ORDINANCE NO. 147

AN ORDINANCE ADDING CHAPTER 4-8 TO THE ORDINANCES OF THE TOWN OF ROSLYN CREATING LICENSING PROVISIONS FOR CANNABIS ESTABLISHMENTS

BE IT ORDAINED by the Board of Trustees of the Town of Roslyn that “Title 4: Licenses” of the Ordinances of the Town of Roslyn is hereby amended by adding new Chapter 4-8 as follows:

 **4-8-1: PURPOSE AND INTENT**

The Board of Trustees of the Town of Roslyn enacts the following licensing ordinances in order to ensure that cannabis establishments within the municipal boundaries of the Town 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.

 **4-8-2: 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.

 Cannabis (or Marijuana): all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

 Cannabis Cultivation Facility: in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

 Cannabis Dispensary: in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

 Cannabis Establishment: cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

Cannabis Product Manufacturing Facility: in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

Cannabis Products: any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures.

Cannabis Testing Facility: in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

Department: the South Dakota Department of Health

**4-8-3 LICENSE REQUIRED**

(a) No cannabis establishment may be located or operate in the Town without the appropriate valid

 and current cannabis establishment license issued by the Town pursuant to this article, subject

 to Section 4-8-17 set forth below. Each day of the violation constitutes a separate offense.

 (b) No cannabis establishment may be located or operate in the Town without the appropriate

 valid and current cannabis establishment registration certificate issued by the Department

 pursuant to rules promulgated under SDCL 34-20G. A violation of this provision is subject to

 Section 4-8-17 set forth below. Each day of the violation constitutes a separate offense.

 **4-8-4: LICENSE APPLICATION**

(a) An application for a cannabis establishment license must be made on a form provided by the Town. No other application form will be considered.

 (b) The applicant must submit the following:

 1. Application fee of $5,000. The Town will reimburse $2,500 for applicants who fail to obtain a registration certificate from the South Dakota Department of Health.

 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 location

 requirements pursuant SDCL 34-20G and the administrative rules promulgated

 thereunder as well as the location requirement set forth in this ordinance.

 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.

 v. Any additional information requested by the Town.

 **4-8-5: ISSUANCE OF LICENSE**

(a) The Town will issue a license unless:

 1. The applicant has made a false statement on the application or submits false records or

 documentation; or

 2. Any owners, principal officer, or board member of the applicant is under the age of twenty-

 one (21) years; or

 3. Any owner, principal officer, or board member of the applicant has been convicted of a

 violent felony offense in the previous ten (10) years in any jurisdiction; or

 4. The proposed location does not meet all location requirements under SDCL 34-20G and the

 administrative rules promulgated thereunder and the location requirements set forth in this

 ordinance; or

 5. The license is to be used for a business prohibited by state or local law, statute, rule,

 ordinance, or regulation; or

 6. Any owner, principal officer, or board member of the applicant has had a cannabis

 establishment license revoked by the Town or a registration certificate revoked by the state;

 or

 7. An applicant, or an owner, principal officer, or board member thereof, is overdue in

 payment to the Town of taxes, fees, fines, or penalties assessed against or imposed upon the

 applicant in relation to any cannabis establishment; or

 8. The applicant will not be operating the business for which the license would be issued.

(b) In the case of an application for a cannabis dispensary license, the Town will reject the

 application if the limit on the number of cannabis dispensaries has been reached.

 (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.

**4-8-6: TOWN NEUTRALITY AS TO APPLICANTS**

1. Upon request from the Department as to the Town’s preference of applicants, the Town will neither support nor oppose any registration certificate application under consideration by the Department. Likewise, if inquiry is made by the Department, the Town will abstain from endorsing any application as beneficial to the community.

 **4-8-7: NUMBER OF CANNABIS ESTABLISHMENTS**

(a) No more than one (1) cannabis dispensaries shall be allowed to operate in the Town at any

 time. No other cannabis establishments shall be allowed to operate in the Town.

 **4-8-8. LOCATION OF CANNIBIS ESTABLISHMENTS**

1. A cannabis establishment shall be located not less than 1,000 feet from a public or private

 school existing before the date of the cannabis establishment application;

1. A cannabis establishment shall be located not less than 500 feet from single family or multi-

family homes, a public park, ball field, long term care facility, and/or day care center or other cannabis establishment existing before the date of the cannabis establishment application.

**4-8-9: 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 4-8-4. Application for renewal must be submitted at least

 thirty (30) days before the expiration date. The license holder must continue to meet the

 license requirements to be eligible for a renewal.

(b) The renewal fee is $5,000. The Town will reimburse $2,500 for applicants who fail to obtain a

 renewal of their registration certificate from the Department.

1. Failure to renew a license in accordance with this section may result in additional fees. Upon

expiration of the license, the Town may order closure of the cannabis establishment.

1. If a license holder has not operated an establishment for which it holds a license in the

preceding twelve (12) months, the license will not be renewed.

 **4-8-10: 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 Department-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.

**4-8-11: REVOCATION**

(a) A license may be revoked if the license is suspended under Section 4-8-10 and the cause for

 the suspension is not remedied.

1. A license may be revoked if the license is subject to suspension under Section 4-8-10 because

 of a violation outlined in that section and the license has been previously suspended in the

 preceding 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 Sections 4-8-10 and 4-8-11;

 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 an owner, principal officer, or board member thereof, is delinquent in

 payment to the Town, county, or state for any taxes or fees related to the cannabis

 establishment;

 7. A license holder, or an owner, principal officers, 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; or

 8. The license holder has its Department-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 Town.

**4-8-12. 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 Town’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 three trustees.

(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 rights 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.

 **4-8-13: 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 Board of Trustees 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 Town of Roslyn, 302 Bjornson Ave., PO Box 31, Roslyn, South Dakota, 57261. The appeal will be considered by the board of trustees at a regularly scheduled meeting within one month of the receipt of the appeal.

 **4-8-14: 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.

 **4-8-15: HOURS OF OPERATION FOR DISPENSARIES**

No cannabis dispensary may operate between the hours of 8:00 am and 12:00 am any day of the week.

**4-8-16: 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.

**4-6-17: 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.

 **4-8-18: SMOKING OF CANNABIS IN PUBLIC PLACES PROHIBITED**

It is unlawful for any person to smoke cannabis in any public place including parks, sidewalks, streets, alleys, rights-of-way, sports complexes, publicly owned property, or in any place that is open to the public. A violation of this section is subject to the penalty set forth under South Dakota Codified Laws.

**4-8-19 PUBLIC NUISANCE**

The establishment, operation, and continuation of any activity in violation of the terms of this Chapter is specifically determined to constitute a public nuisance, may be abated by the Town as a nuisance and may be enjoined by the Town in an action brought to circuit court in the county in which the activity occurs. The remedies set forth in this section shall not be exclusive, shall be cumulative, and shall be in addition to any other remedy available at law or in equity.

**4-8-20: 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.

**4-8-21: SEVERABILITY CLAUSE**

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.

**4-8-22: MOST STRINGENT REGULATION APPLIES**

Nothing in this section is intended to supersede or modify applicable provisions of state law concerning the same subject. To the extent this ordinance is interpreted to authorize an action or activity otherwise prohibited by state law, such authorization shall mean such action or activity is prohibited by local law. To the extent that a provision of the state law is or becomes more stringent than a provision of this ordinance, the most stringent requirement or construction shall govern or apply.

 **4-8-23: OTHER LAWS AND ORDINANCES REMAIN APPLICABLE**

All applicable state laws and Chapters of the Ordinances of the Town of Roslyn, South Dakota shall apply to all cannabis establishments, including but not limited to dispensaries, cultivation facilities, testing facilities, and manufacturing facilities.

First Reading: September 7, 2021

Second Reading: October 4, 2121

Passed & adopted : October 4, 2021 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Tom Lee, President of Board of Trustees

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Rebecca Lundquist, Finance Officer