

TOWN OF ODESSA

THE MAYOR AND COUNCIL OF THE TOWN OF ODESSA
ODESSA, DELAWARE 19730

ORDINANCE 2024-01

**AN ORDINANCE BANNING MARIJUANA ESTABLISHMENTS
IN THE TOWN OF ODESSA**

WHEREAS, the Town of Odessa is authorized pursuant to Section 7.10.3 of the Town Charter to adopt ordinances “relating to any subject within the powers and functions of the Town, or relating to the government of the Town, its peace and order, sanitation, beauty, health, safety, convenience and property[;]”

WHEREAS, the General Assembly of the State of Delaware adopted the Delaware Marijuana Control Act, legalizing the use of marijuana for individuals 21 years of age or older;

WHEREAS, 4 *Del. C.* § 1351(a) authorizes municipalities to “prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through an initiated or referred measure[;]” and

WHEREAS, in the opinion of the Town Council of the Town of Odessa, it is in the best interest of the public health, safety, and welfare to prohibit the operation of marijuana establishments within the Town of Odessa.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Odessa, a majority thereof concurring in Council duly met, that “An Ordinance Banning Marijuana Establishments in the Town of Odessa” be and hereby is adopted, as follows, to wit:

Section 1. Definitions. For purposes of this ordinance, the following terms are defined as follows:

Marijuana – All parts of the plant *Cannabis sativa* L., 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 resin.

Marijuana cultivation facility – An entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers. A marijuana cultivation facility may not produce marijuana concentrates, tinctures, extracts, or other marijuana products.

Marijuana establishment – An entity licensed as a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

Marijuana product manufacturing facility – An entity licensed to: purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and retail marijuana stores, but not to consumers.

Marijuana products – Products that are comprised of marijuana, including concentrated marijuana, and other ingredients and are intended for use or consumption, such as edible products, ointments, and tinctures.

Marijuana testing facility means an entity licensed to test marijuana for potency and contaminants.

Retail marijuana store – An entity licensed to purchase marijuana from marijuana cultivation facilities; to purchase marijuana and marijuana products from marijuana product manufacturing facilities; and to sell marijuana and marijuana products to consumers.

Section 2. Prohibition on Marijuana Establishments. Within the corporate limits of the Town of Odessa, no person shall operate, maintain, or otherwise be engaged in any entity, whether for profit or nonprofit, defined herein as a marijuana establishment.

Section 3. Civil Penalties and Enforcement.

(a) Ordinance Enforcement. A citation and civil penalty for violations of this Ordinance shall be issued to the owner of the property where the violation occurred and/or the person committing the violation. The citation shall include the appeals procedures outlined herein and shall be either hand delivered or mailed via certified mail to the property owner or person committing the violation.

(b) Civil Penalties.

1. A civil penalty of \$100.00 shall be assessed for any violations of this ordinance, which shall constitute and be collected as a civil penalty. Each and every day that a violation of this ordinance continues shall constitute a separate violation.
2. Civil penalties may be collected through any lawful means available, including by adding unpaid civil penalties to the property tax bill of the property that was the subject of the civil penalty as authorized by 25 *Del. C.* § 2901(a)(1)(i).

(c) Appeals Procedures. Whenever a penalty is issued hereunder, the property owner or any other responsible party shall have fifteen (15) days from the date of the citation to file a written appeal with the Town Secretary. The Town Secretary shall schedule a date for the Town Council to hear the appeal, which hearing shall be held as soon as practical within fifteen (15) days of the date of the appeal. The appellant and all other persons affected by the ordinance violation shall have the right to be heard at the hearing. Additional violations and corresponding penalties shall not accrue from the time an appeal is filed through the date the appeal is heard.

(d) Legal Action. Anything herein to the contrary notwithstanding, the Town Council may initiate any civil legal action in the name of the Town of Odessa, at law, in equity, or otherwise, in any court of competent jurisdiction, including but not limited to actions seeking injunctive or other affirmative relief.

Section 4. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected

with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council's intent.

Section 5. Effective Date. This Ordinance shall become effective immediately upon its adoption by the Town Council.

SYNOPSIS

This ordinance prohibits marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and/or retail marijuana stores from being established or otherwise located in the Town of Odessa. This ordinance establishes penalties for violations of the ordinance.

This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Odessa at its regular Council meeting on _____, 2024.

First Reading:

Public Hearing:

Final Passage:

Voice Vote:

Lenny Aguilar,
John Freeman,
Lionel Hynson,
Yeni Ocampo,
Harvey C. Smith Jr,

TOWN OF ODESSA

Harvey C. Smith Jr. – Mayor

ATTEST:

Amy Marie Ottinger – Town Secretary