and shall not be deemed to, permit the sale of Cannabis or Cannabis Product within, or on the grounds of, a residence located on Nation lands.
4. The Cannabis Commission shall issue a separate license required under the Regulations to each place, facility or location on Nation Lands where Cannabis activities authorized under this Ordinance and the Regulations are conducted.
5. On an annual basis, the Nation shall require, and contract for, an independent third party to assess and report to the Nation Representative(s) and the Cannabis Commission, regarding the compliance, of Cannabis activities and/or operators on Nation Lands, with this Ordinance and the Regulations.

Article IV –Cannabis Commission

1. The Nation Cannabis Commission is hereby established as a governmental department of the Nation to regulate and oversee the use, possession, growing, cultivation, processing, distribution and sale of Cannabis and/or Cannabis Product occurring on Nation Land. Except as otherwise provided in this Ordinance, the Commission is vested with the sole regulatory control and jurisdiction over the use, possession, growing, cultivation, processing, distribution and sale of Cannabis and/or Cannabis Product occurring on Nation Land and over all licensing of any and all persons authorized to conduct such activities.
2. The Cannabis Commission shall consist of one or more members who shall be appointed the Nation Representative(s), each of whom shall carry the title “Cannabis Commissioner”. Cannabis Commissioners shall serve at the will of the Nation Representative(s). Any vacancy on the Commission may, but need not, be filled by the Nation Representative(s). The Nation Representative(s) may increase or decrease the number of members serving on the Commission. A Cannabis Commissioner may be a member or non-member of the Nation, shall be a government appointee, and, in order to avoid conflicts of interest, may not have a financial or personal interest in, which includes employment by or management responsibility for, any Cannabis business operating on Nation Lands.
3. The Commission shall have the following powers and authorities:
 - A. To license any Cannabis operation and/or facility on Nation Lands as may be required by this Ordinance and/or the Regulations, and to enter and inspect at any time any facility in which Cannabis operations are conducted pursuant to this Ordinance.
 - B. To investigate any aspect of a Cannabis operation to determine such operation’s compliance with this Ordinance and the Regulations, and, in doing so, to require and review any records of or concerning any Cannabis operation and to compel any person employed by any such operation, or doing business with such operations, to appear before it and to provide such information, records or other materials as may be in their possession to assist in any investigation.
 - C. To receive any complaint from an employee of any Cannabis operation or any member of the public who is or claims to be adversely affected by an act or omission of a Cannabis operation that is asserted to violate this Ordinance or the Regulations, and may upon consideration of such complaint take such enforcement actions as authorized by the Regulations. The Commission may for this purpose, in its sole discretion, conduct a hearing and receive evidence with regard to such complaint if it deems an evidentiary proceeding useful in the resolution of such complaint.
4. A final enforcement action of the Commission may be challenged by a Cannabis operation in Oneida Indian Nation Court by filing with the Court a complaint pursuant to the Oneida Indian Nation Rules of Civil Procedure.
5. Notwithstanding anything to the contrary contained in this Ordinance, while the Commission may recommend Regulations to be adopted by the Nation, the Nation Representative(s) have the sole power to promulgate and approve Regulations under this Ordinance.

Article IV – Amendment of Penal Code

1. Chapter 4(I), Section 706 (Controlled Substances; Definitions), subsection 5, of the Penal Code shall be amended to read as follows:

“5. “Controlled Substance” means any substance listed in Schedule I, II, III, IV or V of section thirty-three hundred six of the New York public health law, as amended.”

2. Chapter 4(I), Section 706 (Controlled Substances; Definitions), subsection 9, of the Penal Code shall be amended to read as follows:

“9. “Hallucinogen” means any controlled substance listed in paragraphs (5), (17), (18), (19), (20) and (21) of subdivision (d) of Schedule I of section thirty-three hundred six of the New York public health law, as amended.”

3. Chapter 4(I), Section 706 (Controlled Substances; Definitions), subsection 10 of the Penal Code shall be amended to read as follows:

“10. “Hallucinogenic substance” means any controlled substance listed in schedule I (d) other than lysergic acid diethylamide or a hallucinogen.”

4. Chapter 4(I), Section 706 (Controlled Substances; Definitions) of the Penal Code is amended by deleting subsection 6 in its entirety and replacing it with the following:

“6. [REPEALED]”.

5. Chapter 4(I), Section 708 (Criminal Possession of a Controlled Substance in the Fifth Degree) of the Penal Code is amended by deleting subsection 4 in its entirety and replacing it with the following:

“4. [REPEALED]”.

6. Chapter 4(I), Section 708 (Criminal Possession of a Controlled Substance in the Fourth Degree) of the Penal Code is amended by deleting subsection 10 in its entirety and replacing it with the following:

“10. [REPEALED]”.

7. Chapter 4(I), Section 713 (Criminal Possession of a Controlled Substance; Presumption) of the Penal Code is amended by deleting the word “marihuana” from the first line of subsection 2.

8. Chapter 4(I), Section 715 (Criminal Sale of a Controlled Substance in the Fourth Degree) of the Penal Code is amended by deleting subsection 3 in its entirety and replacing it with the following:

“3. [REPEALED]”.

9. Chapter 4(I), Sections 726 through 737 of the Penal Code are amended by deleting such sections in their entirety and replacing such sections with the following:

“726 CANNABIS; DEFINITIONS

1. “Cannabis” shall have the meaning set forth in Article II of Oneida Indian Nation Ordinance O-21-01.

2. "Concentrated cannabis" shall have the meaning set forth in Article II of Oneida Indian Nation Ordinance O-21-01.
3. For the purpose of Chapter 4(I), Sections 726 through 737-b of the Penal Code, "sell" shall mean to sell, exchange or dispose of for compensation. "Sell" shall not include the transfer of cannabis or concentrated cannabis between persons twenty-one years of age or older without compensation in the quantities authorized in Section 727(1)(b) of this Penal Code.
4. For the purpose of Chapter 4(I), Sections 726 through 737-b of this Penal Code, "smoking" means the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains cannabis including the use of an electronic smoking device that creates an aerosol or vapor.

727 PERSONAL USE OF CANNABIS

Notwithstanding any other provision of applicable law to the contrary:

1. The following acts are lawful for persons twenty-one years of age or older:
 - (a) possessing, displaying, purchasing, obtaining, or transporting up to three ounces of cannabis and up to twenty-four (24) grams of concentrated cannabis;
 - (b) transferring, without compensation, to a person twenty-one years of age or older, up to three ounces of cannabis and up to twenty-four (24) grams of concentrated cannabis;
 - (c) using, smoking, ingesting, or consuming cannabis or concentrated cannabis unless otherwise prohibited by Oneida Indian Nation law;
 - (d) possessing, using, displaying, purchasing, obtaining, manufacturing, transporting or giving to any person twenty-one (21) years of age or older cannabis paraphernalia or concentrated cannabis paraphernalia;
 - (e) planting, cultivating, harvesting, drying, processing or possessing cultivated cannabis in accordance with 729 of this Penal Code; and
 - (f) assisting another person who is twenty-one (21) years of age or older, or allowing property to be used, in any of the acts described in (a) through (e) of this subsection.
2. Lawfully possessed cannabis, concentrated cannabis, cannabis paraphernalia or concentrated cannabis is not contraband and is not subject to seizure or forfeiture of assets under the Penal Code, Oneida Indian Nation Regulations of Criminal Procedure, Oneida Indian Nation Regulations of Civil Procedure or other applicable law, and no conduct deemed lawful by this section shall constitute the basis for approach, search, seizure, arrest or detention.
3. Except as provided in subsection four of this section, in any criminal proceeding including proceedings pursuant to Section 210(b) of the Oneida Indian Nation Criminal Procedure Law, no finding or determination of reasonable cause to believe a crime has been committed shall be based solely on evidence of the following facts and circumstances, either individually or in combination with each other:
 - (a) the odor of cannabis;
 - (b) the odor of burnt cannabis;
 - (c) the possession of or the suspicion of possession of cannabis or concentrated cannabis in the amounts authorized in this Penal Code;
 - (d) the possession of multiple containers of cannabis without evidence of concentrated cannabis in the amounts authorized in this Penal Code;
 - (e) the presence of cash or currency in proximity to cannabis or concentrated cannabis; or

(f) the planting, cultivating, harvesting, drying, processing or possessing cultivated cannabis in accordance with Section 729 of this Penal Code.

4. Paragraph (b) of subsection three of this section shall not apply when a law enforcement officer is investigating whether a person is operating a motor vehicle, vessel or snowmobile while impaired by drugs or the combined influence of drugs or of alcohol and any drug or drugs in violation of Section 823 of the Penal Code or the Oneida Indian Nation All-Terrain Vehicle Ordinance (Ordinance O-04-07). During such investigations, the odor of burnt cannabis shall not provide probable cause to search any area of a vehicle that is not readily accessible to the driver and reasonably likely to contain evidence relevant to the driver's condition.

728 RESTRICTIONS ON CANNABIS USE

Notwithstanding Section 727 of the Penal Code, unless otherwise authorized by regulation, no person shall (i) smoke or vape cannabis in a location where smoking or vaping cannabis is prohibited pursuant to Oneida Indian Nation law, any workplace policy of a business or other workplace located on Nation Lands or any other Nation policy, including, without limitation, the Oneida Indian Nation Smoke Free-Access Ordinance (O-06-03), the Oneida Indian Nation Land Use, Environmental, Health & Safety Ordinance (O-14-03) and the Oneida Indian Nation Regulations Governing E-Cigarettes and Vaping Products, as amended; or (ii) smoke, vape or ingest cannabis or concentrated cannabis in or upon the grounds of a facility whose purposes is the education, or educational support, of pupils who are under the age of eighteen or in or on a motor vehicle operated for the transportation of pupils who are under the age of eighteen, children of pupils, teachers and other persons acting in a supervisory capacity, to or from such educational facility or associated educational or learning activities, or privately owned and operated for compensation for the transportation of pupils who are under the age of eighteen, children of pupils, teachers and other persons acting in a supervisory capacity, to or from such educational facility or associated educational or learning activities.

Notwithstanding any other section of Oneida Indian Nation law, violations of restrictions on cannabis use under this Section 728 of the Penal Code are subject to a civil penalty not exceeding twenty-five dollars per violation or an amount of community service not exceeding twenty hours per violation.

729 PERSONAL HOME POSSESSION OF CANNABIS

1. **Possession Limits.** Except as may be authorized under Oneida Indian Nation Ordinance O-21-01, or any regulations promulgated under such Ordinance, the planting, cultivating, harvesting, drying, processing or possessing of cannabis plants within a private residence, or on the grounds of a private residence, shall be subject to the following:
 - (a) there shall be a per person limit of no more than three (3) mature cannabis plants (as defined in the Cannabis Home Possession Regulations) and three (3) immature cannabis plants (as defined in the Cannabis Home Possession Regulations) within a private residence, or on the grounds of a private residence, at any one time;
 - (b) there shall be a per household limit of no more than six (6) mature and six (6) immature cannabis plants within any private residence, or on the grounds of a person's private residence, at any one time; and
 - (c) no person under the age of twenty-one (21) may, plant, cultivate, harvest, dry, process or possess cannabis plants within a private residence, or on the grounds of a private residence.

2. The personal possession of cannabis shall only be permitted within, or on the grounds of, a person's private residence. Notwithstanding this Section 729 of the Penal Code or any Cannabis Home Possession Regulations (as defined in Oneida Indian Nation Ordinance O-21-01), sale of cannabis or cannabis product within, or on the grounds of, such private residence shall be unlawful.
3. Any mature or immature cannabis plant described in subsection one of this section, and any cannabis produced by any such cannabis plant or plants cultivated, harvested, dried, processed or possessed pursuant to subsection one of this section shall be stored within such person's private residence or on the grounds of such person's private residence. Such person shall take reasonable steps designed to ensure that such cultivated cannabis is in a secured place and not accessible to any person under the age of twenty-one (21).
4. A person may lawfully possess up to five (5) pounds of cannabis, inclusive of the per household plant limits set forth in subsection 1(b) of this Section 729 of the penal Code, in their private residence or on the grounds of such person's private residence. Such person shall take reasonable steps designed to ensure that such cannabis is in a secured place not accessible to any person under the age of twenty-one (21).
5. A violation of Section 729 of this Penal Code may be subject to a civil penalty of up to one hundred twenty-five dollars per violation, *provided*, that any sale of cannabis or cannabis product within, or on the grounds of, such private residence shall be further subject to Sections 730 through 736-b of this Penal Code, and the penalties contained in such sections.
6. Subsections one through four of this Section 729 of the Penal Code shall not take effect until such a time as the Cannabis Home Possession Regulations, if any, have been issued.

730 UNLAWFUL POSSESSION OF CANNABIS

Subject to Section 729 of the Penal Code, a person is guilty of unlawful possession of cannabis when he or she knowingly and unlawfully possesses cannabis and such cannabis weighs more than three ounces or concentrated cannabis and such concentrated cannabis weighs more than twenty-four grams.

Unlawful possession of cannabis under this Section 730 of the Penal Code is a violation punishable by a fine of not more than one hundred twenty-five dollars per violation.

731 CRIMINAL POSSESSION OF CANNABIS IN THE THIRD DEGREE

Subject to Section 729 of the Penal Code, a person is guilty of criminal possession of cannabis in the third degree when he or she knowingly and unlawfully possesses (i) cannabis and such cannabis weighs more than sixteen ounces; or (ii) concentrated cannabis and such concentrated cannabis weighs more than five ounces.

Criminal possession of cannabis in the third degree is a class A misdemeanor.

732 CRIMINAL POSSESSION OF CANNABIS IN THE SECOND DEGREE

A person is guilty of criminal possession of cannabis in the second degree when he or she knowingly and unlawfully possesses (i) cannabis and such cannabis weighs more than five pounds; or (ii) concentrated cannabis and such concentrated cannabis weighs more than two pounds.

Criminal possession of cannabis in the second degree is a class E felony.

733 CRIMINAL POSSESSION OF CANNABIS IN THE FIRST DEGREE

A person is guilty of criminal possession of cannabis in the first degree when he or she knowingly and unlawfully possesses (i) cannabis and such cannabis weighs more than ten pounds; or concentrated cannabis and such concentrated cannabis weighs more than four pounds.

Criminal possession of cannabis in the first degree is a class D felony.

734 UNLAWFUL SALE OF CANNABIS

A person is guilty of unlawful sale of cannabis when he or she knowingly and unlawfully sells cannabis or concentrated cannabis.

Unlawful sale of cannabis under this Section 734 of the Penal Code is a violation punishable by a fine of not more than two hundred fifty dollars per violation.

735 CRIMINAL SALE OF CANNABIS IN THE THIRD DEGREE

A person is guilty of criminal sale of cannabis in the third degree when (i) he or she knowingly and unlawfully sells more than three ounces of cannabis or more than twenty-four grams of concentrated cannabis; or (ii) being twenty-one years of age or older, he or she knowingly and unlawfully sells or gives, or causes to be given or sold, cannabis or concentrated cannabis to a person less than twenty-one years of age; except that in any prosecution under this subsection (ii), it is a defense that the defendant was less than three years older than the person under the age of twenty-one at the time of the offense.

Criminal sale of cannabis in the third degree is a class A misdemeanor.

736 CRIMINAL SALE OF CANNABIS IN THE SECOND DEGREE

A person is guilty of criminal sale of cannabis in the second degree when (i) he or she knowingly and unlawfully sells more than sixteen ounces of cannabis or more than five ounces of concentrated cannabis; or (ii) being twenty-one years of age or older, he or she knowingly and unlawfully sells or gives, or causes to be given or sold, more than three ounces of cannabis or more than twenty-four grams of concentrated cannabis to a person less than eighteen years of age.

Criminal sale of cannabis in the second degree is a class E felony.

736-a CRIMINAL SALE OF CANNABIS IN THE FIRST DEGREE

A person is guilty of criminal sale of cannabis in the first degree when he or she knowingly and unlawfully sells more than five pounds of cannabis or more than two pounds of concentrated cannabis.

Criminal sale of cannabis in the first degree is a class D felony.

736-b AGGRAVATED CRIMINAL SALE OF CANNABIS

A person is guilty of aggravated criminal sale of cannabis when he or she knowingly and unlawfully sells cannabis or concentrated cannabis weighing one hundred pounds or more.

Aggravated criminal sale of cannabis is a class C felony.

737 LICENSING OF CANNABIS PRODUCTION AND DISTRIBUTION; DEFENSE

In any prosecution for an offense involving cannabis under Sections 726 through 736-b of this Penal Code, it is a defense that the defendant was engaged in such activity in compliance with Oneida Indian Nation Ordinance O-21-01 and/or the rules and regulations promulgated under such Ordinance.”

10. Chapter 4(N), Section 831 (Unlawfully Dealing with a Child in the First Degree) of the Penal Code shall be amended to read as follows:

“A Native American is guilty of unlawfully dealing with a child in the first degree when:

1. he or she knowingly permits a child less than sixteen years old to enter or remain in or upon a place, premises or establishment where Sexual Contact as defined by Section 457 or activity involving Controlled Substances as defined by Section 706(5) is maintained or conducted, and he knows or has reason to know that such activity is being maintained or conducted; or
2. he or she gives or sells or causes to be given or sold any alcoholic beverage to a person less than twenty-one years old.

It is no defense to a prosecution pursuant to subsection two of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Unlawfully dealing with a child in the first degree is a misdemeanor.”

Article V – Amendment of Vehicle and Traffic Code

1. Section 102 of Chapter 1 of the Vehicle and Traffic Code (Definitions) is amended by amending the definition of the term “drug” to read as follows:

““Drug” when used in this chapter, means and includes any substance listed in section thirty three hundred six of the New York Public Health Law, and cannabis and concentrated cannabis as defined in Article II of Oneida Indian Nation Ordinance O-21-01.”

Article VI – Interpretation

1. The Nation does not, by enacting this Ordinance, waive in any respect its sovereign immunity, or that of its agents or officers, in any manner, under any law, for any purpose, or in any place.
2. This Ordinance is not subject to review or modification in any state or federal court or by an authority outside the Nation and is not subject to review or modification in any Nation court. Nothing in

this Ordinance shall constitute, or be construed as, the Nation's consent to the extension of jurisdiction by the State of New York or by any municipality over matters coming within the purview of this Ordinance.

3. This Ordinance does not apply to drug products approved by the Federal Food and Drug Administration.


4. This Ordinance does not create any right, cause of action or benefit enforceable at law or in equity by any person against the Nation, its agents, its officers or employees, or any other person.

5. This Ordinance does not in any way confer upon the Nation criminal jurisdiction over non-Indians.

Article VII – Effective Date

This Ordinance is effective upon its enactment.

Enacted this 8 day of February, 2022.


Ray Halbritter
Nation Representative(s)