

Proposed Draft OST Marijuana
Control Ordinance
for Public Dissemination and Public
Comment

October 13, 2020

*PLEASE NOTE: This is a proposed
DRAFT prepared at the request of the
OST Law and Order Committee. It is
not currently enacted law. Any and all
laws of the Oglala Sioux Tribe must be
approved by the Tribal Council.*

DRAFT

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MARIJUANA CONTROL ORDINANCE

CHAPTER 1. GENERAL PROVISIONS

SECTION 1. SHORT TITLE

This Ordinance may be cited as the Marijuana Control Ordinance.

SECTION 2. FINDINGS AND INTENT

The Oglala Sioux Tribe hereby finds and declares that:

- a. The United States recognizes Indian tribes as domestic, dependent nations with sovereignty over their members and territories.
- b. The Oglala Sioux Tribe (the “Tribe”) adopted its Constitution and By-laws by referendum vote on December 14, 1935. The Preamble of the Constitution states that this Constitution was adopted to “establish a more perfect organization, promote the general welfare, conserve and develop our lands and resources, and to secure to the Oglala people and their posterity the power to exercise certain rights of home rule not inconsistent with Federal law, and our Treaties.”
- c. The Constitution states that the Oglala Sioux Tribal Council shall “adopt laws protecting and promoting the health and general welfare of the Oglala Sioux Tribe and its membership.” Art. IV, §1(w).
- d. The Tribe wishes to continue to exercise its inherent sovereign authority over its own internal affairs.
- e. The Tribe desires to create and support methods for maintaining and enhancing its Tribal economy to help ensure its self-sufficiency, growing economic development, and the welfare of its Tribal community.
- f. The federal Controlled Substances Act, 21 U.S.C. section 801 et seq., classifies Marijuana as a Schedule 1 drug and prohibits any possession or use of Marijuana except in the course of federally approved research projects. The Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, Marijuana.
- g. On August 29, 2013, U.S. Department of Justice Deputy Attorney General James M. Cole issued a memorandum to all United States Attorneys providing updated guidance to federal prosecutors concerning Marijuana enforcement under the federal Controlled Substances Act. The guidance memorandum applies to all of the Department of Justice’s federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning Marijuana in all states. The guidance memorandum reiterates Congress’s determination that Marijuana is a dangerous drug and that the illegal

distribution and sale of Marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The guidance memorandum notes that the Department of Justice is committed to enforcement of the Controlled Substances Act consistent with those determinations. It also notes that the Department of Justice is committed to using its investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, the guidance memorandum provides guidance to the Department of Justice attorneys and law enforcement to focus their enforcement resources on persons or organizations whose conduct interferes with any one or more of the following important priorities:

1. Preventing the distribution of Marijuana to minors;
 2. Preventing revenue from the sale of Marijuana from going to criminal enterprises, gangs, and cartels;
 3. Preventing the diversion of Marijuana from states where it is legal under state law in some form to other states;
 4. Preventing state-authorized Marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
 5. Preventing violence and the use of firearms in the Cultivation and distribution of Marijuana;
 6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with Marijuana use;
 7. Preventing the growing of Marijuana on public lands and the attendant public safety and environmental dangers posed by Marijuana Production on public lands; and
 8. Preventing Marijuana possession or use on federal property.
- h. On October 28, 2014 the United States Department of Justice, Executive Office for United States Attorneys Director Monty Wilkinson issued a memorandum to all United States Attorneys entitled “Policy Statement Regarding Marijuana Issues in Indian Country.” This memorandum states that the eight priorities in the August 29, 2013, guidance memorandum will also guide United States Attorneys’ Marijuana enforcement efforts in Indian Country, including in the event that sovereign Indian Nations seek to legalize the Cultivation or use of Marijuana in Indian Country. This memorandum states each United States Attorney should consult with the affected Tribes on a government-to-government basis when evaluating Marijuana enforcement activities in Indian Country.
- i. On January 4, 2018, the Department of Justice, through then Attorney General Jeff Sessions issued a memorandum titled “Marijuana Enforcement” which rescinded the Cole Memorandum and Wilkinson Memorandum, and all previous guidance on marijuana enforcement. The 2018 memorandum stated that “prosecutors should follow the well-established principles that govern all federal prosecutions,” and these principles require that federal prosecutors “weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the

deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community.”

- j. The Tribe has decided to open specific lands within its jurisdiction to the possession, consumption, Cultivation, Processing and Distribution of Marijuana by enacting this Ordinance.
- k. The medical marijuana program is established to serve patients suffering from a serious medical condition (as illustrated in Chapter 11 Section 1) in Distribution Facilities.
- l. The recreational marijuana program is established to serve patrons in recreational lounges.

SECTION 3. CONTROL OF MARIJUANA

- a. This Ordinance shall govern the Cultivation, Processing, and distribution of Marijuana on the Reservation, will increase the ability of the Tribe to control the possession and consumption of Marijuana on the Reservation, and will provide an additional source of revenue for Tribal operations.
- b. Tribal regulation of the possession, consumption, Cultivation, Processing and distribution of Marijuana on the Reservation is necessary to protect the health, security, and general welfare of the Tribal community, and to address Tribal concerns relating to use of Marijuana on the Reservation. In order to further these goals and to provide an additional source of governmental revenue, the Tribe has adopted this Ordinance, which shall be liberally construed to fulfill the purposes for which it has been adopted.
- c. Nothing in this Ordinance shall be deemed to be in positive conflict with the Controlled Substances Act, 21 U.S.C. section 801 *et seq.*
- d. The Tribe hereby reaffirms the possession, Cultivation, transportation, production, and use of Marijuana and Marijuana Products within the territory of the Tribe, when those activities are licensed by the Tribe and conducted in full compliance with the requirements of this Ordinance, including amendments to the Tribal Criminal Code set forth in Chapter 2 below and other applicable law.

SECTION 4. DEFINITIONS

The following definitions of terms shall apply to all rules promulgated pursuant to this Ordinance, unless the context requires otherwise:

“Advertising” means the act of providing consideration for the publication, dissemination, solicitation, or circulation of visual, oral, or written communication, to induce directly or indirectly any person to patronize a particular Marijuana Business, or to purchase particular Marijuana or Marijuana Product. Advertising includes marketing but does not include packaging and labeling. Advertising proposes a commercial transaction or otherwise constitutes commercial speech.

“Additive” means any substance added to Marijuana Product that is not a common baking or cooking item.

“Alarm System” means a device or series of devices, intended to summon law enforcement personnel during, or as a result of, an alarm condition. Devices may include hard-wired systems and systems interconnected with a radio frequency method such as cellular or private radio signals that emit or transmit a remote or local audible, visual, or electronic signal; motion detectors, pressure switches, duress alarms (a silent system signal generated by the entry of a designated code into the arming station to indicate that the user is disarming under duress); panic alarms (an audible system signal to indicate an emergency situation); and hold-up alarms (a silent system signal to indicate that a robbery is in progress).

“Applicant” means a person that has submitted an application for licensure or registration, or for renewal of licensure or registration, pursuant to this Ordinance that was accepted by the Marijuana Commission for review but has not been approved or denied.

“Audited Product” means a Metered Dose Nasal Spray, Vaginally Administered Marijuana Product, or a Rectally Administered Marijuana Product. Audited Products must go through additional microbial contaminant testing at a licensed Testing Facility for the following substances: total aerobic microbial count, Staphylococcus Aureus, Pseudomonas aeruginosa, Bile tolerant gram-negative bacteria, and Candida albicans.

“Batch Number” means any distinct group of numbers, letters, or symbols, or any combination thereof, assigned by a Cultivation Facility or Processing Facility to a specific Harvest Batch or Production Batch of Marijuana.

“Bona Fide Purpose” means any visitation or occupancy of a Licensed Premises by a person that is not otherwise permitted under this Ordinance but that is necessary for business function or tours.

“Cannabinoid” means any of the chemical compounds that are active principles of Marijuana.

“Child-Resistant” means packaging that is:

- a. Designed or construed to be significantly difficult for children under 5 years of age to open and not difficult for normal adults to use properly;
- b. Opaque so that the packaging does not allow the product to be seen without opening the packaging material;
- c. Resealable for any product intended for more than a single use or containing multiple servings;
- d. Any package certified as Child-Resistant under the requirements of the Poison Prevention Packaging Act of 1970 Regulations (16 CFR § 1700.15(b)(1)) (Rev. July 1995).

“Container” means the receptacle directly containing Marijuana or Marijuana Product that is labeled according to the requirements in this Ordinance.

“Cultivation” means the preparing and growing of the plant Cannabis, commonly known as Marijuana.

“Cultivator” means the individual or entity preparing and growing the plant Cannabis, commonly known as Marijuana.

“Cultivation Facility” means any business under the jurisdiction of the Tribe that acquires, possesses, cultivates, delivers, Transfers, transports, supplies, or sells Marijuana and related supplies to another Cultivation Facility, Processing Facility, or Distribution Facility.

“Dispensary” means the same as Distribution Facility.

“Distribution Facility” means any business under the jurisdiction of the Tribe that acquires, possesses, delivers, Transfers, transports, supplies, sells, or dispenses Marijuana or related supplies and educational materials to the holder of a valid Medical Registration Card through a dispensary.

“Edible Marijuana Product” means any Marijuana Product for which the intended use is oral consumption, including but not limited to, any type of food, drink, or pill.

“Exit Package” means an Opaque bag or similar Opaque covering provided at the point of sale, in which Marijuana or Marijuana Product already in a Container is placed. If Marijuana flower, trim, or seeds are placed into a Container that is not Child-Resistant, then the Exit Package must be Child-Resistant. The Exit Package is not required to be labeled in accordance with this Ordinance.

“Flammable Solvent” means a liquid that has a flash point below 100 degrees Fahrenheit.

“Flowering” means the reproductive state of the cannabis plant in which there are physical signs of flower budding out of the nodes of the stem.

“Food-Based Marijuana Concentrate” means a Marijuana Concentrate that was produced by extracting Cannabinoids from Marijuana through the use of propylene glycol, glycerin, butter, olive oil, or other typical cooking fats.

“Grower” means the same as a person or business operating in or as a Cultivation Facility.

“Heat/Pressure-Based Marijuana Concentrate” means Marijuana Concentrate that was produced by extracting Cannabinoids from Marijuana through the use of heat and/or pressure. This method of extraction may only be used by a Processing Facility and can be used alone or on a Production Batch that also includes water-based Marijuana Concentrate or solvent-based Marijuana Concentrate.

“Immature Plant” means a non-Flowering Marijuana plant that is no taller than 8 inches and no wider than 8 inches produced from a cutting, clipping, or seedling and is in a cultivating Container. Plants meeting these requirements are not attributable to a Licensee’s maximum allowable plant count but must be fully accounted for in the Seed-To-Sale Tracking System.

“Inventory Tracking System” means the required Seed-To-Sale Tracking System that tracks Marijuana from either the seed or Immature Plant stage until the Marijuana or Marijuana Product is sold to a customer at a Distribution Facility or lounge or destroyed.

“Licensed Premises” means the premises specified in an application for a license pursuant to this Ordinance that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, store, transport, or test Marijuana in accordance with the provisions of this Ordinance.

“Licensee” means any person licensed or registered pursuant to this Ordinance.

“Limited Access Area” means a building, room, or other contiguous area upon the Licensed Premises where Marijuana is grown, cultivated, stored, weighed, packaged, Transferred, or processed for Transfer, under the control of the Licensee.

“Liquid Edible Marijuana Product” means and Edible Marijuana Product that is a liquid beverage or liquid food-based product for which the intended use is oral consumption, such as a soft drink or cooking sauce.

“Marijuana” means the plant Cannabis, including constituents of the plant and the preparation of the plant.

“Marijuana Business” means a business established for the cultivation, processing, dispensing, or transporting of Marijuana, or a business established for laboratory testing of Marijuana or the consumption of Marijuana at a Recreational Lounge, or any combination thereof.

“Marijuana Commission” means the Commission established to oversee the regulations embodied in this Ordinance as further described in Chapter 9 of this Ordinance.

“Marijuana Concentrate” means a specific subset of Marijuana that was produced by extracting Cannabinoids from Marijuana. Categories of Marijuana Concentrate include water-based Marijuana Concentrate, Food-Based Marijuana Concentrate, solvent-based Marijuana Concentrate, and Heat/Pressure-Based Marijuana Concentrate.

“Marijuana Product” means a product that contains Marijuana or an extract thereof and is intended for use or consumption other than by inhalation, including but not limited to foodstuffs, extracts, oils, tinctures, and other similar products.

“Marijuana Transporter” means a person that is licensed to transport Marijuana, Marijuana Concentrate, and Marijuana Products from one Marijuana Business to another Marijuana Business and to temporarily store the transported Marijuana, Marijuana Concentrate, or Marijuana Products at its Licensed Premises, but is not authorized to sell, give away, buy, or receive complimentary Marijuana, Marijuana Concentrate, or Marijuana Products under any circumstances. A Marijuana Transporter does not include a Licensee that transports and distributes its own Marijuana, Marijuana Concentrate, or Marijuana Products.

“Marketing Layer” means packaging in addition to the Container that is the outermost layer visible to the consumer at the point of sale. The Marketing Layer is optional, but if used by a Licensee in addition to the required Container, it must be labeled in accordance with this Ordinance.

“Mature Plant(s)” means a Marijuana plant that is taller than 8 inches in a cultivating Container. Plants meeting these requirements are attributable to a Cultivator or Licensee’s maximum allowable plant count and must be fully accounted for in the Seed-To-Sale Tracking System.

“Medical Registration Card” means a document issued by the Marijuana Commission or its designee that identifies a person as being allowed to purchase Marijuana or Marijuana Product from a Distribution Facility for medical use. Such registrant will be exempt from Tribal prosecution for the use or possession of Marijuana for medical purposes as permitted by this Ordinance including amendments to the Tribal Criminal Code set forth in Chapter 2 below and other applicable law.

“Member Enrollment Card” means a document issued by the Tribe, by the Bureau of Indian Affairs or by another federal agency that indicates that an individual is an enrolled member of the Oglala Sioux Tribe.

“Multiple-Serving Edible Marijuana Product” means an Edible Marijuana Product unit for sale to consumers containing more than ten (10) milligrams of active THC and no more than one hundred (100) milligrams of active THC. If the overall Edible Marijuana Product unit for sale to the consumer consists of multiple pieces where each individual piece may contain less than ten (10) milligrams of active THC, yet in total all pieces combined within the unit for sale contain more than ten (10) milligrams of active THC, then the Edible Marijuana Product shall be considered a multiple-serving Edible Marijuana Product.

“Opaque” means that the packaging does not allow the product to be seen without opening the packaging material.

“Ownership Interest” means any capital stock, share, partnership interest, membership interest, unit of participation, joint venture interest of any kind or other similar interest in a Marijuana Business.

“Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; except that the term “Pesticide” shall not include any article that is a “new animal drug” as designated by the United States Food and Drug Administration.

“Plant” means a Marijuana plant irrespective of size.

“Processing” means the harvesting of the plant Cannabis or the use of any process or equipment, including but not limited to dehydrators or humidifiers that may be necessary to convert raw Marijuana plants or plant parts into a consumable product.

“Processing Facility” means any business under the jurisdiction of the Tribe at which Marijuana is processed for supply to a Distribution Facility or lounge.

“Production Batch” means:

- a. Any amount of Marijuana Concentrate of the same category and produced using the same extraction methods, standard operating procedures, and an identical group of Harvest Batch(es) of Marijuana; or
- b. Any amount of Marijuana Product of the same exact type, produced using the same ingredients, standard operating procedures, and the same Production Batch(es) of Marijuana Concentrate.

“Proficiency Testing” means an assessment of the performance of a Marijuana testing facility’s methodology and processes. Proficiency Testing is also known as inter-laboratory comparison. The goal of Proficiency Testing is to ensure results are accurate, reproducible, and consistent.

“Recreational Lounge” means any business under the jurisdiction of the Tribe at which Marijuana is sold to adult consumers 21 years or older, for on-site consumption only.

“Resealable” means that the Container maintains its Child-Resistant effectiveness for multiple openings.

“Reservation ” means all lands described or referenced in the Tribe’s Constitution; which is the territory within the original confines of the Pine Ridge Reservation boundaries pursuant to the 1868 Fort Laramie Treaty (15 Stat. 635) and the 1889 Act (25 Stat. 888) all lands over which the Tribe retains jurisdiction; all lands held by the United States of America in trust for the Tribe; and any lands which may in the future come within the jurisdiction of the Tribe by any lawful means.

“Sample” means any item collected from a Marijuana Business that is provided to a licensed testing facility for testing. The following is a non-exhaustive list of types of Samples: Marijuana, Marijuana Concentrate, Marijuana Products, soil, growing medium, water, solvent, or swab of a counter or equipment.

“Shipping Container” means a hard-sided Container with a lid or other enclosure that can be secured in place. A shipping Container is used solely for the transport of Marijuana, Marijuana Concentrate, or Marijuana Product between Marijuana Businesses.

“Single-Serving Edible Marijuana Product” means an Edible Marijuana Product unit for sale to consumer containing no more than ten (10) milligrams of active THC.

“Solvent-Based Marijuana Concentrate” means a Marijuana Concentrate that was produced by extracting Cannabinoids from Marijuana by the use of a solvent approved by the Marijuana Commission pursuant to this Ordinance.

“Standardized Serving of Marijuana” means a standardized single serving of active THC. The size of a standardized serving of Marijuana shall be no more than ten (10) milligrams of active THC.

“Test Batch” means a group of Samples that are derived from a single Harvest Batch, Production Batch, or Seed-To-Sale Tracking System package, and that are collectively submitted to a licensed testing facility for testing purposes.

“Testing Lab” means any business under the jurisdiction of the Tribe at which Marijuana or Marijuana Products are tested to ascertain scientific accuracy.

“THC” means tetrahydrocannabinol.

“THCA” means tetrahydrocannabinolic acid.

“Total THC” means the sum of the percentage by weight of THCA multiplied by 0.877 plus the percentage by weight of THC, i.e., $\text{Total THC} = (\% \text{THCA} \times 0.877) + \% \text{THC}$.

“Transfer(s)(ed)(ing)” means to grant, convey, hand over, assign, sell, exchange, donate, or barter, in any manner or by any means, with or without consideration, any Marijuana, Marijuana Concentrate, or Marijuana Product from one Licensee to another Licensee or to a consumer. A Transfer includes the movement from one Licensed Premises to another, even if both premises are contiguous, and even if both premises are owned by a single entity or individual or group of individuals and also includes a virtual Transfer that is reflected in the Seed-To-Sale Tracking System, even if no physical movement of Marijuana, Marijuana Concentrate, or Marijuana Product occurs.

“Tribe/Tribal” means the Oglala Sioux Tribe, a federally recognized Indian Tribe.

“Tribal Court: means the Tribal Courts of the Oglala Sioux Tribe as established pursuant to the Tribal Constitution and the Tribe’s Law and Order Code.

“Universal Symbol” means the image established by the Marijuana Commission and made available to Licensees through the Tribe’s website indicating the Marijuana, Marijuana Concentrate, or Marijuana Product contains Marijuana.

“Vaporizer Delivery Device” means a device that utilizes heat to vaporize the active molecules in cannabis flower and concentrates.

“Water-Based Marijuana Concentrate” means a Marijuana Concentrate that was produced by extracting Cannabinoids from Marijuana through the use of only water, ice, or dry ice.

CHAPTER 2.
LIABILITY OF INDIVIDUALS AND LICENSED
MARIJUANA BUSINESSES AND EXEMPTION TO TRIBAL LIABILITY

SECTION 1. AMENDMENTS TO THE CRIMINAL CODE

- a. Section 541(a) is amended as follows:

“Section 541. Dangerous Drug Offenses.

As used in Sections 541 through 550 of this Code:

(a) The term “controlled substance” means a drug or other substance , or immediate precursor, included in Schedule I, II, III, IV or V of Part B of Subchapter I of the Controlled Substances Act, 21 USC Sec. 812, as amended, **except peyote or marijuana is not a “controlled substance”.**”

- b. Section 542(a) is amended as follows:

“Section 542. Prohibited Acts: Manufacture, Distribution, and Possession with Intent to Distribute.

(a) Except as authorized and controlled by Federal Law, **or as authorized by the Marijuana Control Ordinance** it shall be unlawful for any person knowingly and intentionally:

(1) to manufacture, distribute, or dispense, or possess with intent to distribute, or dispense a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense a counterfeit substance.”

- c. Section 541.1 is added to the Criminal Code as follows:

“Section 541.1. Legalization of Marijuana.

Notwithstanding any other provision of Tribal law, State law and the law of any political subdivision of the State, except as otherwise provided in the Marijuana Control Ordinance, it is lawful, and must not be used as the basis for prosecution or penalty by the Tribe, and must not be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:

- (a) Possess, use, consume, purchase, obtain, process, or transport marijuana paraphernalia, one ounce or less of marijuana other than marijuana products, or one-eighth of an ounce or less of marijuana concentrates (by weight of oil infused in a marijuana product or on its own); while away from home or while in a public place.

- (b) Give or otherwise deliver one ounce or less of marijuana, other than marijuana products, or one-eighth of an ounce or less of marijuana concentrates (by weight of oil infused in a marijuana product or on its own) without remuneration to a person provided that the transaction is not advertised or promoted to the public; or
 - (c) Assist another person who is 21 years of age or older in any of the acts described in this section.”
- d. Section 541.2 is added to the Criminal Code as follows:

“Section 541.2. Unauthorized, Unlawful Manufacture, Distribution or Dispensing of a Controlled Substance.

It shall be unlawful for any person to manufacture, produce, distribute, or dispense a controlled substance unless such manufacture, distribution, or dispensing is done directly under or pursuant to a valid license for manufacturing or distribution or dispensing, or pursuant to a valid prescription or order from a medical or veterinary practitioner while acting in the course of his professional **practice or except that Marijuana plants can be cultivated for personal use, as follows:**

- (a) Any Tribal member 21 years of age or older can grow Marijuana in his or her home for personal use.
 - (b) Up to 2 plants are allowed per Tribal member 21 years of age or older.
 - (c) All residences are limited to a maximum of 6 plants, even if there are 3 or more adults 21 years of age or older in the residence.
 - (d) Legal representatives of minors are allowed up to 2 plants, however, this is within and not in addition to the 6 plant maximum.
 - (e) Marijuana plants must be kept in an enclosed area not in public view and not able to be accessed by minors.
 - (f) At homes with resident under 18 years of age, any Marijuana grow area must be enclosed and locked in a separate space that minors cannot access.
 - (g) At homes without residents under 18 years of age, extra precautions must be taken to ensure any visiting minors do not have access to the Marijuana plants.
 - (h) Homegrown Marijuana or Marijuana Products cannot be sold to anyone but can be freely shared between adults 21 years of age or older. Only licensed Marijuana businesses can sell Marijuana or Marijuana Products.
 - (i) As permitted by Chapter 11, Section 3 and those provisions of the Marijuana Control Ordinance in Chapter 11, Section 3 concerning household cultivation or those provisions in the Marijuana Control Ordinance concerning licensed Marijuana businesses: Any person convicted of a violation of this section shall be subject to imprisonment not to exceed six (6) months, or to a fine not to exceed five hundred dollars (\$500.00), or by both such fine and imprisonment, with costs.”
- e. Section 542.1 is added to the Criminal Code as follows:

“Section 542.1. Distribution Of Marijuana To A Minor.”

The distribution of marijuana to a minor with or without consideration shall be punishable by imprisonment for a period not to exceed six (6) months, or to a fine not to exceed five hundred dollars (\$500.00), or both such imprisonment and fine, with costs. Lack of knowledge as to the age of a minor is not a defense. It is not a defense that the defendant did not know that the recipient was a minor, even if such lack of knowledge was reasonable.”

- f. Section 542.2 is added to the Criminal Code as follows:

“Section 542.2. Illegal Use of Marijuana.”

A person who smokes or otherwise consumes marijuana in a public place not approved by the Tribe, in a retail marijuana store, or in a moving vehicle is guilty of a misdemeanor punished by a fine of not more than \$500.”

- g. Section 542.3 is added to the Criminal Code as follows:

“Section 542.3. Marijuana Offenses by Minors.”

(a) A person under 21 years of age who falsely represents himself or herself to be 21 years of age or older to obtain marijuana or a marijuana product is guilty of a misdemeanor punished by a fine of not more than \$500.

(b) A person under 21 years of age who knowingly enters, loiters, or remains on the premises of a marijuana business licensed as provided by the Marijuana Control Ordinance shall be punished by a fine of not more than \$500 unless the person is authorized to possess marijuana as a Medical Registration Cardholder.

(c) A person under 21 years of age who knowingly possesses marijuana, or a marijuana product is guilty of a misdemeanor punished by a fine of not more than \$500.”

- h. Section 542.4 is added to the Criminal Code as follows:

“Section 542.4. Importing and Exporting of Marijuana.”

(a) For purposes of this section: “Export” includes placing marijuana or a marijuana product in any mode of transportation for hire, such as luggage, mail or parcel delivery, even if the transportation of the marijuana or marijuana product is intercepted prior to the marijuana item leaving this state.

(b) A person may not import marijuana product into this state or export marijuana items from the reservation except as otherwise provided by the Marijuana Control Ordinance.

(c) Any person convicted is subject to imprisonment for a period not to exceed six (6) months, or a fine not to exceed five hundred dollars (\$500.00), or both such fine and imprisonment, with costs.”

- i. Section 551 is added to the Criminal Code as follows:

“Section 551. Setting Aside Prior Marijuana Convictions.”

When a person is convicted of an offense involving possession, delivery or manufacture of marijuana or marijuana product, and when the conduct that is the basis of the conviction occurred before adoption of this Ordinance and would no longer be a crime after the adoption of this Ordinance, the prior conviction is set aside, as void ab initio.”

- j. Section 552 is added to the Criminal Code as follows:

“Section 552. Vacating Prior Sentences Based on Marijuana Offenses.”

When a person was convicted of an offense involving possession, delivery or manufacture of marijuana or marijuana product, and is currently serving a sentence for that conviction, and when the conduct that is the basis of the conviction occurred before adoption of this Ordinance and would no longer be a crime after the adoption of this Ordinance, the sentence is vacated and the offender ordered to be released.”

SECTION 2. ADMINISTRATIVE LIABILITY OF LICENSED MARIJUANA BUSINESSES

- a. Any violation of this Ordinance is subject to administrative, civil, or criminal penalties, in addition to being subject to other remedies provided by law, including but not limited to injunctive relief, fines, and revocation of business or employee licenses.
- b. Violations affecting public safety, including but not limited to sales to persons under 21 years of age, consuming Marijuana or Marijuana Products on Licensed Premises (unless allowed by this Ordinance), sales in excess of the relevant transaction limit, permitting the diversion of Marijuana outside the regulated distribution system, possessing Marijuana or Marijuana Products from outside the regulated distribution system or from an unauthorized source, making misstatements or omissions in the Seed-To-Sale Tracking System, failing to continuously escort a visitor in Limited Access Areas, failure to maintain books and records to fully account for all transactions of the business, Advertising violations targeted directly at minors, or packaging and labeling violations that directly impact consumer safety, are the most severe. Violations of this nature generally have an immediate impact on the health, safety, and welfare of the public at large. The range of penalties for this category of violation may include license suspension, a fine per individual violation, a fine in lieu of suspension of up to \$15,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.
- c. For the category of violation that is more severe than a license infraction, but generally does not have an immediate impact on the health, safety, and welfare of the public at large, the range of penalties may include a written warning, license suspension, a fine per individual violation, a fine in lieu of suspension of up to \$10,000, and/or license revocation depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license. This category may include, but is not limited to Advertising

and/or marketing violations, packaging or labeling violations that do not directly impact consumer safety, failure to maintain minimum security requirements, failure to keep and maintain adequate business books and records, or minor clerical errors in the Seed-To-Sale tracking procedures.

- d. License infractions are the least severe and may include, but are not limited to, failure to display required badges, unauthorized modifications of the Licensed Premises of a minor nature, or failure to notify the Marijuana Commission of a minor change in ownership. The range of penalties for this category may include a verbal or written warning, license suspension, a fine per individual violation, and/or a fine in lieu of suspension of up to \$5,000 depending on the mitigating and aggravating circumstances. Sanctions may also include restrictions on the license.
- e. Mitigating and aggravating factors to be considered when determining the imposition of a penalty include, but are not limited to, any prior violations by the Licensee, good faith measures by the Licensee to prevent the violation, Licensee's past history of success or failure with compliance checks, corrective action taken by the Licensee related to the current violation or prior violations, willfulness and deliberateness of the violation, and likelihood of reoccurrence of the violation.

SECTION 3. EXEMPTION TO TRIBAL LIABILITY

The Tribe, including its officers, employees, agents, representatives, successors, and assigns, shall not be held responsible for any deleterious outcomes from the use of Marijuana by any person.

CHAPTER 3.

LICENSING

SECTION 1. MARIJUANA BUSINESS FEES

- a. Each Marijuana Business under the jurisdiction of the Tribe shall be organized under Tribal law.
- b. The Marijuana Commission shall, from time to time, determine an appropriate maximum number of available licenses for Marijuana Businesses. The Marijuana Commission shall have total discretion on the number of licenses available.
- c. A person who wishes to operate a Marijuana Business shall be required to meet all employment licensing requirements under this Ordinance.
- d. Every Marijuana Business shall pay quarterly to the Tribe an operating fee equal to five percent (5%) of its total income from all sources derived from or attributable to the Tribe for the quarter. For purposes of this section, “total income from all sources derived from or attributable to the Tribe” means gross income minus the cost of goods sold that are paid or incurred in connection with the Marijuana Business.
- e. The operating fee assessed under this section shall be due and payable on the 15th day following the close of the fiscal quarter and shall be subject to interest and applicable penalties. A penalty of five percent (5%) of the amount of any underpayment shall be added to the fee. For purposes of this section, the underpayment amount shall be equal to the difference between the total amount of the operating fee imposed by this section less the amount paid.
- f. All operating fees shall be remitted to the Marijuana Commission, which shall keep accurate records of all such receipts, and shall be subject to distribution by the Marijuana Commission in accordance with Chapter 10, Section 2 of this Ordinance.

SECTION 2. GENERAL LICENSURE REQUIREMENTS

- a. A license issued to a Marijuana Business or an individual constitutes a revocable privilege. The burden of proving an Applicant’s qualifications for licensure rests at all times with the Applicant.
- b. Applicants must submit a complete application to the Marijuana Commission before it will be accepted or considered.
 1. All applications must be complete and accurate in every material detail;
 2. All applications must include all attachments or supplemental information required by the current forms supplied by the Marijuana Commission; and
 3. All applications must be accompanied by a full remittance of the application and relevant license fees for each Applicant and each premise.

- c. All applications to reinstate a license will be deemed applications for new licenses. This includes, but is not limited to, licenses that have expired, licenses that have been voluntarily surrendered, and licenses that have been revoked.
- d. The Marijuana Commission may refuse to accept or consider an incomplete application.
- e. Upon request by the Marijuana Commission, an Applicant shall provide any additional information required to process and fully investigate the application. The additional information must be provided to the Marijuana Commission no later than ten (10) days after the request is made unless otherwise specified by the Marijuana Commission for good cause shown.
- f. An Applicant's failure to provide the requested information by the Marijuana Commission deadline may be grounds for denial of the application
- g. All Applicants shall submit information to the Marijuana Commission in a full, faithful, truthful, and fair manner. The Marijuana Commission may recommend denial of an application where the Applicant made misstatements, omissions, misrepresentations or untruths in the application or in connection with the Applicant's background investigation. This type of conduct may be considered as the basis for additional administrative action against the Applicant and it may also be the basis for criminal charges against the Applicant.
- h. The Marijuana Commission will either approve or deny a complete application on or before the 90th day after its receipt.

SECTION 3. EMPLOYEE LICENSES

- a. Every employee of a Marijuana Business shall be required to obtain from the Marijuana Commission or its designee a Marijuana Employee License as a prerequisite to employment within the exterior boundaries of the Reservation.
- b. The application for a Marijuana Employee License shall include the following information:
 - 1. The name, address, telephone number, email address, social security number, enrollment ID number, and date of birth of the Applicant;
 - 2. Proof that the Applicant is at least 21 years of age;
 - 3. A current photograph of the Applicant;
 - 4. Documentation establishing that the Applicant has not been convicted of a felony offense or of a misdemeanor involving a non-marijuana drug or fraud related offense within the past ten (10) years. For each conviction, the name and address of the court involved and the date and disposition. A conviction within the meaning of this subsection means a plea or verdict of guilty or a conviction following a plea of nolo contendere;

5. Currently and for the previous five (5) years: business and employment positions held, Ownership Interests in those businesses, business addresses and Applicant's residence addresses and driver's license numbers;
 6. A complete set of the Applicant's fingerprints and written permission of the Applicant authorizing the Marijuana Commission or its designee to forward the fingerprints to the Federal Bureau of Investigation for its report;
 7. The names, telephone numbers, email address and current physical address of at least three (3) references, including at least one (1) professional reference;
 8. Written permission of the Applicant authorizing the Marijuana Commission or its designee to seek verification of the information contained within the application;
 9. A statement in writing that the Applicant pledges to not dispense or otherwise divert Marijuana to any person or entity that is not allowed to lawfully possess Marijuana;
 10. A statement in writing that the Applicant certifies under penalty of perjury that all the information contained in the application is true and correct; and
 11. Any other information the Marijuana Commission deems relevant.
- c. The Marijuana Employee License that is issued to the Applicant shall include the following printed statement and the application for the license shall require the individual Applicant to acknowledge the following warning:

CAUTION: Federal and Tribal laws on the Cultivation of Marijuana and possession of Marijuana and Marijuana Products differ. In the absence of a federal license, federal law prohibits the Cultivation and possession of Marijuana and Marijuana Products even pursuant to a Tribal license. If you are in violation of federal law, you may be prosecuted in federal court, imprisoned, required to pay a fine and restitution and your real and personal property deemed related to the Cultivation or violation may be forfeited. A Tribal license is not a defense to a federal prosecution and forfeiture.

SECTION 4. BUSINESS LICENSES

- a. Every Marijuana Business shall be required to obtain from the Marijuana Commission or its designee a Marijuana Business License as a prerequisite to operating as a Marijuana Business within the exterior boundaries of the Reservation.
- b. All licenses obtained by Marijuana Businesses from the Marijuana Commission shall be conspicuously displayed on the Licensed Premises.
- c. The following entities may receive a permit to operate as a Marijuana Business to grow, process, dispense, transport, test, or provide recreational Marijuana:
 1. A Cultivator;
 2. A Processor;
 3. A Dispensary;

4. A Transporter;
 5. A Testing Lab;
 6. A Recreational Lounge.
- d. The application for a Marijuana Business License shall include the following information:
1. The name, address, telephone number, and other contact information for every person having an Ownership Interest in the Marijuana Business;
 2. Information relating to a similar permit, license, or other authorization granted in another jurisdiction, including any suspensions, revocations, or discipline in that jurisdiction;
 3. A release authorizing the Marijuana Commission to conduct a background check of all persons having an Ownership Interest in the Marijuana Business;
 4. A statement as to whether the Applicant intends to operate as a cultivator, processor, dispensary, transporter, testing lab, or recreational lounge, and a concise description of the business activities in which the Marijuana Business intends to engage;
 5. The address or location where the Marijuana Business intends to operate;
 6. A statement that no person having an Ownership Interest in the Marijuana Business has a felony conviction that has not been expunged;
 7. A complete set of all Applicants' fingerprints and written permission of the Applicant authorizing the Marijuana Commission or its designee to forward the fingerprints to the Federal Bureau of Investigation for its report;
 8. Proof of enrollment status and residency of all applicable owners pursuant to Chapter 12 Section 1;
 9. A statement in writing that the Applicant certifies under penalty of perjury that all the information contained in the application is true and correct; and
 10. Any other information required by the Marijuana Commission.
- e. The Marijuana Business License that is issued to the Applicant shall include the following printed statement and the application for the license shall require the individual Applicant to acknowledge the following warning:

CAUTION: Federal and Tribal laws on the Cultivation of Marijuana and possession of Marijuana and Marijuana Products differ. In the absence of a federal license, federal law prohibits the Cultivation and possession of Marijuana and Marijuana Products even pursuant to a Tribal license. If you are in violation of federal law, you may be prosecuted in federal court, imprisoned, required to pay a fine and restitution and your real and personal property deemed related to the Cultivation or violation may be forfeited. A Tribal license is not a defense to a federal prosecution and forfeiture.

SECTION 5. TERM, RENEWAL, AND FEES

- a. All Employee licenses expire after three (3) years unless revoked by the Marijuana Commission. They may be renewed during the renewal period for a subsequent period of three (3) years unless revoked by the Marijuana Commission.
- b. All Marijuana Business licenses expire after three (3) years unless revoked by the Marijuana Commission. They may be renewed during the renewal period for a subsequent period of three (3) years unless revoked by the Marijuana Commission.
- c. The Marijuana Commission will send a Notice for License Renewal ninety (90) days prior to the expiration of an existing license by first class mail to the Licensee's mailing address of record. Failure to receive a Notice for License Renewal does not relieve a Licensee of the obligation to renew all licenses as required.
- d. A Licensee may apply for the renewal of an existing license not less than thirty (30) days prior to the license's expiration date. If a Licensee timely applies for the renewal of an existing license, the Marijuana Commission may administratively continue the license beyond the expiration date while it completes the renewal licensing process.
- e. If the Licensee files a renewal application within thirty (30) days prior to expiration, the Licensee must provide a written explanation detailing the circumstances surrounding the untimely filing. If the Marijuana Commission accepts the application, then the Marijuana Commission may elect to administratively continue the license beyond the expiration date while it completes the renewal licensing process.
- f. The application for renewal will only be accepted if accompanied by:
 1. The requisite licensing fees;
 2. The Applicant(s)'s fingerprints and written permission of the Applicant authorizing the Marijuana Commission or its designee to forward the fingerprints to the Federal Bureau of Investigation for its report;
 3. A release authorizing the Marijuana Commission to conduct a background check of all Applicants; and
 4. The original application.
- g. A license is immediately invalid upon expiration if the Licensee has not filed a renewal application and remitted all of the required fees. In the event the license is not renewed prior to expiration, the Marijuana Business may not operate, or an employee with an expired license may not work at the Marijuana Business, unless the license has been administratively continued by the Marijuana Commission.
- h. If a former Licensee files an application within ninety (90) days of expiration of its license with the Marijuana Commission and pays the requisite fees, the Marijuana Commission may administratively continue the license from the date the application is

received until it can complete its renewal application process and investigate the extent to which Licensee operated with an expired license.

- i. Any licenses expired over ninety (90) days prior to submission of the Licensee's renewal application will not be renewed; a new application will have to be completed.
- j. The following fees apply to original applications:
 1. Employee:
 - i. A nonrefundable license application fee of \$75;
 - ii. A refundable license fee of \$100.
 2. Business:
 - i. A nonrefundable license application fee of \$200, if there are no more than two (2) Owners, the business shall pay an additional nonrefundable fee of \$75 per additional Owner;
 - ii. A refundable license fee of \$200.
- k. The following fees apply to renewal applications:
 1. Employee:
 - i. A refundable license renewal fee of \$100.
 2. Business:
 - i. A refundable license renewal fee of \$200.
1. The Marijuana Commission shall refund the refundable fee if the license or license renewal is not approved. However, the fees are not refundable if the license is initially granted but later suspended or revoked.

SECTION 6. ELIGIBILITY DETERMINATION

The Marijuana Commission or its designee shall review an Applicant's prior activities, criminal record, if any, and reputation, habits, and associations to make a finding concerning the eligibility for a license.

SECTION 7. LICENSES AND ELIGIBILITY DETERMINATION FOR LOUNGE NEAR PRAIRIE CASINO

- a. The Marijuana Commission shall issue no more than five (5) licenses for Recreational Lounges to be located within ten (10) miles from the Prairie Winds Casino; but in no event may a Recreational Lounge be located within three (3) miles from the Prairie Winds Casino.

- b. A license for a Recreational Lounge located near Prairie Winds Casino may only be issued to a limited liability company or a corporation that demonstrates that there are no less than five (5) enrolled tribal members who have an ownership interest in the entity.

SECTION 8. GROUNDS FOR DENIAL OF LICENSE

The grounds for denial of a license shall be one or more of the following:

- a. The Applicant, within the past three (3) years, has violated this Ordinance or any Tribal, State, or Federal law, statute, rule or regulation relating to the Cultivation, Processing, transporting, or distribution of Marijuana and such violations have not been expunged;
- b. The Applicant has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for licensure;
- c. The Applicant has been convicted of a felony offense or within the past three (3) years of a misdemeanor involving a drug related offense that has not been expunged. A conviction within the meaning of this subsection means a plea or verdict of guilty or a conviction following a plea of nolo contendere;
- d. A determination by the Marijuana Commission that the Applicant poses a threat to the public interest or to the effective regulation of Marijuana;
- e. The Applicant is under 21 years of age;
- f. The required application or renewal fees have not been paid within a reasonable time.

SECTION 9. ADVERSE ACTION APPEALS PROCESS

- a. Adverse decisions made by the Marijuana Commission may be appealed under the following guidelines:
 - (i) Applicants who believe they are adversely affected by the denial of a license application, denial of a license renewal, a termination of a license, the suspension of a license, or any other adverse action by the Marijuana Commission, may appeal such adverse decision to the Administrative Law Judge of the Oglala Sioux Tribe.
 - (ii) The standard on appeal shall be clear error.
 - (iii) If the Administrative Law Judge sustains an Applicant's appeal of a licensing denial, the Marijuana Commission shall issue a license to the Applicant.
 - (iv) If the Administrative Law Judge denies an appeal, the Applicant's license application will be denied.
 - (v) Any decision of the Administrative Law Judge that sustains or denies the relief claimed by an Applicant shall be final and binding on the Applicant and the Marijuana Commission. No further appeals of an Administrative

Law Judge's decision shall be taken to the Oglala Sioux Tribal Council or the AMS Administrator under 7 C.F.R. 990.41 or 990.42.

- (vi) The laws of the Oglala Sioux Tribe shall govern all administrative appeals taken under this subsection.

SECTION 10. LICENSE SUSPENSION OR REVOCATION

- a. If, after the issuance of a license, the Marijuana Commission receives reliable information indicating that an employee or Marijuana Business owner is not eligible for a license under Section 7 above, the Marijuana Commission shall suspend such license and shall notify in writing the Licensee of the suspension and proposed revocation.
- b. The Marijuana Commission shall notify the Licensee of a time and place for a hearing on the proposed revocation of a license.
 1. Any Licensee has a right to legal counsel throughout all processes described in this Ordinance associated with license suspension or revocation. Such counsel shall be provided solely at the Licensee's expense.
- c. After a revocation hearing, the Marijuana Commission shall decide to revoke or to reinstate a license within thirty (30) days of the hearing. The decision of the Marijuana Commission shall be final if not appealed to the ALJ under Section 8 of this Chapter.
- d. No person who has a license revoked may have the license restored but upon order of the Marijuana Commission after the filing of a petition for reinstatement.
 1. No person may petition for reinstatement until the expiration of at least one (1) year from the effective date of the revocation; and
 2. The petitioner will have the burden of proving by clear, cogent, and convincing evidence:
 - (i) The petitioner meets the criteria requirements under Section 6 above;
 - (ii) The petitioner has reformed, rehabilitated or otherwise overcome the issue(s) underpinning the revocation;
 - (iii) Permitting the petitioner to resume employment or business operations will not be detrimental to the integrity of the Tribe or to the public interest; and
 - (iv) The petitioner paid all application and license fees required.
- e. If a Marijuana Business license is suspended, the business will post a notice in a conspicuous place on both the exterior and interior of the building for the duration of the suspension. The notices shall be at least seventeen inches (17") by seventeen (17") with letters not less than one-half inch (1/2") in height.

1. The notice shall say:

NOTICE OF SUSPENSION

MARIJUANA BUSINESS LICENSES FOR THESE PREMISES HAVE BEEN SUSPENDED BY ORDER OF THE TRIBAL LICENSING AUTHORITY FOR VIOLATION OF THE MARIJUANA CONTROL ORDINANCE.

2. Any posted signs that indicate the premises have been closed or business suspended for any reason other than by the manner described in this section shall be deemed a violation of this Ordinance.
- f. If a Marijuana Business license is suspended, unless otherwise authorized by the Marijuana Commission, the Licensee shall not permit the serving, giving away, distribution, manufacture, sampling, acquisition, purchase, Transfer, or transport of Marijuana or Marijuana Products on the Licensed Premises or allow customers to enter the Licensed Premises for the duration of the suspension.
1. Unless otherwise ordered by the Marijuana Commission, during any period of suspension, the Licensee may continue to possess, maintain, cultivate, or harvest Marijuana or Marijuana Products on the Licensed Premises. The Licensee must fully account for all such Marijuana or Marijuana Products in the Seed-To-Sale Tracking System. The Licensee must safeguard any Marijuana or Marijuana Products in its possession or control. The Licensee must fully comply with all security requirements, including but not limited to surveillance, lock, and alarm requirements set forth in this Ordinance.
- g. If an Employee license is suspended, unless otherwise authorized by the Marijuana Commission, the Licensee shall not serve, give away, distribute, manufacture, Sample, acquire, purchase, Transfer, or transport Marijuana or Marijuana Products for the duration of the suspension.
- h. Marijuana and Marijuana Product During License Suspension and Revocation.
1. During the term of any license suspension, a Marijuana Business licensee may not conduct any operations on the licensed premises except as follows:
 - (i) Distribution Facility Licensee. Unless otherwise ordered, during any period of active license suspension the licensee shall not engage in the selling, serving, giving away, distribution, transfer or transport of any product, including Marijuana, Marijuana product or paraphernalia and accessories on the licensed premises, nor allow customers to enter the licensed premises.
 - (ii) Cultivation Facility Licensee. Unless otherwise ordered, during any period of active license suspension the licensee shall not sell, distribute, transfer, transport or otherwise remove any Marijuana or Marijuana Product from the licensed premises. However, the licensee

may maintain inventory and otherwise care for its Marijuana plant inventories during the period of suspension.

- (iii) Marijuana Product Manufacturing Facility Licensee. Unless otherwise ordered, during and period of active license suspension the licensee shall not manufacture any retail marijuana product or concentrates, nor permit the selling, distribution, transfer, or transport of Marijuana or Marijuana Product on or from the licensed premises.
 - (iv) Testing Facility Licensee. Unless otherwise ordered, during any period of active license suspension the licensee shall not receive any marijuana for testing, perform any testing on marijuana, or otherwise transfer or transport any Marijuana or Marijuana Product on or from the licensed premises.
 - (v) Transportation Licensee. Unless otherwise ordered, during any period of active license suspension the licensee shall not receive any Marijuana or Marijuana Product.
 - (vi) Removal or Destruction Prohibited. During any period of active license suspension, Marijuana and Marijuana products shall not be removed from the licensed premises or destroyed except under the supervision of the Marijuana Control Commission.
2. Upon revocation of a license, a Marijuana Business may not conduct any operations on the licensed premises. Marijuana and Marijuana Product must be returned to the transferor-licensee or destroyed under the supervision of the Marijuana Commission.

SECTION 11. ELECTRONIC VERIFICATION SYSTEM

- a. The Marijuana Commission shall maintain an electronic verification system.
- b. The electronic verification system must be able to monitor and report information, including, without limitation:
 - 1. For each person or Marijuana Business that holds a valid license;
 - 2. The number of the license;
 - 3. The date on which the license was issued;
 - 4. The date on which the license will expire;
 - 5. Verification of the identity of the person to whom the license was issued;
 - 6. Any violations of this Ordinance by the Licensee; and
 - 7. Such other information as the Marijuana Commission may require.

SECTION 12. AUTHORIZED PLANT COUNT AND ASSOCIATED FEES

- a. No Marijuana Cultivation Facilities shall be authorized to cultivate more than five hundred (500) mature plants at any given time upon licensure.
- b. A Marijuana Cultivation Facility can apply to increase their tier and total plant count upon renewal of the Marijuana Business's license by a maximum increase of two tiers. In connection with the license renewal process for Marijuana Businesses that are authorized to cultivate not more than five hundred (500) plants, the Marijuana Commission will review the purchases, Transfers, and cultivated plant count of the Cultivation Facility during the preceding licensing term. The Marijuana Commission may reduce the Licensee's maximum allowed plant count to a lower tier if the Licensee sold less than seventy percent (70%) of what it produced during the six months prior to the application for renewal.
- c. The tier system is as follows:
 1. Tier 1: 1 – 100 mature plants
 2. Tier 2: 101 – 200 mature plants
 3. Tier 3: 201– 300 mature plants
 4. Tier 4: 301 –400 mature plants
 5. Tier 5: 401 – 500 mature plants
- d. Cultivation fees to be paid to the Marijuana Commission at the time of licensure and upon subsequent license renewals:
 1. Tier 1: \$200.
 2. Production fee for Tier 2: \$400
 3. Production fee for Tier 3: \$600
 4. Production fee for Tier 4: \$800
 5. Production fee for Tier 5: \$1,000
- e. The Marijuana Commission shall review the tier system and the fee structure annually and will provide notice to the Oglala Sioux Council regarding any changes to tiers or fees.

SECTION 13. CHANGING LOCATION OF LICENSED PREMISES

- a. An owner of a Marijuana Business seeking to change the physical location or address of its Licensed Premises must apply to the Marijuana Commission for permission to change location of its Licensed Premises.
- b. Such application shall:

1. Be complete in every material detail and include remittance of all applicable fees;
 2. Be submitted at least thirty (30) days prior to the proposed change; and
 3. Explain the reason for requesting the change.
- c. The application fee for changing the location of the Licensed Premises is \$200.
- d. No change of location shall be permitted until after the Marijuana Commission considers the application, and such additional information as it may require, and issues the Applicant a permit for such change.
- e. The permit shall be effective on the date of issuance, and the Licensee shall, within thirty (30) days, change the location of its business to the place specified therein and at the same time cease to operate a Marijuana Business at the former location. At no time may a Marijuana Business operate or exercise any of the privileges granted pursuant to the license in both locations. For good cause shown, the thirty (30) day deadline may be extended for an additional thirty (30) days. If the Licensee does not change the location of its business within the time period granted by the Marijuana Commission, including any extension, the Licensee shall submit a new application, pay the requisite fees and receive a new permit prior to completing any change of the location of the business.
- f. The permit shall be conspicuously displayed at the new location, immediately adjacent to the license to which it pertains.
- g. After obtaining a license, the Licensee shall make no physical change, alteration, or modification of the Licensed Premises that materially or substantially alters the Licensed Premises or the usage of the Licensed Premises from the plans originally approved, without the Marijuana Commission prior written approval.

SECTION 14. NUMBER OF ALLOWED LICENSES

- a. Per owner:
1. Each owner of a Marijuana Business may have an Ownership Interest in no more than one (1) License for each category of Marijuana Business. Ownership Interests must be approved upon licensure of the Marijuana Business or upon approval of Transfer of ownership pursuant to Chapter 12 Section 3 of this Ordinance.
- b. Per Licensed Premises:
1. Only one type of Marijuana Business license shall be permitted at each Licensed Premises, Licensed Premises may be sited within the same building, however, each Licensed Premises must be located at a distinct address recognized by the Marijuana Commission and each Licensed Premises must have its own public entrance and be securely and physically separated from any other address located within the same structure.

CHAPTER 4.

MARIJUANA FACILITIES

SECTION 1. MARIJUANA FACILITY OPERATING PROCEDURES

- a. Each facility shall establish written standard operating procedures (“SOP”) for the growing, Processing, dispensing, transporting, voluntary testing, or retail consumption of Marijuana (whichever is applicable to the Marijuana Business License). The SOP must include the minimum following information:
 1. The manner in which all Pesticide and other agricultural chemicals are to be applied during its Cultivation process (if applicable);
 2. The equipment and methods employed by the facility;
 3. How Harvest Batch Numbers and Production Batch Numbers are assigned (if applicable);
 4. How the Marijuana, or Marijuana Product, will be transported to another facility (i.e., from Grower to Processor, etc.);
 5. The measures taken to minimize or offset the energy use from the Cultivation, Processing, etc. of the Marijuana (if applicable);
 6. The manner in which chemicals will be stored and used at the premises;
 7. The type and quantity of all effluent discharged into the Tribe’s wastewater or storm-water system;
 8. The hours and days of the week the facility will be open;
 9. The number of persons per shift who will be working at the facility;
 10. A description of the screening, registration, and validation process for consumers (if applicable);
 11. A description of consumer records acquisition and retention procedures (if applicable);
 12. The process for tracking Marijuana and Marijuana Product quantities and inventory control;
 13. The procedure and documentation process for assuring the safety and quality of all Marijuana and Marijuana Products;
 14. The procedure and documentation for determining patient dosage, including testing for Cannabinoids Tetrahydrocannabinol (THC), Cannabidiol (CBD) and Cannabinol (CBN) (if applicable);

15. The security measures that will be employed at the premises, including but not limited to licensed and uniformed guards, lighting, alarms, surveillance, and automatic law enforcement notification; and
 16. Any other information required by the Marijuana Commission.
- b. A copy of all SOP must be maintained at every facility.
 - c. On an annual basis, the Marijuana Commission shall have the authority to conduct up to three (3) random inspections of facilities to verify compliance with all requirements of the license issued and of this Ordinance, so long as previous testing has demonstrated the Marijuana business is in compliance with this Ordinance. In facilities where violations of this Ordinance have been discovered, The Marijuana Commission may conduct additional random inspections, at their sole discretion, and until such time as no further violations have been discovered. These inspections may include sampling by the Marijuana Commission to determine that the Marijuana or Marijuana Product is in compliance with this Ordinance.
 1. All Samples collected by the Marijuana Commission shall become the property of the Marijuana Commission. Samples shall not exceed those amounts which are absolutely necessary to effectuate testing.
 2. The Marijuana Commission shall furnish copies of any testing results to the Licensee and shall retain the testing results and any inspection reports for a minimum of five (5) years. The Marijuana Commission shall post the results of the inspections at the Commission's office and on a Commission website if such a website is created and maintained.
 - d. Marijuana Businesses shall not sell or serve Marijuana or Marijuana Products at any time other than between the hours of 8:00AM and 11:59PM, Monday through Sunday.

SECTION 2. ON-SITE CONSUMPTION

The use or consumption of Marijuana shall be prohibited at each facility, except by patrons in recreational lounges and individuals who have a Medical Registration Cards pursuant to Chapter 11 of this Ordinance. Consumption of Marijuana by employees at any facility is prohibited, except that employers will accommodate the needs of medical marijuana cardholders, so long as the accommodation does not impair the employee's ability to perform his or her duties.

SECTION 3. QUALITY ASSURANCE

- a. The Marijuana Commission may test any Marijuana cultivated for safety and quality assurance. A Cultivation Facility may not treat or otherwise adulterate Marijuana with any chemical or compound whatsoever to alter its color, appearance, weight, or smell.
- b. Any Marijuana processed and each Marijuana Product may be tested by the Marijuana Commission for safety and quality assurance, including but not limited to, potency

testing, residual solvents testing, microbial testing, aflatoxin testing, Pesticide testing, and heavy metal testing.

- c. A facility shall not accept or Transfer to another facility or any person any Marijuana or Marijuana Product that has failed required testing.
- d. A facility shall reject any Sample, Marijuana, or Marijuana Product where the condition of the Sample, Marijuana, or Marijuana Product at receipt indicates it may have been tampered with.
- e. A Testing Facility must establish, monitor, and document the ongoing review of a quality assurance program that is sufficient to identify problems in the laboratory preanalytic, analytic and postanalytic systems when they occur and must include, but is not limited to:
 - 1. Review of instrument preventive maintenance, repair, troubleshooting and corrective actions documentation must be performed by the laboratory director or designated supervisory analyst on an ongoing basis to ensure the effectiveness of actions taken over time;
 - 2. Review by the laboratory director or designated supervisory analyst of all ongoing quality assurance; and
 - 3. Review of the performance of validated methods used by the Testing Facility to include calibration standards, controls and the standard operating procedures used for analysis on an ongoing basis to ensure quality improvements are made when problems are identified or as needed.
- f. A Testing Facility must establish an adequate chain of custody and keep record of all chain of custody and quality control measures employed. The Testing Facility must maintain all required business records, including but not limited to, test results, quality control and quality assurance records, SOP, personnel records, chain of custody records, Proficiency Testing records, and analytical data of the calibration standards by the instrumentation.
- g. Permissible levels of contaminants:

1. Microbials (Bacteria, Fungus)

Substance	Acceptable limits per gram	Products to be tested
-Shiga-toxin producing Escherichia coli (STEC)- Bacteria	<1 Colony Forming Unit (CFU)	Flower and Trim; Marijuana Products (other than Audited Product);
Salmonella species- Bacteria	<1 Colony Forming Unit (CFU)	Water-Based, Heat/Pressure-Based, and

Substance	Acceptable limits per gram	Products to be tested
Total Yeast and Mold	<10 ⁴ Colony Forming Unit (CFU)	Food-Based Marijuana Concentrate; Pressurized Metered Dose Inhalers; Vaporizer Delivery Device
	≤10 ¹ cfu/ml or cfu/g	Audited Product: administration by Metered Dose Nasal Spray or Vaginal Administration
	≤10 ² cfu/ml or cfu/g	Audited Product: Rectal Administration
Total Aerobic Microbial Count	≤10 ² cfu/ml or cfu/g	Audited Product: administration by Metered Dose Nasal Spray or Vaginal Administration
	≤10 ³ cfu/ml or cfu/g	Audited Product: Rectal Administration
Staphylococcus Aureus	Absent in 1ml or 1g	Audited Product: administration by Metered Dose Nasal Spray or Vaginal Administration
Pseudomonas aeruginosa	Absent in 1ml or 1g	Audited Product: administration by Metered Dose Nasal Spray or Vaginal Administration
Bile tolerant gram negative bacteria	Absent in 1ml or 1g	Audited Product: administration by Metered Dose Nasal Spray
Candida albicans	Absent in 1ml or 1g	Audited Product: Vaginal Administration

2. Mycotoxins

Substance	Acceptable limits per gram	Products to be tested
Aflatoxins (B1, B2, G1, and G2)	<20 parts per billion (PPB) (total of B1+B2+G1+G2)	Solvent-Based Marijuana Concentrate manufactured from Marijuana flower or
Ochratoxin A	<20 parts per billion (PPB)	

Substance	Acceptable limits per gram	Products to be tested
		trim that failed microbial testing

3. Residual Solvents

Substance	Acceptable limits per gram	Products to be tested
Acetone	<1,000 parts per million (PPM)	Solvent-Based Marijuana Concentrate
Butanes	<1,000 parts per million (PPM)	
Ethanol (does not apply if for oral consumption or skin and body products only)	<1,000 parts per million (PPM)	
Heptanes	<1,000 parts per million (PPM)	
Isopropyl Alcohol	<1,000 parts per million (PPM)	
Propane	<1,000 parts per million (PPM)	
Benzene	<2 parts per million (PPM)	
Toluene	<180 parts per million (PPM)	
Pentane	<1,000 parts per million (PPM)	
Hexane	<60 parts per million (PPM)	
Total Xylenes (m, p, o-xylenes)	<430 parts per million (PPM)	
Any other solvent not permitted for use pursuant to this Ordinance	None Detected	

4. Metals

Substance	Acceptable limits per gram	Products to be tested
Metals (Arsenic, Cadmium, Lead, and Mercury)	Inhaled Product or Audited Product: administration by Metered Dose Nasal Spray Lead–Max Limit: <1.0 ppm Arsenic–Max Limit: <0.4	Flower and Trim; Water-Based, Food-Based, Heat/Pressure-Based, and Solvent-Based Concentrate; Marijuana Product; Pressurized

Substance	Acceptable limits per gram	Products to be tested
	ppm Cadmium–Max Limit: <0.4 ppm	Metered Dose Inhaler; Vaporizer Delivery Device; Audited Product
	Mercury–Max Limit: <0.2 ppm	
	Topical and/or Transdermal	
	Lead–Max Limit: <10 ppm	
	Arsenic–Max Limit: <3 ppm	
	Cadmium–Max Limit: <3 ppm	
	Mercury–Max Limit: <1 ppm	
	Oral Consumption or Audited Product: Rectal or Vaginal Administration	
	Lead–Max Limit: <1 ppm	
	Arsenic–Max Limit: <1.5ppm	
	Cadmium–Max Limit: <0.5 ppm	
	Mercury–Max Limit: <1.5 ppm	

5. Pesticides

Substance	Acceptable limits per gram	Products to be tested
Abamectin (Avermectins: B1a & B1b)	<0.07 PPM	Flower and Trim
Azoxystrobin	<0.02 PPM	
Bifenazate	<0.02 PPM	
Etoxazole	<0.01 PPM	
Imazalil	<0.04 PPM	
Imidacloprid	<0.02 PPM	
Malathion	<0.05 PPM	
Myclobutanil	<0.04 PPM	
Permethrin (mix of isomers)	<0.04 PPM	
Spinosad (mix of A and D)	<0.06 PPM	
Spiromesifen	<0.03 PPM	

Substance	Acceptable limits per gram	Products to be tested
Spirotetramat	<0.02 PPM	
Tebuconazole	<0.01 PPM	

6. Other Contaminants

Pesticide	If the Test Batch is found to contain banned prohibited Pesticide not listed in Paragraph (5) above, or the improper application of a permitted Pesticide, then that Test Batch shall be considered to have failed contaminant testing.	
Chemicals	If the Test Batch is found to contain levels of any chemical that could be toxic if consumed or as applied, then the Marijuana Commission may determine that the Test Batch has failed contaminant testing.	
Microbials	If the Test Batch is found to contain levels of any microbial that could be toxic if consumed or present, then the Marijuana Commission may determine that the Test Batch has failed contaminant testing.	
Metals	If the Test Batch is found to contain levels of any metal that could be toxic if consumed or present, then the Marijuana Commission may determine that the Test Batch has failed contaminant testing.	

h. Potency Testing

1. For potency test results on Marijuana and Marijuana Products, results must be reported by listing a single percentage concentration for each Cannabinoid (THC, CBD, CBN, and THCA) that represents an average of all Samples within the Test Batch. This includes the Total THC in addition to each Cannabinoid listed above.
2. If an individually packaged Edible Marijuana Product is determined to have more than one hundred (100) milligrams of THC within it, subject to permissive variance, then the Test Batch shall be considered to have failed potency testing. If an individually packaged Edible Marijuana Product is determined to have more than the total milligrams of THC stated on the Container, or less than the total milligrams of THC stated on the Container, subject to permissive variance, then the Test Batch shall be considered to have failed potency testing. If a single serving in an individually packaged Edible Marijuana Product is determined to have more than ten (10) milligrams of THC, or less than ten (10) milligrams of THC, subject to permissive variance, then the Test Batch shall be considered to have failed potency testing.
3. If the THC content of a Marijuana Product is determined through testing not to be homogenous, then it shall be considered to have failed potency testing. A Marijuana Product shall be considered to not be homogenous if ten percent (10%) of the infused portion of the Marijuana Product contains more than twenty percent (20%) of the total THC contained within entire Marijuana Product.

4. A potency variance of no more than plus or minus fifteen percent (15%) is allowed.

SECTION 4. FOOD SAFETY COURSE

- a. Any person who processes Marijuana into food and other edibles shall be required to provide a Food Handler Certificate showing completion of a food handler training course administered by the Indian Health Service (IHS) or such other comparable program.
- b. The food handler training course must be completed by all applicable employees every two (2) years and proof of course completion shall be retained in the facility's records.

SECTION 5. PRECAUTIONS AND REQUIREMENTS

- a. Every facility shall take all reasonable measures and precautions to ensure that the following requirements are met:
 1. All Cultivation, Processing, or distribution of Marijuana or Marijuana Products must take place in an enclosed, locked structure or building;
 2. Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with Marijuana shall be excluded from any operations which may be expected to result in such contamination until the condition is corrected;
 3. All persons working in direct contact with Marijuana shall conform to hygienic practices while on duty, including but not limited to, maintaining sufficient personal cleanliness;
 4. Litter and waste shall be properly removed and the operating systems for waste disposal shall be maintained in an adequate manner so that they do not constitute a source of contamination in areas where Marijuana is exposed as pursuant to Chapter 4 Section 9;
 5. All floors, walls, and ceilings shall be constructed in such a manner that they may be adequately cleaned and kept clean and kept in good repair;
 6. Adequate lighting shall be required in all areas where Marijuana is stored;
 7. Adequate screening or other protection against the entry of pests shall be made. Rubbish shall be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests;
 8. All buildings, fixtures, and other facilities shall be maintained in a sanitary condition; and
 9. Pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of Marijuana, and in a manner that is in accordance with this Ordinance and any applicable Tribal, state, or federal law, rule, or regulation.

- a. Cultivation facilities shall be subject to the following specific regulations:
 1. The display or sale of paraphernalia employed in the use or consumption of Marijuana or any implement that may be used to administer, use, inhale, consume, smoke or ingest Marijuana, is prohibited at the Cultivation Facility;
 2. The Cultivation of Marijuana shall not adversely affect the health or safety of the employees, or the facility in which it is cultivated or processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;
 3. The Cultivation area shall occur only within a self-contained structure that is adequately ventilated;
 4. The Cultivation Facility shall comply with storm-water, wastewater, and other requirements of the Tribe;
 5. The water supply shall be sufficient for the operations intended and shall be derived from a source that is a regulated water system. Private water supplies shall be derived from a water source that is capable of providing a safe, potable, and adequate supply of water to meet the facility's needs;
 6. The plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water and that shall properly convey sewage and liquid disposable waste from the Cultivation Facility. There shall be no cross-connections between the potable and wastewater lines;
 7. All operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Marijuana or Marijuana Product shall be conducted in accordance with adequate sanitation principles;
 8. Every Cultivation Facility shall provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair;
 9. All hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in the Cultivation Facility and where good sanitary practices require employees to wash and/or sanitize their hands, and provide effective hand cleaning and sanitizing preparations and sanitary towel service or suitable drying devices; and
 10. Marijuana that can support the rapid growth of undesirable microorganisms shall be held in a manner that prevents the growth of these microorganisms.
- b. Processing facilities shall be subject to the following specific regulations:
 1. There shall be no on-site use or consumption of Marijuana;
 2. The display or sale of paraphernalia employed in the use or consumption of Marijuana or any implement that may be used to administer, use, inhale, consume, smoke or ingest Marijuana, is prohibited at the Processing Facility;

3. The Processing of Marijuana shall not adversely affect the health or safety of the employees, or the facility in which it is cultivated or processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;
 4. The Processing area shall occur only within a self-contained structure that is adequately ventilated;
 5. The Processing Facility shall comply with storm-water, wastewater, and other requirements of the Tribe;
 6. The water supply shall be sufficient for the operations intended and shall be derived from a source that is a regulated water system. Private water supplies shall be derived from a water source that is capable of providing a safe, potable, and adequate supply of water to meet the facility's needs;
 7. The plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water and that shall properly convey sewage and liquid disposable waste from the Processing Facility. There shall be no cross-connections between the potable and wastewater lines;
 8. All operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of Marijuana or Marijuana Product shall be conducted in accordance with adequate sanitation principles;
 9. Every Processing Facility shall provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair;
 10. All hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in the Cultivation Facility and where good sanitary practices require employees to wash and/or sanitize their hands, and provide effective hand cleaning and sanitizing preparations and sanitary towel service or suitable drying devices;
 11. All contact surfaces, including utensils and equipment used for the preparation of a Marijuana Product, shall be cleaned and sanitized as frequently as necessary to protect against contamination. Equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable, and shall be properly maintained; and
 12. The processor shall not include any Additive that is toxic within a Marijuana Product; nor include any Additive for the purposes of making the product more addictive, appealing to children, or misleading to consumers.
- c. Distribution facilities shall be subject to the following specific regulations:
1. The Distribution Facility shall only distribute Marijuana or Marijuana Products to holders of a valid Medical Registration Card or a Member Enrollment Card;

2. The Distribution Facility shall display rules and regulations in a conspicuous place that is readily seen by all persons entering the Distribution Facility;
 3. There shall be no on-site use or consumption of Marijuana. Each building entrance to the Distribution Facility shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming Marijuana on the premises or in the vicinity of the Distribution Facility is prohibited;
 4. Each building entrance to the Distribution Facility shall be clearly and legibly posted with a notice indicating that persons under the age of 21 are precluded from entering the premises;
 5. The Distribution Facility shall only distribute Marijuana or Marijuana Products during normal business hours;
 6. The Distribution Facility shall strongly discourage and avoid daily or weekly visits by consumers as a routine practice and shall not distribute Marijuana or Marijuana Product to any person more than twice a day. The amount distributed cannot exceed one (1) ounce of marijuana or one-eighth (1/8) of an ounce of marijuana concentrates (by weight of oil infused in a marijuana product or on its own) per day. Non-edible, non-psychoactive Marijuana Products including ointments, lotions, balms, and other non-transdermal topical products are exempt from the quantity limit;
 7. The on-site display of Marijuana plants visible from the outside shall be prohibited, including live plants or graphic representations of the Marijuana plant.
 8. The distribution of Marijuana shall not adversely affect the health or safety of the employees, volunteers or the facility in which it is distributed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;
 9. A Licensee is prohibited from selling Marijuana or Marijuana Products over the internet. Any Transfer of Marijuana or Marijuana Product must occur within the Distribution Facility's Licensed Premises;
 10. A Licensee may not give away Marijuana or Marijuana Product to a consumer for free for any reason; and
 11. A Licensee is prohibited from selling or providing Marijuana or Marijuana Product that contain nicotine or alcohol.
- d. Recreational Lounges shall be subject to the following specific regulations:
1. The plumbing shall be of adequate size and design and adequately installed and maintained to carry sufficient quantities of water and that shall properly convey sewage and liquid disposable waste from the Cultivation Facility. There shall be no cross-connections between the potable and wastewater lines;

2. Every lounge shall provide its employees and patrons with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair;
3. All hand-washing facilities shall be adequate and convenient and be furnished with running water at a suitable temperature. Hand-washing facilities shall be located in the lounge and where good sanitary practices require employees to wash and/or sanitize their hands, and provide effective hand cleaning and sanitizing preparations and sanitary towel service or suitable drying devices;
4. All contact surfaces, including utensils and equipment used, shall be cleaned and sanitized as frequently as necessary to protect against contamination. Equipment and utensils shall be so designed and of such material and workmanship as to be adequately cleanable, and shall be properly maintained;
5. Each building entrance to the facility shall be clearly and legibly posted with a notice indicating that persons under the age of 21 are precluded from entering the premises;
6. The lounge shall only distribute Marijuana or Marijuana Products during normal business hours;
7. The distribution of Marijuana shall not adversely affect the health or safety of the employees, volunteers, patrons or the facility in which it is distributed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;
8. A Licensee is prohibited from selling or providing Marijuana or Marijuana Product that contain nicotine or alcohol including alcohol based tinctures.

SECTION 6. ACCESS

- a. Only employees with a valid employee identification card and persons with a bona fide purpose for entering may have access to Cultivation, Processing, or testing facilities.
- b. Only Distribution Facility employees, holders of a valid Enrollment Card and persons with a bona fide purpose for visiting the premises shall be permitted access into a Distribution Facility.
 1. Potential customers shall not visit any Distribution Facility without first having obtained a valid Medical Registration Card or Member Enrollment Card.
 2. All visitors accompanying a holder of a valid Member Enrollment Card shall remain in a designated waiting area in the Distribution Facility.
- c. Notwithstanding these requirements, nothing shall prohibit Tribal law enforcement from entering any area of the facility upon presentation of official credentials identifying them as such.

- d. The Marijuana Business Licensee shall maintain a log of all visitor activity, for any purpose, within the Cultivation, Processing, testing, or Distribution Facility and shall make such logs available for inspection by the Marijuana Commission or its designee.
- e. The Licensee shall check the identification for all visitors to verify that the name on the identification matches the name in the visitor log.
- f. All areas of ingress and egress to Limited Access Areas on the Licensed Premises shall be clearly identified by the conspicuous posting of a sign which shall be not less than twelve inch (12”) by twelve inch (12”), composed of letters not less than one-half inch (1/2”) in height, which shall state, “Do Not Enter – Limited Access Area – Access Limited to Licensed Personnel and Escorted Visitors.”

SECTION 7. ELECTRONIC VERIFICATION SYSTEM

- a. Each Distribution Facility shall maintain an electronic verification system.
- b. The electronic verification system must be able to monitor and report information, including, without limitation:
 - 1. For each person who holds a valid Medical Registration Card or Member Enrollment Card and who purchased Marijuana or Marijuana Products from the Distribution Facility in the immediately preceding three (3) day period;
 - 2. The amount of Marijuana or Marijuana Product sold to the cardholder;
 - 3. The number of the card;
 - 4. The date on which the card was issued;
 - 5. The date on which the card will expire;
 - 6. Verification of the identity of a person to whom Marijuana or Marijuana Products are sold or otherwise distributed; and
 - 7. Such other information as the Marijuana Commission may require.
- c. Nothing in this section prohibits more than one Distribution Facility from co-owning an electronic verification system in cooperation with another Distribution Facility, or sharing the information obtained therefrom.
- d. A Distribution Facility must exercise reasonable care to ensure that the personal identifying information of persons who hold valid Registration Cards, which is contained in an electronic verification system is encrypted, protected, and not divulged for any purpose not specifically authorized by law.

SECTION 8. TRAINING

All employees shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding Marijuana in compliance with this Ordinance. Employees shall

be given thirty (30) days to train on the rules and procedures of the facility employing them and this Ordinance.

SECTION 9. WASTE DISPOSAL

- a. All Marijuana and Marijuana Product waste must be stored, secured, locked, and managed in accordance with federal, local, and Tribal statutes, regulations, ordinances, or other requirements.
- b. Liquid waste from Marijuana Businesses shall be disposed of in compliance with all applicable federal, local, and Tribal laws, regulations, rules, and other requirements.
- c. Disposal of chemical, dangerous, or hazardous waste must be conducted in a manner consistent with federal, local, and Tribal laws, regulations, rules, and other requirements. This may include, but is not limited to, the disposal of all Pesticide or other agricultural chemicals, certain solvents, or other chemicals used in the production of Marijuana Concentrate or any Marijuana soaked in a Flammable Solvent for purposes of producing a Marijuana Concentrate.
- d. Marijuana and Marijuana Product waste must be made unusable and unrecognizable prior to leaving the Licensed Premises through one of the following methods:
 1. Grinding or compacting and incorporating the Marijuana waste with non-consumable solid wastes listed below such that the resulting mixture is at least 50% non-Marijuana waste, and such resulting mixture cannot easily be separated and sorted:
 - (i) Paper waste;
 - (ii) Plastic waste;
 - (iii) Food waste;
 - (iv) Grease or other compostable oil waste;
 - (v) Compost activators;
 - (vi) Soil;
 - (vii) Sawdust; and
 - (viii) Other wastes approved by the Marijuana Commission.
- e. Licensees shall not dispose of Marijuana or Marijuana Product waste in an unsecured waste receptacle not in possession and control of the Licensee. After the waste is made unusable and unrecognizable, then the rendered waste shall be:
 1. Disposed of at a solid waste site and disposal facility that has been designated by the Marijuana Commission;
 2. Deposited at a compost facility that has been designated by the Marijuana Commission; or

3. Composted on-site at a facility owned by the generator of the waste and is in compliance with this Ordinance.

SECTION 10. PROHIBITED CHEMICALS

Each Applicant shall complete a written agreement stating that they will only apply chemicals to their Marijuana in accordance with applicable tribal and federal law. See Exhibit A for Prohibited Chemicals.

CHAPTER 5.
LABELING, PACKAGING, AND ADVERTISING

SECTION 1. LABELING OF PRODUCT PRIOR TO TRANSFER TO A MARIJUANA FACILITY

- a. Prior to Transfer to another Marijuana Business or Facility, every Container of Marijuana flower, trim, wet whole plant, or concentrate shall be affixed with a label that includes at least the following:
 1. The license number of the Cultivation Facility where the Marijuana was grown;
 2. The Harvest Batch Number(s) assigned to the Marijuana or the Production Batch Number(s) assigned to the concentrate;
 3. If applicable, the license number of the Cultivation Facility that produced the water-based Marijuana Concentrate;
 4. If applicable, the license number of the producer where the concentrate was produced;
 5. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Marijuana or concentrate prior to its placement in the Container; and
 6. Potency test results as required to permit the receiving Marijuana Business or Facility to label the Marijuana or concentrate as required by this Ordinance.

- b. Prior to Transfer to another Marijuana Business or Facility, every Container of Marijuana Product shall be affixed with a label that includes at least the following information:
 1. The license number of the Cultivation Facility where the Marijuana was grown;
 2. The license number of the Marijuana processor that produced the Marijuana Product;
 3. The Production Batch Number(s) assigned to the Marijuana Product;
 4. The net contents, using a standard of measure compatible with the Inventory Tracking System, of the Marijuana or concentrate prior to its placement in the Container; and
 5. Potency test results as required to permit the receiving Marijuana Business or Facility to label the Marijuana Product as required by this Ordinance.

- c. Prior to Transfer to another Marijuana Business or Facility, every Container of Marijuana seeds and Immature Plants shall be affixed with a label that includes at least the license number of the Cultivation Facility where the Marijuana that produced the seeds or the Immature Plant was grown.

SECTION 2. LABELING OF PRODUCT PRIOR TO TRANSFER TO CONSUMER

Prior to Transfer to a consumer, every Container of Marijuana or Marijuana Product shall be affixed with a label that includes at least the following:

- a. Required labeling text on the Container and any Marketing Layer must be no smaller than 1/16 of an inch.
- b. A Marijuana Business shall not place any content on a Container or Marketing Layer in a manner that reasonably appears to target individuals under the age of 21, including but not limited to cartoon characters or similar images.
 1. Edible Marijuana Products in the following shapes are prohibited:
 - (i) The distinct shape of a human, animal, or fruit; or
 - (ii) A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.
 2. The prohibition on human, animal, and fruit shapes does not apply to the logo of a licensed Marijuana Business;
 3. Edible products that are geometric shapes and simply fruit flavored are permissible; and
 4. Edible products that are manufactured in the shape of a Marijuana leaf are permissible.
- c. Labels on a Container or any Marketing Layer shall not include any false or misleading statements.
- d. No Container or Marketing Layer shall be intentionally or knowingly labeled so as to cause a reasonable consumer confusion as to whether the Marijuana is a trademarked product or labeled in a manner that violates any federal trademark law or regulation.
- e. The labels on the Container and any Marketing Layer shall not make any claims regarding health or physical benefits to the patient or consumer.
- f. Labeling text on the Container and any Marketing Layer must be clearly written or printed and in the English language. In addition to the required English label, Licensees may include an additional, accurate language translation on the label that otherwise complies with this Ordinance.
- g. Labeling text on the Container and any Marketing Layer must be unobstructed and conspicuous. A Licensee may affix multiple labels to the Container, provided that none of the information required by these rules is obstructed. For example, and not by means of limitation, labels may be accordion, expandable, extendable, or layered to permit labeling of small Containers.

- h. Licensees shall not use the word(s) “candy” and/or “candies” or a variation (such as “kandy” or “kandeez”) on the label of any Container or Marketing Layer.
 - 1. Notwithstanding the above requirements, a Marijuana Business whose identity statement contains the word(s) “candy” and/or “candies” may place its identity statement on the label of the Container or any Marketing Layer.
- i. The license number of each of the following:
 - 1. The Cultivation Facility where the Marijuana was grown;
 - 2. If applicable, the Cultivation Facility where the water-based Marijuana Concentrate was produced;
 - 3. If applicable, the Marijuana processor where the Marijuana Product was produced; and
 - 4. The Distribution Facility (Marijuana store) that sold the Marijuana or Marijuana Product to the consumer. The distributor may affix its license number to the Container or Marketing Layer.
- j. The Harvest Batch Number(s) of the Marijuana or the Production Batch Number(s) assigned to the Marijuana Product.
- k. The statement of net contents must identify the net weight, volume, or number of Marijuana or Marijuana Products prior to its placement in the Container, using a standard of measure compatible with the Inventory Tracking System.
- l. The Universal Symbol on the front of the Container and any Marketing Layer, no smaller than ½ inch by ½ inch, with the following statement directly below the Universal Symbol, in a bold font: **“Contains Marijuana. Keep away from children.”**
- m. The potency of Marijuana flower or trim shall be expressed as the percentage of total THC and CBD from the test results for that Harvest Batch. If CBD is not detected in the Harvest Batch, then total CBD potency is not required. The potency of Marijuana Concentrate’s total THC and CBD shall be expressed as a percentage. If CBD is not detected in the Production Batch, then total CBD potency is not required. All other Marijuana Products must express the target potency or potency value determined by the testing facility of the product’s active THC and CBD expressed in milligrams. If CBD is not detected in the Marijuana Product, then active CBD potency is not required. The potency of Marijuana or Marijuana Product shall be displayed either in a bold font and enclosed within an outlined shape (such as a circle or square) or highlighted with a bright color (such as yellow).
- n. The dispensary shall affix the date of sale to the consumer to the Container or Marketing Layer.
- o. The dispensary shall affix the consumer’s Member Enrollment Card identification to the Container or Marketing Layer at the time of Transfer to the consumer.

- p. A list of any solvents used to produce any solvent-based Marijuana Concentrate or other Marijuana Product.
- q. If applicable, a list of all ingredients used to manufacture the Marijuana Product including identification of any major allergens contained in the product. Disclosure of the following major food allergens is required: milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans.
- r. Either the label affixed to the Container or the Marketing Layer shall include the following information:
 - 1. “This product was produced without regulatory oversight for health, safety, or efficacy.”
 - 2. “There may be long term physical or mental health risks from use of Marijuana including additional risks for women who are or may become pregnant or are breastfeeding. Use of Marijuana may impair your ability to drive a car or operate machinery.”
 - 3. Activation time expressed in words or through a pictogram. (In this context - Activation time means the amount of time it is likely to take for an individual to begin to feel the effects of ingesting or inhaling a marijuana product.)
- s. A list of ingredients, including Additives, used to manufacture the Vaporizer Delivery Device or Pressurized Metered Dose Inhaler.
- t. A Pressurized Metered Dose Inhaler, Vaporizer Delivery Device, or Audited Product must be affixed with a label that states: “Not approved by the FDA.”
- u. The Container or any Marketing Layer shall identify one or more intended use(s) for Marijuana or Marijuana Products from the following list:
 - 1. Inhaled Product:
 - (i) Flower or Trim (including pre-rolled joint and Kief);
 - (ii) Solvent-Based Marijuana Concentrate;
 - (iii) Water-Based Marijuana Concentrate;
 - (iv) Heat/Pressure-Based Marijuana Concentrate;
 - (v) Vaporizer Delivery Device;
 - (vi) Pressurized Metered Dose Inhaler.
 - 2. For Oral Consumption:
 - (i) Food or drink infused with Marijuana;
 - (ii) Marijuana Concentrate intended to be consumed orally;
 - (iii) Pills and capsules;

- (iv) Tinctures.
- 3. Skin and Body Products:
 - (i) Topical;
 - (ii) Transdermal.
- 4. Audited Product:
 - (i) Metered Dose Nasal Spray;
 - (ii) Vaginal Administration;
 - (iii) Rectal Administration.
- v. Instructions for use and any preparation needed for the Marijuana or Marijuana Product.
- w. Expiration, use-by, or best-by date, if applicable.
- x. “KEEP REFRIGERATED” or “REFRIGERATE AFTER OPENING” if perishable after opening.
- y. For Edible Marijuana Products:
 - 1. Sodium, sugar, carbohydrates and total fat per serving in milligrams or grams;
 - 2. Every single standardized serving (ten (10) milligrams of THC) of an Edible Marijuana Product must be individually marked, stamped, or imprinted with the Universal Symbol;
 - 3. When impractical to mark an Edible Marijuana Product with the Universal Symbol, as in the case of bulk goods and powders, these products must be packaged in a single-serving, Child-Resistant Container (see section 3 below);
 - 4. In an Edible Marijuana Product that contains multiple servings, each single standardized serving must be marked, stamped, or imprinted with the Universal Symbol; and
 - 5. “The intoxicating effects of this product may be delayed by up to four (4) hours.”

SECTION 3. PACKAGING

- a. Prior to Transfer to a consumer, Marijuana flower and trim, Pressurized Metered Dose Inhaler, Vaporizer Delivery Device, or syringe-type device shall be in a Container that does not exceed the daily sales limit in Chapter 4 Section 5. The Container may but is not required to be Child-Resistant. Any Marijuana flower and trim, Pressurized Metered Dose Inhaler, Vaporizer Delivery Device, or syringe-type device in a Container that is not Child-Resistant shall be placed into a Child-Resistant Exit Package at the point of Transfer to consumer.
- b. Marijuana seeds shall be placed in a Container prior to Transfer to consumer. This Container may but is not required to be Child-Resistant. Any Marijuana seeds not in a

Child-Resistant Container shall be placed in a Child-Resistant Exit Package at the point of Transfer to consumer.

- c. Prior to Transfer to consumer, Immature Plants shall be placed into a receptacle. The receptacle may but is not required to be Child-Resistant.
- d. All other Marijuana Products shall be in a Child-Resistant Container at the time of Transfer to the dispensary.
- e. If the Marijuana Product contains multiple portions, then it shall be placed into a Child-Resistant Container that is Resealable.
 - 1. Every single-serving Edible Marijuana Product must be placed into a Child-Resistant Container and shall not exceed ten (10) milligrams of active THC.
 - 2. Single-serving Edible Marijuana Products that are placed into a Child-Resistant Container may be bundled into a larger Marketing Layer so long as the total amount of active THC per Marketing Layer does not exceed one hundred (100) milligrams.
 - 3. Every multiple-serving Edible Marijuana Product shall be placed in a Child-Resistant Container that is Resealable and shall not exceed one hundred (100) milligrams of active THC per Container.
 - 4. Each liquid Edible Marijuana Product that is a multiple-serving Marijuana Product shall be packaged in a structure that uses a single mechanism to achieve both Child-Resistant properties and accurate pouring measurement of each liquid serving in increments equal to or less than ten (10) milligrams of active THC per serving, with no more than one hundred (100) milligrams of active THC per Container. The measurement component must be within the Child-Resistant cap or closure of the bottle and not be a separate component.
- f. Requirement for Child-Resistant packaging are as follows:
 - 1. Packaging must be designed or constructed to be significantly difficult for children under five (5) years of age to open and not difficult for normal adults to use;
 - 2. The packaging must be opaque so that the packaging does not allow the product to be seen without opening the packaging material;
 - 3. Packaging must be resealable for any product intended for more than a single use or containing multiple servings;
 - 4. Packaging that is certified as Child-Resistant under the requirements of the Poison Prevention Packaging Act of 1970 Regulations (16 CFR § 1700.15(b)(1)) (Rev. July 1995);
 - 5. Any container not in compliance with these rules must be placed in a Child-Resistant Exit Package upon Transfer to consumer, unless otherwise stated above.

- g. Packages and containers that hold the Marijuana or Marijuana Product must protect those items from contamination and must not expose the Marijuana or Marijuana Product to any toxic or harmful substance.
- h. Only packaging that is resealable and continually Child-Resistant may be re-used. If the Marijuana or Marijuana Product is placed in a package that is being re-used, the old label or labels must be removed, and the package must have a new label or labels attached to it. Additionally, any packaging that is being re-used must be clean. The package cannot contaminate the Marijuana or Marijuana Product and must not expose the item to any toxic or deleterious substances. Exit packages may be reused as long as they are re-sealable, remain Child-Resistant throughout the life of the product, and are in good working order.

SECTION 4. ADVERTISING

- a. A Marijuana Business shall not engage in Advertising that is deceptive, false, or misleading. A Marijuana Business shall not make any deceptive, false, or misleading assertions or statements on any product, any sign, or any document provided to a consumer.
- b. A Marijuana Business shall not utilize television Advertising unless the Marijuana Business has reliable evidence that no more than thirty percent (30%) of the audience for the program on which the Advertising is to air is reasonably expected to be under the age of 21.
- c. A Marijuana Business shall not engage in radio Advertising unless the Marijuana Business has reliable evidence that no more than thirty percent (30%) of the audience for the program on which the Advertising is to air is reasonably expected to be under the age of 21.
- d. A Marijuana Business shall not engage in Advertising in print publication unless the Marijuana Business has reliable evidence that no more than thirty percent (30%) of the audience for the program on which the Advertising is to appear is reasonably expected to be under the age of 21.
- e. A Marijuana Business shall not engage in Advertising via the internet unless the Marijuana Business has reliable evidence that no more than thirty percent (30%) of the audience for the program on which the Advertising is to appear is reasonably expected to be under the age of 21.
- f. A Marijuana Business shall not engage in Advertising that specifically targets persons located outside the exterior boundaries of the Reservation.
- g. No Marijuana Business may engage in Advertising or utilize signage that asserts its products are safe because they are regulated by this Ordinance or because they are tested by a Marijuana Testing Facility.

- h. In addition to any requirements within this Ordinance, a Marijuana Business shall comply with any applicable local ordinances regulating signs and Advertising.
- i. Except as otherwise provided in this Ordinance, it shall be unlawful for any Marijuana Business to engage in Advertising that is visible to members of the public from any street, sidewalk, park, or other public place, including Advertising utilizing any of the following media: any billboard or other outdoor general Advertising device; any sign mounted on a vehicle, any hand-held or other portable sign; or any handbill, leaflet, or flier directly handed to any person in a public place, left upon a motor vehicle, or posted upon any public or private property without the consent of the property owner.
- j. The prohibitions set forth above shall not apply to any fixed sign that is located on the same zone lot as a Marijuana Business and that exists solely for the purpose of identifying the location of the Marijuana Business and otherwise complies with any applicable local ordinances.
- k. A Marijuana Business shall not include in any form of Advertising or signage any content that specifically targets individuals under the age of 21, including but not limited to cartoon characters or similar images.
- l. A Marijuana Business shall not engage in Advertising via marketing directed towards location-based devices, including but not limited to cellular phones, unless the marketing is a mobile device application installed on the device by the owner who is 21 years of age or older and includes a permanent and easy opt-out feature.
- m. A Marijuana Business shall not utilize unsolicited pop-up Advertising on the internet.
- n. A Marijuana Business website shall include an age portal that requires visitors to verify that they are 21 years of age or older.
- o. A Marijuana Business may sponsor a charitable, sports, or similar event, but a Marijuana Business shall not engage in Advertising at, or in connection with, such an event unless the Marijuana Business has reliable evidence that no more than thirty percent (30%) of the audience at the event and/or viewing Advertising in connection with the event is reasonably expected to be under the age of 21.

CHAPTER 6.
TRANSPORTATION OF MARIJUANA

SECTION 1. TRANSPORTATION

- a. Provided that appropriate in-transit security measures are taken; the delivery or transportation of Marijuana or Marijuana Products between facilities and laboratories within the boundaries of the Reservation is permitted by licensed transporters so long as there is a written manifest. The written manifest shall include:
 1. The originating location's license number and address;
 2. The destination location's license number and address;
 3. The product name, and quantity (by weight or unit as applicable) of each marijuana item;
 4. The actual date and estimated time of departure;
 5. A written description of the route that will be used to get to each location;
 6. The arrival date and estimated time of arrival or completion of delivery;
 7. The delivery vehicle make, model, and license plate number; and
 8. The name, contact information, and signature of the individual accompanying the transport.
- b. A physical, printed copy of the generated manifest must accompany every transport of marijuana items.
- c. Any person who while transporting or delivering Marijuana or Marijuana Products shall not possess or carry on their person or in their vehicle an excessive amount of Marijuana, an excessive amount of cash, one or more weapons, or illicit drugs.
- d. Every Marijuana Business shall be responsible for sealing all Shipping Containers, if applicable, of Marijuana or Marijuana Products immediately upon the conclusion of the safe and secure stuffing process and must keep record of each seal number.
 1. Only management employees at a receiving facility or government officials having custody of a Shipping Container of Marijuana or Marijuana Products, may break the seal for legitimate reasons.

SECTION 2. TRANSPORTATION SECURITY PROGRAM

Every Marijuana Business shall establish a detailed Transportation Security Program, approved by the Marijuana Commission, which shall include at a minimum the following:

- a. Standards and procedures to enhance the physical security of shipments, for example Shipping Containers, including standards for seals and locks.

- b. Standards and procedures for screening and evaluating shipments prior to transportation and upon delivery at the next facility.
- c. Standards and procedures for securing shipments and monitoring that security while in transit.
- d. Standards and procedures for allowing government officials to ensure and validate compliance with this program.
- e. Any other measures the Marijuana Commission considers necessary to ensure the security and integrity of transporting Marijuana or Marijuana Products.

SECTION 3. TRANSPORTATION OUTSIDE THE RESERVATION

Delivery or transportation of Marijuana or Marijuana Products beyond the exterior boundaries of the Reservation is prohibited.

CHAPTER 7.
SECURITY, SITE MANAGEMENT, AND INVENTORY CONTROL

SECTION 1. SECURITY AND SITE MANAGEMENT

- a. Every Marijuana Business shall provide adequate security for all facilities and laboratories, which shall include at a minimum the following:
 1. All employees shall be required to hold and properly display a current identification badge issued by the Tribe at all times. Proper display of the license badge shall consist of wearing the badge in a plainly visible manner, at or above the waist, and with the photo of the holder visible. The holder shall not alter, obscure, damage, or deface the badge in any manner;
 2. Security surveillance cameras shall be installed and maintained in good working condition to monitor the main entrance and exterior of all facilities and laboratories to discourage loitering, crime, illegal or nuisance activities. Security video shall be maintained for a minimum of seventy-two (72) hours.
 3. Professionally monitored robbery alarm and burglary Alarm Systems shall be installed and maintained in good working condition;
 4. Professionally monitored fire alarm and fire suppression systems shall be installed and maintained in good working condition;
 5. At all times, there shall be at least one licensed, uniformed security guard or a Tribal police officer present and visible on the premises of all facilities and laboratories; and
 6. All points of ingress and egress shall have commercial-grade, nonresidential door locks.
- b. Every Marijuana Business shall take all reasonable steps to discourage and correct disturbances of peace, open public consumption of Marijuana or alcohol, excessive pedestrian or vehicular traffic, illegal drug activity, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct, or police detention and arrests.

SECTION 2. SEED-TO-SALE TRACKING SYSTEM

- a. Every Marijuana Business shall maintain a Seed-To-Sale Tracking System, such as Metric.
- b. The Tracking System must be able to monitor and report information, including, without limitation:
 1. Insofar as is practicable, the chain of custody and current whereabouts, in real time, of Marijuana from the point it is harvested at a Cultivation Facility until it is sold at a dispensary and, if applicable, if it is processed at a facility for the production of Marijuana Products;

2. A real time accounting of the total amount of product sold; and
 3. Such other information as the Marijuana Commission may require.
- c. Nothing in this section prohibits a facility from co-owning a Tracking System in cooperation with other facilities, or sharing the information obtained therefrom.

SECTION 3. AUDITS

- a. Each Marijuana Business shall cause to be prepared an annual financial statement of every facility using generally accepted accounting principles that are audited by an independent certified public accountant in conformity with generally accepted auditing standards.
- b. Every Marijuana Business shall undergo an annual health and sanitary audit of any facility by an independent consultant. The scope of the audit may include, but not limited to, whether each facility and laboratory is in compliance with the requirements set forth in this Ordinance and other applicable health, sanitary, or food handling laws, rules, and regulations. Failure to perform to the independent audit may result in suspension of operations until the completion of the independent audit and the implementation of any required remedial measures is made.
 1. An independent audit of a Marijuana Business may be deemed necessary by the Marijuana Commission when the Marijuana Commission has reasonable grounds to believe that the Marijuana Business is in violation of one or more of the requirements set forth in this Ordinance or other applicable public health or sanitary laws, rules, or regulations or the Marijuana Commission has reasonable grounds to believe that the Marijuana Business was the cause or source of contamination of Marijuana or Marijuana Product.
- c. Every Marijuana Business must pay for and timely cooperate with the requirement that it undergo a health and sanitary audit in accordance with this Ordinance.

CHAPTER 8.

TESTING AND SAMPLING

SECTION 1. LAB ACCREDITATION

Compliance and safety testing for Marijuana or Marijuana Products encouraged by this Ordinance shall be conducted by independent laboratories that are licensed under this Ordinance. The laboratories shall implement standards and methods for conducting analysis of forms of Marijuana in accordance with the requirements of ISO/IEC 17025 “General Requirements for the Competence of Testing and Calibration Laboratories”. The Marijuana Commission shall approve each proposed laboratory. Only the laboratory(s) approved in advance by the Marijuana Commission and meeting the requirements of this Ordinance may perform the tests on a licensed Marijuana Business’s Marijuana or Marijuana Products.

SECTION 2. SAMPLING AND TESTING

- a. The Marijuana Commission may subject a licensee to a random test of a Harvest, Partial Harvest, Marijuana or Marijuana Product for the purpose of ensuring that the lot complies with this Ordinance. The cost for such testing shall be at the Licensee’s expense. Notice of such random test results or Certificate of Analysis shall be provided to the Marijuana Commission. Only the laboratory(s) approved in advance by the Marijuana Commission and meeting the above requirements may perform the random tests on a licensed Marijuana Business’s Marijuana or Marijuana Products.
 1. A cultivator shall not remove a Harvest from a Grow Site that has been randomly tested for compliance in accordance with this Ordinance until removal is approved by the Marijuana Commission;
 2. The Marijuana Commission shall test random Samples expeditiously and may not unduly delay the release, hold or otherwise impede the sale or delivery of a Harvest from a Grow Site, Marijuana or a Marijuana Product that has been randomly tested;
 3. Samples removed pursuant to a random test shall not exceed those amounts which are absolutely necessary to effectuate testing;
 4. Samples subjected to random testing collected from the flower material or Marijuana Product shall be tested for levels of THC, CBD, and any contaminants as listed in Chapter 4, Section 3;
 5. Random tests may be performed on every Harvest, Marijuana or Marijuana Product; and
 6. Sample sizes shall not exceed the amount necessary to perform testing.
 7. Testing shall be done no more than three (3) times per year, so long as the results of previous testing demonstrated that the Marijuana Business was in compliance with this Ordinance.
- b. Nothing in this section shall prevent a Marijuana Business from voluntarily collecting Samples and testing Marijuana or Marijuana Product for quality assurance and research

and development purposes. All voluntary testing is to be conducted at the expense of the Marijuana Business.

SECTION 3. RETESTING AND RESAMPLING

A Marijuana Business whose Harvest, Marijuana, or Marijuana Product does not test as compliant with this Ordinance may reapply to the Marijuana Commission for retesting and/or resampling of any non-compliant lot. This retesting shall be allowed absent good cause and shall be at the expense of the Marijuana Business.

SECTION 4. ADDITIONAL REQUIREMENTS

- a. The method used for sampling must ensure that a representative Sample is collected that represents a homogeneous composition of the lot.
- b. During a scheduled Sample collection, the cultivator/processor or an authorized representative of the cultivator/processor shall be present at the site where the Sample is being collected.
- c. Representatives of the sampling agency shall be provided with complete and unrestricted access during business hours to all Marijuana plants and products, whether growing, harvested, or processed, and all land, buildings, and other structures used for the Cultivation, handling, storage, and Processing of all Marijuana plants and products, and all locations listed in the cultivator/processor license.
- d. Samples of Marijuana material from one lot shall not be commingled with Marijuana material from other lots.

SECTION 5. ANALYTICAL TESTING MINIMUM STANDARDS

Analytical testing for purposes of detecting concentration and contamination levels shall meet the following standards:

- a. Laboratory quality assurance must ensure the validity and reliability of test results;
- b. Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;
- c. The demonstration of testing validity must ensure consistent, accurate analytical performance;
- d. Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Ordinance;
- e. An effective disposal procedure for Marijuana and Marijuana Products that do not meet the requirements of this Ordinance; and

- f. Measurement of uncertainty must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

CHAPTER 9.

THE MARIJUANA COMMISSION

SECTION 1. CREATION

The Oglala Sioux Tribe hereby creates a Marijuana Commission and vests it with the authority to license and manage the possession, cultivation, transportation, laboratory testing and use of marijuana and marijuana products within the territory of the Tribe so long as it does so in compliance with this Ordinance.

The Commission shall be comprised of:

- a. The program as a Tribal entity, inclusive of the Executive Director and staff, and
- b. The Commissioners charged with responsibility for licensing and regulation.

The Commissioners acting as a board shall have broad oversight and are primarily responsible for all aspects of the licensing process, including issuing and revoking licenses as well as the promulgation of regulations and establishing a fee schedule. The staff are primarily responsible for the day-to-day operations of the Commission.

SECTION 2. APPOINTMENT OF MEMBERS OF THE MARIJUANA COMMISSION

The Oglala Sioux Tribal Council shall appoint three (3) Oglala Sioux Members to serve as members of the Marijuana Commission. Such members shall be referred to as “Commissioners.”

- a. At least two (2) members shall have experience in agriculture, business, public health, heavily regulated industries or a science-related or testing field.
- b. No Tribal Council Officer or Member shall serve on the Marijuana Commission in any capacity during his or her term in office.

SECTION 3. QUALIFICATIONS

All Commissioners must:

- a. Be at least 25 years of age on the date of their appointment , and an enrolled member of the Tribe.
- b. Possess a high school diploma or its equivalent.
- c. Not have been found guilty of or entered a plea of nolo contendere or guilty to any felony related to a controlled substance under tribal, federal or state law.
- d. Not have been found guilty of or entered a plea of nolo contendere or guilty to any criminal offense under federal, state or tribal law involving the possession or use of a weapon in a crime, felony fraud or exploitation, or bribery, unless the Tribal Council determines that the person is now a trustworthy individual.

- e. Not have been convicted of a crime, the essential elements of which constitutes a felony.
- f. Be free from any financial ties with any persons, companies or businesses involved in the marijuana industry, or from circumstances that will create a conflict of interest or adversely affect one's performance as a member of the Marijuana Commission.
- g. All Marijuana Commission appointees shall undergo thorough financial and criminal background checks to ensure and verify that the appointee is in compliance with subsections c, d, e and f of this Section. All criminal background checks shall verify and ensure that the appointee has no felony convictions under or related to the federal Controlled Substances Act (21 U.S.C. §§ 801 et seq.).
- h. A Commissioner's failure to report any circumstance which violates these minimum standards shall be grounds for immediate removal as a Commissioner.

SECTION 4. TERM OF OFFICE

Commissioners, appointed by the Tribal Council, shall serve staggered four (4) year terms, except for the initial appointment of Commissioners. A Commissioner shall serve until his/her successor is appointed. The Commissioners shall select from among its members a chairperson who shall preside over the meetings of the Commission.

- a. Initial Marijuana Commission. One Commissioner shall be appointed to serve a two (2) year term, and two Commissioners shall be appointed to serve three (3) year terms.
- b. Subsequent Appointments. Each Commissioner after the initial appointments shall serve a four (4) year term.
- c. No Commissioner shall serve more than three (3) consecutive terms.

SECTION 5. REMOVAL OF A COMMISSIONER

- a. A Commissioner may be removed upon a finding by a majority vote of the Oglala Sioux Tribal Council.
- b. Any Commissioner whose removal is sought shall be entitled to be notified in writing at least ten (10) business days before any vote is taken regarding that Commissioner's removal. Such Commissioner may request a hearing and present evidence before the Tribal Council.
- c. Any two (2) Commissioners may recommend to the Tribal Council, the removal of a Commissioner and may immediately suspend a Commissioner from engaging in Commission activities, if it determines that allowing the continued participation of that Commissioner during the Tribal Council removal process, would undermine the integrity of the Commission. This suspension shall remain in place until lifted by a majority vote of the Tribal Council or until a final vote on a removal petition is held by the Tribal Council.

- d. A Commissioner shall be automatically removed from the Commission without hearing or appeal upon proof that he or she has been convicted of a drug related crime while in office.

SECTION 6. COMMISSION MEETINGS

- a. The Commission shall establish its own schedule of meetings and Board actions but shall meet at least once every calendar month. Two Commissioners shall constitute a quorum and notices of all meeting shall, unless waived by a vote of all Commissioners, be given to all Commissioners at least forty-eight (48) hours in advance of a formal meeting.
- b. Meetings of the Commission involving the licensing of any applicant shall be in closed session, allowing for staff, legal counsel, and experts to participate, unless the Commission determines otherwise by majority vote. Final actions on licensing shall, however, be done in open session.
- c. The Commission shall keep a written record of all open meetings and actions.
- d. The Commission shall adopt regulations governing the conduct of meetings, a conflict of interest policy, and a code of ethics. Such regulations must be in conformity with and in addition to any existing Tribal laws.
- e. If the Commission does not adopt rules of procedure, then the Robert's Rules of Order Newly Revised for board meetings shall apply.

SECTION 7. DUTIES OF THE COMMISSION

The duties of the Commission shall at a minimum include:

- a. Familiarizing themselves with this Ordinance and with state and federal laws on Marijuana.
- b. Seeking out and obtaining the latest training on marijuana laws and scientific and commercial developments involving marijuana cultivation and use, as well as the latest information on the accepted scientific methods utilized to test marijuana and marijuana-related items.
- c. Developing a written system of regulations and procedures for licensing persons who wish to participate in marijuana cultivating, brokering, handling, processing, transporting and testing. Developing additional procedures for the destruction of marijuana crops, and additional standards for the marketing of marijuana within the territory of the Oglala Sioux Tribe. These additional standards must, at a minimum, be in full compliance with the provisions of this Ordinance.
- d. Maintaining a formal record, including a legal description of each of the sites where marijuana activity is allowed under a Commission approved license, along with a detailed description of the approved activity, and a record of all persons which have applied for

and/or received any type of marijuana license under this Ordinance. These formal records shall be maintained in the Commission's files for not less than seven (7) years.

- e. Developing and implementing procedures and minimum requirements for ensuring the proper inspection, testing and sampling of marijuana plants, marijuana cultivated, stored, transported, processed, possessed or used within the territory of the Tribe. Said procedures shall make use of testing methods designed to determine if the item in question meets the definition of the product authorized by this Ordinance and applicable law.
- f. Developing and implementing minimum standards and procedures for background checking and where applicable licensing all labs, technicians and other scientific professionals performing the various marijuana related tests required by the Commission and this Ordinance. The records of these testing professionals shall be maintained in the Commission's records for not less than seven (7) years.
- g. Developing and implementing procedures for background checking and licensing all applicants for the various marijuana licenses authorized by this Ordinance and Commission regulations.
- h. Developing and implementing a procedure for ensuring that all marijuana related licenses are granted on an impartial basis in the best interest of the Oglala Sioux Tribe and in compliance with applicable tribal law.
- i. Developing and implementing additional standards and procedures for refusing a marijuana related license and revoking or suspending any marijuana related license granted by the Commission.
- j. Developing and obtaining approval of an annual budget for the Commission, including a personnel budget and compensation for the Commissioners.
- k. Providing a quarterly report to the Tribal Council or such Tribal committee as is delegated by the Tribal Council to receive the reports summarizing the Marijuana Commission's official actions, activities, investigative reports, and reports received from any Marijuana Business as it deems necessary to keep the Tribal Council fully informed as to the status of the Marijuana Commission's activities.
- l. Developing and implementing a working relationship with tribal, state and federal law enforcement and the tribal business license and the TERO programs.
- m. Developing and implementing a working relationship with the U.S. Food and Drug Administration, the U.S. Department of Justice, the U.S. Department of the Interior and all other federal regulators and enforcement arms involved with the enforcement arms of federal and tribal narcotics laws.

SECTION 8. POWERS OF THE COMMISSION

The Marijuana Commission may exercise such powers and authorities as are necessary to perform its duties and discharge its responsibilities under this Ordinance. These powers include, but are not limited to:

- a. Establishing additional rules, standards and regulations relating to the licensing and regulating of all marijuana activities authorized by this Ordinance.
- b. Receiving and processing all license applications and issuing or denying the licenses authorized by this Ordinance.
- c. Conducting or causing to be conducted background investigations of all prospective licensees as well as background checks on the Commission employees and contractors. No Commissioner shall be involved in investigating themselves.
- d. Denying, suspending, restricting or revoking any license granted by the Commission under this Ordinance.
- e. Establishing and collecting application, license, testing, and sampling fees and such other fees and costs required by the Commission regulations.
- f. Engaging the services of legal counsel.
- g. Inspecting and examining all premises where marijuana is present within the territory of the Tribe and delegating this authority to appropriately trained Commission employees and contractors.
- h. Entering into agreements with third parties to assist the Commission in fulfilling its duties.
- i. Holding hearings and requiring licensees and license applicants to appear and testify under oath regarding matters related to the enforcement of this Ordinance and Commission regulations.
- j. Establishing and imposing civil fines and penalties or such other sanctions as it deems appropriate and approving or disapproving the corrective action plans provided for in this Ordinance consistent with the provisions of Chapter 2 of this Ordinance.
- k. Retaining staff and contracting with experts to fulfill its obligations under this Ordinance.
- l. Referring matters to law enforcement.

SECTION 9. COMMISSION'S EXECUTIVE DIRECTOR

The Commission shall have an executive director ("Executive Director") who shall oversee its day to day functions including the acceptance of license applications and license agreements and the scheduling of tests and inspections. The Executive Director shall be a person with a

bachelor's degree, or a person who has not less than five (5) years' experience in the Marijuana Industry or who can otherwise demonstrate the ability to perform the services required by the position. The Executive Director shall be hired by the Commissioners.

- a. The Executive Director shall be the direct supervisor of any other employees of the Commission.
- b. The Executive Director shall be responsible for developing a budget for the Commission.
- c. The Executive Director shall have signatory authority as supervisor, however, supervisory and disciplinary actions over the Executive Director must be actions of the Commissioners.
- d. The Executive Director shall be a contract employee.

SECTION 10. SOVEREIGN IMMUNITY

- a. The Marijuana Commission shall enjoy all the privileges and immunities of the Tribe, including sovereign immunity from suit in the state, federal, or Tribal Court, except as specifically limited by this Ordinance.
- b. The Marijuana Commission shall have no authority to waive the sovereign immunity of the Tribe, the Marijuana Commission, or any other Tribal entity.
- c. Nothing in this Ordinance shall be deemed or construed to be a waiver of the Marijuana Commission's sovereign immunity from suit.
- d. Nothing in this Ordinance shall be deemed or construed as consent of the Marijuana Commission to the jurisdiction of the United States, any state, or any other Tribe regarding the business or affairs of the Marijuana Commission.
- e. Notwithstanding any other provisions herein, as an entity of the Tribe, the Marijuana Commission's immunity from suit shall at all times be deemed waived for actions against the Marijuana Commission initiated by Oglala Sioux Tribe.

CHAPTER 10. **TAXATION AND FEES**

SECTION 1. TAXATION

- a. All Marijuana Businesses are responsible for all taxes, interest, or penalties due to the Department of Revenue relating to the Marijuana Business. The Marijuana Commission shall review the taxes and fees annually and shall provide notice to the Tribal Council whether the taxes and fees have been modified.
- b. Licensed distributors are required to charge customers an excise tax of ten percent (10%) for all Marijuana and Marijuana Products sold.
- c. Licensed lounges are required to charge customers an excise tax of ten percent (10%) and a consumption tax of ten percent (10%) for all Marijuana and Marijuana Products sold.
- d. Each month the tax collected by the Marijuana Business from customers during the previous month is due to the Marijuana Commission.
- e. Licensed Marijuana Businesses are required to pay an excise tax of ten percent (10%) of the average market rate for unprocessed Marijuana sold or Transferred on the first sale or Transfer of unprocessed Marijuana from a Cultivation Facility to either a distributor or processor.
 1. Marijuana subject to this excise tax includes all parts of the plant of genus cannabis (whether growing or not), the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including Marijuana Concentrate.
 2. Sales and Transfers to this excise tax include any grant, conveyance, handing over, assignment, exchange, or barter of unprocessed Marijuana by any means whatsoever, with or without consideration.
 3. The Transfer of Marijuana to a testing facility for testing purposes is exempt from the excise tax so long as the Marijuana is destroyed during or following the testing. No excise tax is imposed on a Transfer of Marijuana from one cultivator to another cultivator. In the case of a Transfer of Marijuana between Cultivation facilities, the excise tax is imposed on the subsequent Transfer of Marijuana to a distributor or processor.

SECTION 2. ALLOCATION

- a. All fees, including licensing and renewal fees, collected by the Marijuana Commission will be used by the Marijuana Commission for purposes of operating under the duties given by this Ordinance.

- b. All taxes and operating fees collected by the Marijuana Commission will be allocated in the following manner: first to operate the Marijuana program, second to benefit various programs on the Pine Ridge Reservation including youth, the elderly, veterans mental health, and to support the holding company charged with job creation. It is the responsibility of the Marijuana Commission after the close of the fiscal year to provide a report to the Tribal Council regarding the funds available, first to operation and then to benefit the enumerated programs.
- c. The Tribal Council will allocate the funds in excess of the funds for operation to the programs enumerated above.

CHAPTER 11.
MEDICAL REGISTRATION CARD

SECTION 1. QUALIFYING CONDITIONS

Consumers (including minors) qualify for a Medical Registration Card if they can prove they have been diagnosed with one or more of the following conditions by an attending physician:

- a. Cancer;
- b. Glaucoma;
- c. HIV or AIDS;
- d. Cachexia;
- e. Persistent muscle spasms;
- f. Seizures;
- g. Severe nausea;
- h. Severe pain;
- i. Post-Traumatic Stress Disorder;
- j. Autism Spectrum Disorder;
- k. Insomnia;
- l. A degenerative or pervasive neurological disorder;
- m. Anorexia;
- n. Arthritis;
- o. Migraines;
- p. Any condition for which a physician could prescribe an opioid; or
- q. Any other chronic or persistent medical symptom that substantially limits the ability of the person to conduct one or more major life activities or, if not alleviated, may cause serious harm to the patient's safety or physical or mental health

SECTION 2. APPLICATION REQUIREMENTS

- a. Adult Applicants must submit to the Marijuana Commission:
 1. Name, address, and contact information of the Applicant;
 2. A valid Oglala Sioux Tribal Enrollment ID;
 3. Proof of residency within the boundaries of the Reservation ;
 4. \$30 application processing fee;
 5. Medical paperwork stating the Applicant has been diagnosed with one of the above conditions by an attending physician;

6. Proof that the Applicant is at least 21 years of age; and
 7. A current photograph of the Applicant.
- b. Minor Applicants must have a person responsible for the minor's health care and medical decisions who must submit to the Marijuana Commission:
1. Name, address, and contact information of the minor and their legal representative;
 2. A valid Oglala Sioux Tribal Enrollment ID of the minor and of his or her legal representative;
 3. Proof of residency within the boundaries of the Reservation ;
 4. \$30 application processing fee;
 5. Two sets of medical paperwork stating the Applicant has been diagnosed with one of the above conditions by two separate attending physicians;
 6. A current photograph of the minor; and
 7. A declaration from the minor's legal representative for the minor to participate in the Medical Marijuana Program.

SECTION 3. GROWING FOR MEDICAL USE

- a. Any Tribal member 21 years of age or older who has a Medical Registration Card can grow Marijuana in their homes for his or her own use or for that of a minor for whom the Tribal member has the authority to make health care decisions regarding medical use.
- b. Up to four (4) plants are allowed per individual with a Medical Registration Card.
- c. All residences are limited to a maximum of eight (8) plants, including plants grown for personal use even if there are three (3) or more adults 21 years of age or older in the residence.
- d. Marijuana plants must be kept in an enclosed area not in public view and not able to be accessed by minors.
- e. At homes with residents under 21 years of age, any Marijuana grow area must be enclosed and locked in a separate space that minors cannot access.
- f. At homes without residents under 21 years of age, extra precautions must be taken to make sure any visiting minors do not have access to the Marijuana plants.
- g. Homegrown Marijuana or Marijuana Products cannot be sold to anyone, however, any Medical Registration Cardholder may transfer, for no consideration, an amount of Marijuana that a Tribal Member with a Medical Registration Card can possess. Only licensed Marijuana Businesses can sell Marijuana or Marijuana Products.

SECTION 4. RECREATIONAL LOUNGE RECIPROCITY

Adult consumers 21 years of age or older who possess a valid Medical Registration Card, duly issued by a state in the United States where medical Marijuana is legal, or from a federally recognized tribe where Medical Marijuana is legal, or from any other country, are eligible to purchase Marijuana or Marijuana Products in Recreational Lounges and only in quantities that can be consumed within the Recreational Lounge.

SECTION 5. ELECTRONIC VERIFICATION SYSTEM

- a. The Marijuana Commission shall maintain an electronic verification system.
- b. The electronic verification system must be able to monitor and report information, including, without limitation:
 1. For each person that holds a valid Medical Registration Card:
 - (i) The number of the card;
 - (ii) The date on which the card was issued;
 - (iii) The date on which the card will expire;
 2. For each person that holds a valid Member Enrollment Card:
 - (i) The identification on the card
 3. Verification of the identity of the person to whom the Medical Registration Card or the Member Enrollment Card was issued;
 4. Any violations of this Ordinance by the cardholder; and
 5. Such other information as the Marijuana Commission may require.

CHAPTER 12.
MARIJUANA BUSINESS OWNERSHIP

SECTION 1. OWNERSHIP INTEREST AND CONTROL

- a. Only enrolled members of the Oglala Sioux Tribe may obtain an Ownership Interest in a Marijuana Business. Proof of enrollment status is required upon application for a Marijuana Business license.
- b. An enrolled member of the Oglala Sioux Tribe may have an ownership interest in only one Marijuana business within a category of marijuana businesses (i.e. grower, processor dispensary, transporter, testing lab, recreational lounge) requiring a business license.
- c. A recreational lounge that is located within ten (10) miles of the Prairie Wind Casino must be owned by a business entity (either a corporation or limited liability company) and must be owned by no less than five (5) enrolled members of the Tribe.
- d. A Marijuana Business may borrow money to fund its operations, however:
 1. the loan may not include provisions to convert to an equity position with the business,
 2. the lender may not foreclose on the marijuana business, and
 3. the lender must meet the same background check qualifications as the marijuana business owners.

SECTION 2. DISCLOSURE

A Marijuana Business shall disclose all Ownership Interests at the time of initial application and at the time of each renewal application. It shall be unlawful to fail to completely report all Ownership Interests in each license issued. It shall be unlawful for a person other than an Ownership Interest holder to exercise control over a Marijuana Business or to be positioned so as to enable the exercise of control over a Marijuana Business.

SECTION 3. TRANSFER OF OWNERSHIP AND CHANGES IN BUSINESS STRUCTURE

- a. All Transfers of ownership or changes in business structure after a business license has been issued must be approved by the Marijuana Commission.
- b. All applications for Transfer of ownership and changes in Marijuana Businesses must include application fees, be complete in every material detail, and be filled out truthfully.
 1. The application fee for a Transfer of ownership or change in business structure is \$100.

- c. All applications for Transfers of ownership and changes in licensed entities by Marijuana Businesses must be reported to the Marijuana Commission or its designee at least thirty (30) days prior to any requested Transfer or change.
- d. Each Applicant for a Transfer of ownership shall provide suitable evidence as required by the Marijuana Commission, in accordance with this Ordinance, of each natural person's proof of lawful presence, citizenship, Tribal member enrollment status, residence, good character, and/or reputation. Each Applicant will also be required to provide suitable evidence for verification that funds used to invest in or finance the Marijuana Business were lawfully earned or obtained. Each Applicant shall also provide all requested information concerning financial and management associations and interests of other persons in the business, Department of Revenue tax payment information, the deed, lease, contract, or other document governing the terms and conditions of occupancy of the Licensed Premises. Nothing in this section is intended to limit the Marijuana Commission's ability to request additional information it deems necessary to determining an Applicant's suitability for licensure.
- e. Failure to provide such additional information by the deadline specified by the Marijuana Commission may result in denial of the application.
- f. The Applicant(s), or proposed Transferee(s), for any license shall not operate the Marijuana Business identified in the Transfer of ownership application until the Transfer of ownership request is approved in writing by the Marijuana Commission or its designee. A violation of this requirement shall constitute grounds to deny the Transfer of ownership request, may be a violation affecting public safety, and may result in disciplinary action against the Applicant's existing license(s), if applicable.
- g. All current owners, or proposed Transferor(s), of the license(s) at issue retain full responsibility for the Marijuana Business identified in the Transfer of ownership application until the Transfer of ownership request is approved in writing by the Marijuana Commission. A violation of this requirement shall constitute grounds to deny the Transfer of ownership request, may be a violation affecting public safety, and may result in disciplinary action against the license(s) of the current owner(s) and/or the Marijuana Business.

CHAPTER 13.
RECREATIONAL LOUNGES

SECTION 1. PERMITTED ACTS

A recreational lounge shall:

- a. Operate the establishment in a decent, orderly, and respectable manner;
- b. Require all employees to successfully complete an annual responsible vendor training program;
 1. The training program must contain, at a minimum, the following standards and must be taught in a minimum two (2) hour period:
 - (i) A core curriculum of pertinent regulatory provisions, which includes acceptable forms of identification, how to check identification and spot false identification, licensing and enforcement under this Ordinance, health and safety standards, maintenance of records, and information on the serving size, THC and Cannabinoid potency, and impairment.
- c. Ensure that the display and consumption of any Marijuana or Marijuana Products is not visible from outside of the Licensed Premises of the Marijuana Business;
- d. Educate patrons by providing informational materials regarding the safe consumption of Marijuana;
- e. Maintain record of all educational materials required for inspection by the Marijuana Commission;
- f. If an emergency requires law enforcement, firefighters, emergency medical service providers, or other public safety personnel to enter the premises, ensure that all employees and patrons cease all consumption and other activities until such personnel have completed their investigation or services and have left the Licensed Premises;
- g. Remove an individual from the Licensed Premises for any reason, including showing visible signs of intoxication;
- h. Permit the consumption of Marijuana and Marijuana Products on the Licensed Premises by patrons; and
- i. Permit all adults 21 years of age or older whether enrolled member, medical card holder, or nonmember to purchase marijuana and marijuana items only in amounts designed to be consumed at the lounge and no one is permitted to leave the lounge with any item purchased there.

SECTION 2. PROHIBITED ACTS

A recreational lounge shall not:

- a. Allow on-duty employees of the Marijuana Business to consume any Marijuana or Marijuana Products in the Licensed Premises of the Marijuana Business;
- b. Distribute or allow distribution of free Samples of Marijuana or Marijuana Products in the Licensed Premises of the Marijuana Business;
- c. Allow the consumption of alcohol on the Licensed Premises;
- d. Allow the smoking of tobacco or tobacco products in the Licensed Premises;
- e. Allow any activity that would require an additional Marijuana Business license under this Ordinance in the Licensed Premises of the Marijuana Business, including but not limited to sales, manufacturing, or Cultivation;
- f. Knowingly permit any activity or acts of disorderly conduct as described in Chapter 7 Section 1;
- g. Permit the use or consumption of Marijuana or Marijuana Products by a patron who displays any visible signs of intoxication;
- h. Admit into the Licensed Premises of the Marijuana Business any person who is under 21 years of age; and
- i. Allow live entertainment unless the establishment has an appropriate license for that activity.

SECTION 3. INVENTORY

- a. A recreational lounge shall track all of its Marijuana and Marijuana Products from the point that they are Transferred from a distributor, cultivator, or processor to the point of sale to its patrons.
- b. Patrons shall be limited to one transaction of no more than the sales limit set by Chapter 4 Section 5 per person per day.
- c. Marijuana and Marijuana Products shall not be allowed to be removed from the premises by a patron.

SECTION 4. TAXATION

An excise tax of ten percent (10%) as well as a consumption tax of ten percent (10%) shall be applied to all transactions, regardless of status as an enrolled Tribal member or Medical Registration Card holder, as stipulated in Chapter 10 Section 1.

SECTION 5. AGE VERIFICATION

Age verification is required for patrons entering the premises and consuming Marijuana or Marijuana Products. All patrons must be at least 21 years of age on the date of admittance to the premises. Acceptable forms of identification include:

- a. State-issued driver's license;
- b. Valid passport;
- c. Military ID;
- d. State-issued ID card;
- e. Alien Registration Card;
- f. Birth certificate; or
- g. Any Tribal Identification Card that includes birth date.

CHAPTER 14.
MISCELLANEOUS PROVISIONS
TO OTHER SECTIONS OF THE LAW AND ORDER CODE

SECTION 1. LIMITATION ON ABILITY TO EVICT

Chapter 2, Section 21.1 of the Tribal Law and Order Code is amended as follows:

“CHAPTER 21.1 EVICTION LAW - FORCIBLE ENTRY AND DETAINER

SECTION 1. GROUNDS FOR BRINGING AN ACTION.

An action of detainer or forcible entry and detainer amounting to eviction and recovery of damages can be brought when:

- a. A tenant or lessee who himself or through a subtenant fails to pay his rent for three (3) days from the date due, the expiration of his lease period;
- b. A party by force, intimidation, or fraud entered, detained or occupied the land of another;
- c. A party after entering peaceably upon land turned out the party in possession using force, threats, or menacing conduct;
- d. A party has illegally held possession of land, whether acquired peaceably or otherwise, using force, threats or menacing conduct;
- e. A party continues to occupy and possess land after its sale (under mortgage, execution, order, or judicial process after the expiration of the time fixed for redemption and after execution and the delivery of a deed);
- f. A party continues to possess land after a judgment in partition or after a sale under a Tribal Court Order or Decree;
- g. A tenant or lessee wastes and damages leased land or fails to perform any act which under the lease terminates that lease **except that no landlord shall penalize an enrolled Tribal member solely for his or her use or possession or cultivation of Marijuana, so long as that use, possession or cultivation is otherwise permitted under the Marijuana Control Ordinance, unless failing to do so would imminently cause the landlord to lose a monetary or licensing related benefit under federal law or regulations.**

SECTION 2. NOTICE TO QUIT

In all arising under subdivisions (a) (e) and (f) , of Section 1, a formal written notice to quit shall be served upon the lessee, subtenants or party in possession or posted on the entrance of the premises at least three (3) days before commencing an action in Court.

SECTION 3. JURISDICTION OF COURT

The Oglala Sioux Tribal Court shall have jurisdiction of any such cases within the exterior boundaries of the Pine Ridge Indian Reservation.

SECTION 4. JOINDER OF ACTIONS

An action brought under this Chapter cannot be brought in connection with any other, except for rents, profits, and damages, but separate plaintiff actions may be brought.

SECTION 5. DEATH OF PLAINTIFF

The legal representative of a potential plaintiff may bring an action under this Chapter after his death.

SECTION 6. VERIFIED COMPLAINT

The complaint must be in writing and verified by the plaintiff, his agent, or his attorney and served with a summons upon the defendant as in other actions in the Tribal Court. If after making a diligent effort personal service cannot be had, service can be made by posting a copy of the summons and the complaint in some conspicuous place upon the premises.”

SECTION 2. AMENDMENT TO CHAPTER 17 LIMITING EMPLOYMENT DISCRIMINATION BASED ON OFF-SITE CONSUMPTION OF MARIJUANA

Chapter 17 of the Law and Order Code is amended to include the following:

“SECTION ____. LIMITING EMPLOYMENT DISCRIMINATION

Unless a failure to do so would cause an employer to imminently lose a monetary or licensing related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a Tribal member based upon the person's use or possession of Marijuana or a Marijuana product. However, employers may act against a Tribal member who uses or possesses Marijuana or a Marijuana product while in the Tribal member’s place of employment or during the hours of employment. Employers may not act against a Tribal member based solely upon the results of a drug test showing positive for Marijuana, a Marijuana product, or its components.”

CHAPTER 15. **MISCELLANEOUS PROVISIONS**

SECTION 1. SEVERABILITY

The provisions of this Ordinance are declared to be separate and severable. If the Tribal Court shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, article, or part of this Ordinance, such judgement or decree shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the clause, sentence, paragraph, section, article, or chapter of this Ordinance as adjudged to be invalid or unconstitutional.

SECTION 2. INTERPRETATION AND APPLICABILITY

- a. No part of this Ordinance shall be deemed to be in positive conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 801 *et seq.*, not to otherwise permit any activity that is prohibited under that Act or any other Tribal, state or federal law, statute, rule, or regulation.
- b. Nothing in this Ordinance is intended, nor shall it be construed, to burden any defense to criminal prosecution otherwise afforded by Tribal law.
- c. Nothing in this Ordinance is intended, nor shall it be construed, to make legal any Cultivation, transportation, sale or other use of Marijuana that is otherwise prohibited under Tribal law.

SECTION 3. RENUMBERING AND RE-DESIGNATION

Authority is given to the compiler of the laws of the Tribe to renumber, re-designate, or to cite the provisions of this Ordinance as necessary for uniformity and accessibility.

Exhibit A:

The following chemicals are prohibited and shall not be used in Marijuana Cultivation. Possession of chemicals and/or Containers from these chemicals upon the Licensed Premises shall be a violation of this Rule. Additionally, possession of Marijuana or Marijuana Concentrate on which any of the following chemicals is detected shall constitute a violation of this Rule.

1. Any Pesticide the use of which would constitute a violation of the Pesticide Act, section 35-9-101 et seq., C.R.S., the “Pesticides Applicators’ Act,” section 35-10-101 et seq., C.R.S., or the rule and regulations pursuant thereto.
2. Other chemicals (listed by chemical name and CAS Registry Number (or EDF Substance ID)):

ALDRIN	CAMPHECHLOR
309-00-2	8001-35-2
ARSENIC OXIDE (3)	CAPTAFOL
1327-53-3	2425-06-1
ASBESTOS (FRIABLE)	CARBOFURAN
1332-21-4	1563-66-2
AZODRIN	CARBON TETRACHLORIDE
6923-22-4	56-23-5
1,4-BENZOQUINONE, 2,3,5,6-TETRACHLORO	CHLORDANE
118-75-2	57-74-9
BINAPACRYL	CHLORDECONE (KEPONE)
485-31-4	143-50-0
2,3,4,5-BIS (2-BUTENYLENE) TETRAHYDROFURFURAL	CHLORDIMEFORM
126-15-8	6164-98-3
BROMOXYNIL BUTYRATE	CHLOROBENZILATE
EDF-186	510-15-6
CADMIUM COMPOUNDS	CHLOROMETHOXYPROPYLMERCURIC ACETATE [CPMA] EDF183
CAE750	COPPER ARSENATE
CALCIUM ARSENATE [2ASH3O4.2CA]	10103-61-4
7778-44-1	

2,4-D, ISOOCTYL ESTER	FLUOROACETAMIDE
25168-26-7	640-19-7
DAMINOZIDE	GAMMA-LINDANE
1596-84-5	58-89-9
DDD	HEPTACHLOR
72-54-8	76-44-8
DDT	HEXACHLOROBENZENE
50-29-3	118-74-1
DI(PHENYLMERCURY)DODECENYLSUCCINATE [PMDS] EDF187	1,2,3,4,5,6- HEXACHLOROCYCLOHEXANE (MIXTURE OF ISOMERS)
1,2-DIBROMO-3-CHLOROPROPANE (DBCP)	608-73-1
96-12-8	1,3-HEXANEDIOL, 2-ETHYL
1,2-DIBROMOETHANE	94-96-2
106-93-4	LEAD ARSENATE
1,2-DICHLOROETHANE	7784-40-9
107-06-2	LEPTOPHOS
DIELDRIN	21609-90-5
60-57-1	MERCURY
4,6-DINITRO-O-CRESOL	7439-97-6
534-52-1	METHAMIDOPHOS
DINITROBUTYL PHENOL	10265-92-6
88-85-7	METHYL PARATHION
ENDRIN	298-00-0
72-20-8	MEVINPHOS
EPN	7786-34-7
2104-64-5	MIREX
ETHYLENE OXIDE	2385-85-5
75-21-8	NITROFEN

1836-75-5

EDF-184

OCTAMETHYLDIPHOSPHORAMIDE

2,4,5-TRICHLOROPHENOL

152-16-9

95-95-4

PARATHION

VINYL CHLORIDE

56-38-2

75-01-4

PENTACHLOROPHENOL

87-86-5

PHENYLMERCURIC OLEATE [PMO]

EDF-185

PHOSPHAMIDON

13171-21-6

PYRIMINIL

53558-25-1

SAFROLE

94-59-7

SODIUM ARSENATE

13464-38-5

SODIUM ARSENITE

7784-46-5

2,4,5-T

93-76-5

TERPENE POLYCHLORINATES
(STROBANE6)

8001-50-1

THALLIUM(I) SULFATE

7446-18-6

2,4,5-TP ACID (SILVEX)

93-72-1

TRIBUTYLTIN COMPOUNDS