

Ordinance 12-028

An Ordinance Establishing Procedures for the Licensing of Medical Cannabis Establishments in the City of Brookings, South Dakota.

Be It Ordained by the Governing Body of the City of Brookings, South Dakota, as follows:

MEDICAL CANNABIS ESTABLISHMENT LICENSING ORDINANCE

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I.

Section 1. Purpose and intent. The purpose of this ordinance is to implement medical cannabis licensing requirements in a manner consistent with SDCL Chapter 34-20G and Article 44:90 of the South Dakota Administrative Rules, to protect the health, safety and welfare of the public and qualifying patients by prescribing the manner in which medical cannabis establishments can be conducted within the City. Further, the purpose and intent of this ordinance is to:

- a. Protect public health and safety through reasonable regulation of medical cannabis establishments as they relate to neighborhoods, patient safety, security for medical cannabis dispensaries and their personnel, and other health and safety concerns.
- b. Impose fees to cover the direct and indirect costs to the City of licensing and regulating medical cannabis establishments.

Nothing in this ordinance is intended to promote or condone the sale, distribution, possession or use of marijuana in violation of any applicable law.

Section 2. Definitions. The following words and phrases, when used in this ordinance, shall have the meanings provided in this ordinance. In addition to the definitions contained in this ordinance, other terms used in this ordinance shall have the meanings provided in South Dakota Codified Law Title 34, Chapter 20G, Section 1, SDCL § 22-42-1 (Controlled Substances and Marijuana, Definitions), and Article 44:90 of the South Dakota Administrative Rules, and such definitions are hereby incorporated into this ordinance by reference.

Advertise, advertising or advertisement means the act of drawing the public's attention, whether through print, signs, telephonic, electronic, wireless or digital means, to a medical cannabis establishment in order to promote the sale of medical cannabis by a dispensary.

Applicant shall mean any person or entity who has submitted an application for a license or renewal of a license issued pursuant to this ordinance. If the applicant is an entity and not a natural person, applicant shall include all persons who are the members, managers, officers, directors and shareholders of such entity.

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

Cardholder shall mean any person who has been issued and possesses a valid registry identification card pursuant SDCL Chapter 34-20G.

Disqualifying felony offense shall mean a crime that was classified as a felony in the jurisdiction where the person was convicted.

Initial application shall mean the first application filed for a medical cannabis establishment.

License shall mean to grant a license pursuant to this ordinance.

Licensed premises shall mean the premises specified in an application for a license pursuant to this ordinance that is owned by or in possession of the licensee and within which the licensee is authorized to operate a cannabis cultivation facility, a cannabis testing facility, a cannabis manufacturing facility or a cannabis dispensary which distributes or sells medical cannabis in accordance with the provisions of South Dakota Codified Law Chapter 34-20G.

Licensee shall mean any person or business entity that has been issued and holds a valid, current license pursuant to this ordinance. If the licensee is an entity and not a natural person, licensee shall include all persons who are the members, managers, officers, directors and shareholders of such entity.

Local licensing authority shall mean the City of Brookings.

Medical cannabis or cannabis shall mean cannabis as defined in Article 44:90 of the Administrative Rules of South Dakota and as used in SDCL Chapter 34-20G.

Medical cannabis code shall mean SDCL Chapter 34-20G, as the same may be hereafter amended, and any other rules or regulations promulgated thereunder, including Article 44:90 of the Administrative Rules of South Dakota and as used in SDCL Chapter 34-20G.

Medical cannabis cultivation facility shall mean an entity registered with the South Dakota Department of Health pursuant to SDCL Chapter 34-20G that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment.

Medical cannabis testing facility shall mean an independent entity registered with the South Dakota Department of Health pursuant to SDCL Chapter 34-20G to analyze the safety and potency of cannabis.

Medical cannabis product manufacturing facility shall mean an entity registered with the South Dakota Department of Health pursuant to SDCL Chapter 34-20G that acquires, possesses, manufactures, delivers,

transfers, transports, supplies, or sells cannabis products to a medical cannabis dispensary.

Medical cannabis dispensary or dispensary shall mean the entity registered with the South Dakota Department of Health pursuant to SDCL Chapter 34-20G and licensed by the City pursuant to this ordinance that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders. Medical cannabis dispensary does not include a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a recreational cannabis dispensary.

Medical cannabis establishment shall mean a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary as those terms are defined in SDCL§ 34-20G-1.

Registry identification card shall mean a document issued by South Dakota Department of Health that identifies a person as a registered qualifying patient or registered designated caregiver, or documentation that is deemed a registry identification card pursuant to §§ 34-20G-29 to 34-20G-42, inclusive.

Section 3. Other laws/administrative rules. If the State of South Dakota adopts any stricter regulation governing a medical cannabis establishments than as set forth in this ordinance, the stricter regulation shall control the establishment or operation of any medical cannabis establishment in the City. The Administrative Rules of South Dakota set forth in Article 44:90 and pertaining to medical cannabis are incorporated by reference and are made a part hereof. A licensee shall be required to demonstrate, upon demand by the City, or by law enforcement officers, that the source and quantity of any cannabis located upon the licensed premises are in full compliance with the applicable laws of the State and City. If the State prohibits the cultivation, manufacturing, testing or sale or other distribution of medical cannabis in any respect, any license issued for any prohibited activity under this Section shall be deemed immediately revoked by operation of law. The issuance of any license pursuant to this ordinance shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution, or use of marijuana.

Section 4. Authority. The City Council shall have the authority pursuant to the SDCL Chapter 34-20G and this ordinance to grant or deny licenses. Authorized representatives of the City of Brookings shall have the authority to inspect the premises of a medical cannabis establishment to confirm compliance with all licensing requirements.

Section 5. Medical cannabis license required. It shall be unlawful for any person to operate a medical cannabis establishment within the jurisdictional limits of the City without first having obtained a medical cannabis establishment license to operate pursuant to the provisions of this ordinance, having a validly issued medical cannabis establishment registration certificate in good standing from the State, and having paid all applicable fees. Such license and registration certificate shall be kept current at all times, and failure by a licensee to maintain a current medical cannabis establishment license shall constitute a violation of this ordinance.

Section 6. Term of license; renewal. Each medical cannabis establishment license issued by the City shall be effective upon issuance, however a Certificate of Registration issued by the State of South Dakota shall be required before a licensee may conduct business as a medical cannabis establishment in the City. Each medical cannabis license shall terminate on the last day of each calendar year. Renewal applications shall be filed at least 30 days prior to the expiration date of the existing license.

Section 7. License transfers. An application for the transfer of a medical cannabis license to a different physical location or to another person or business entity shall include all information required by the South Dakota Administrative Rules under Administrative Rule 44:90:03:01.

Section 8. License application. An application for a medical cannabis establishment license or to renew a license previously issued under this ordinance shall be submitted to the City on forms provided by the City Clerk for such purposes and shall include the following information:

- a. The name, address, and date of birth of each owner, shareholder, LLC member, partner and manager, principal officer, and board members of the proposed medical cannabis establishment;
- b. Documentation reflecting the applicant's right to possess the proposed licensed premises for the proposed use;
- c. A site plan reflecting the boundaries of the proposed licensed premises;
- d. A description of safety and security measures reflecting compliance with the City and State's operating requirements as required by the Administrative Rule 44:90:03:02; and
- e. Any other additional information requested by the City Council deemed necessary for the City to evaluate the application.

Section 9. Application fee. At the time an applicant files an application for a medical cannabis establishment license, the applicant shall pay a non-refundable application fee to the City in an amount established by resolution of the City to defray the costs incurred by the City for processing the application.

Section 10. Annual license fee. Within thirty (30) days of receiving a medical cannabis establishment registration certificate from the State of South Dakota pursuant to SDCL Chap. 34-20G, the licensee shall pay to the City an annual license fee in an amount

established by resolution of the City. The annual license fee is in addition to the initial application fee required pursuant to Section 9. The annual license fee shall be paid on the basis of a calendar year regardless of the date of license issuance, and no proration or discount shall be given.

Section 11. Additional permits and licenses. A license issued pursuant to this ordinance is in addition to and does not eliminate the need for the licensee to obtain any zoning-related permits or building permits required by the Brookings Code of Ordinances.

Section 12. Application review process.

- a. Upon receipt of a complete application, the City Manager or their representative shall review the application to determine whether the application is in compliance with the City's ordinances. No license will be approved until the City Manager or their representative has conducted an inspection of the proposed premises to determine compliance of the proposed medical cannabis establishment with all applicable requirements of this ordinance, and with the plans and application submittals. The City Manager or their representative shall reject any application that does not meet the requirements of this ordinance or that contains any false, misleading or incomplete information.
- b. Within thirty (30) days after the completion of the review of the application, the City Council shall approve or deny the license application provided the City Manager or their representative has determined that all requirements for a medical cannabis establishment license have been satisfied. The City Clerk or their representative shall provide the reason(s) for denial of the license by first class mail to the applicant at the address provided in the application.
- c. If approved, the City Clerk or their representative shall issue to the applicant a medical cannabis establishment license, which shall include the date of issuance, the term of the license, the name of the licensee and the physical address of the licensed premises.
- d. The City will not issue a medical cannabis establishment license until all information required of the applicant has been submitted, and the applicant:
 - i. Has submitted a complete application;
 - ii. Is prepared to operate the establishment with the owners and managers as set forth in the application, all in compliance with this ordinance and any other applicable law, rule or regulation; and
 - iii. Has paid all fees.

Section 13. Inspections. During the review of the medical cannabis establishment license application, and at all reasonable times after a medical cannabis establishment license is issued, the City Manager or their representative may make any reasonable inquiries and inspections at reasonable times of the medical cannabis establishment to determine if the premises meets or continues to meet the requirements of City ordinances and State statutes. It shall be a violation of this ordinance and grounds for revocation of any license issued hereunder for a licensee to fail to provide supplemental information or refuse inspections by the City Manager or their representative.

Section 14. Effect of City's issuance of a medical cannabis establishment license.

If approved, the City's issuance of a license shall be subject to automatic termination if:

- a. The licensee does not receive or fails to qualify for the State registration certificate required under SDCL Chapter 34-20G; or
- b. The licensee fails to pay the annual license fee to the City within thirty (30) days of the issuance of the State registration certificate in accordance with this ordinance.

No licensee may engage in the sale of cannabis products unless the licensee holds a current State registration certificate and a City of Brookings medical cannabis establishment license.

Section 15. Annual license fee non-refundable. If a license is revoked pursuant to the provisions of this ordinance, the annual license fee shall not be refunded.

Section 16. Requirements of medical cannabis establishment licensees. A medical cannabis establishment licensee is subject to the following requirements:

- a. A licensee shall be prohibited from employing any employee under twenty-one (21) years of age;
- b. In accordance with SDCL § 34-20G-67, a medical cannabis establishment shall not share office space with or refer a patient to a practitioner;
- c. In accordance with SDCL § 34-20G-68, a medical cannabis establishment shall not permit any person to consume cannabis upon the property of the licensed premises;
- d. A licensed premises may only be located within a zoning district which permits a medical cannabis establishment as a permitted use;
- e. The licensed premises shall be located no less than one thousand feet (1,000') of a public or private school existing before the date of the medical cannabis establishment application, and shall comply with any other buffer zone requirements set forth in the zoning ordinances of the City. Distances shall be measured from the closest point of the property lines including public rights of way;
- f. The licensed premises shall not be located within any building containing a dwelling unit, a pediatrician's office, hotel, motel or lodging facility.

Section 17. Facility standards for medical cannabis dispensaries. A medical cannabis dispensary shall be maintained in accordance with the following facility standards:

- a. It shall be unlawful to operate a medical cannabis dispensary outside of an enclosed building which is capable of being locked. All medical cannabis dispensary licenses shall be issued for a specific fixed location within an enclosed building.
- b. The facility shall have locked display cases only accessible to staff during business hours. The facility shall have a locked vault or storage cage in which all

cannabis and cannabis products shall be stored during hours the dispensary is closed.

- c. The facility shall conform to the prevailing building and fire codes adopted by the City of Brookings.
- d. All exterior entrances and exits and all parking areas shall be lighted at all times after dark.
- e. Security cameras which comply with the South Dakota Administrative Rules for Medical Cannabis Dispensaries are required. The camera system shall securely store camera footage for no less than thirty (30) days.
- f. The facility shall have a functional commercial alarm system triggered by the press of a button, by the breaking of glass, and by forcing open a locked door.

Section 18. Medical cannabis dispensary rules of operation. Each dispensary shall be operated only in accordance with the following rules:

- a. A medical cannabis dispensary shall be operated and maintained in accordance with Administrative Rule 44:90:03:02, which provides the operating procedures for all medical cannabis establishment application submittals filed with the South Dakota Department of Health.
- b. Each dispensary shall be operated and maintained in accordance with the dispensary requirements and facility standards set forth in this ordinance and all other applicable City ordinances, State laws and State administrative rules.
- c. No person shall be allowed entry into the dispensary without showing a valid picture identification.
- d. A medical cannabis dispensary shall be ventilated so that the odor of cannabis or cannabis products cannot be detected by a person with a normal sense of smell outside the medical cannabis dispensary or on any adjoining property.
- e. All sales of medical cannabis shall be made in person, directly to the purchaser, within the medical cannabis dispensary. Sales shall occur only in person to the purchaser at the time of purchase within the medical cannabis dispensary. No drive up windows or other similar delivery process shall be allowed.
- f. No medical cannabis dispensary shall distribute or allow the distribution of any medical cannabis without charge within a medical cannabis dispensary or at any other place for purposes of promotion, advertising or any other purpose.

Section 19. License revocation and penalties.

- a. Any medical cannabis establishment license may be revoked or suspended in accordance with this ordinance.
- b. Any person operating a medical cannabis establishment without a license is subject to a civil fine of up to two hundred dollars (\$200.00). Each day a medical cannabis establishment is operated without a license shall constitute a separate offense.
- c. Operating a medical cannabis establishment without a license shall be deemed a public nuisance and subject to abatement as a public nuisance. Such nuisance may be abated in any manner permitted by ordinance or other applicable law, including, but not limited to an action for injunctive relief.

- d. A medical cannabis establishment license is subject to suspension if a licensee or any of its employees or agents has been convicted of selling a cannabis product to any person under the age of twenty-one (21) or sells a cannabis product in a manner which violates any medical cannabis law or ordinance.

Section 20. No City liability; indemnification; no defense.

- a. By accepting a license issued pursuant to this ordinance, the licensee waives any claim concerning, and releases the City, its officers, elected officials, employees, attorneys and agents from any liability for injuries or damages of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers of the licensee for a violation of State or federal laws, rules or regulations.
- b. By accepting a license issued pursuant to this ordinance, all licensees, jointly and severally if more than one, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the medical cannabis establishment that is the subject of the license. All owners of a medical cannabis establishment shall sign the license application forms and indemnification and waiver and release forms.
- c. The issuance of a license pursuant to this section shall not be deemed to create an exception, defense or immunity for any person in regard to any potential criminal liability the person may have under State or federal law for the cultivation, possession, sale, distribution or use of marijuana.

Section 21. Signage and advertising. All exterior signage associated with a medical cannabis dispensary must comply with the zoning ordinances of the City and the Administrative Rules of the State of South Dakota.

Section 22. Compliance with other applicable laws and rules. Except as may be otherwise provided in this ordinance, any law or regulation adopted by the State governing the cultivation, production, possession, or distribution of medical cannabis use shall also apply to medical cannabis establishments licensed within the City. Accordingly, the South Dakota Administrative Rules set forth in Article 44:90 are incorporated in this ordinance by reference.

Section 23. Suspension or revocation of license; imposition of fines. The grounds for suspension or revocation of a medical cannabis establishment license and the procedures for such suspension or revocation shall be as provided in State law. In addition thereto, a violation of any of the provisions of this ordinance or any State law or regulation related to licensing or operation of a medical cannabis establishment shall be grounds for suspension or revocation of a City medical cannabis establishment license, subject to notice and hearing.

Section 24. License renewals; expiration of license.

- a. **Renewal of License.** The licensee shall apply for renewal of the medical cannabis establishment license at least 30 days prior to the expiration of the license (December 31st of each year). If the Applicant files for renewal less than 30 days prior to the expiration date, then the City may process the renewal application if the Applicant submits a late filing fee in an amount established by resolution of the City at the time of submission of the renewal application.
 - (1) The renewal license fee, and late fee, if applicable, shall accompany the renewal application. Such fees are nonrefundable.
 - (2) In the event there have been any changes in the location of the premises submitted, the renewal application shall identify the proposed changes in the location.
 - (3) In the event any person who has an interest as described in the initial medical cannabis establishment application made to the City pursuant to this ordinance, or any establishment owner or agent, as defined herein, has been charged with or accused of violations of any law since such disclosure, the renewal application shall include the name of the violator, the date of the violation, the court and case number where the violation was filed and the disposition of such violation.
 - (4) In the event the medical cannabis establishment license has been suspended or revoked, or a licensee has received any notice of violation of any law, the renewal application shall include a copy of the notice, suspension or revocation.
 - (5) The renewal application shall include verification that the medical cannabis establishment has a valid State certificate of registration.
 - (6) In the event there have been allegations of violations of this ordinance by any of the licensees or the establishment submitting a renewal application, the City Manager or their representative may conduct an investigation prior to approving the renewal application. The investigation shall be for purposes of determining whether the application, proposed licensee and past operation of the establishment has been in compliance with this ordinance. If the application or the licensee do not meet the requirements of this ordinance, or the establishment has been operated in the past in violation of this ordinance or State law, the renewal application may be denied by the City Council or their representative, or issued with conditions.

Section 25. Change of location. A medical cannabis establishment licensee may apply to the City for a change in location of the licensed premises. The inquiry by the City into the request for a change of location of the licensed premises may include any item that may be reviewed for a new medical cannabis establishment license, provided that the qualifications of the licensee to hold a license for a medical cannabis establishment shall not be subject to review so long as the licensee meets all requirements of this ordinance and any provisions of State law at the time the license was originally issued and remains in compliance with this ordinance subsequent to the issuance of said license.

Section 26. Penalties. In addition to the possible denial, suspension, revocation or non-renewal of a license or any other penalty provided for under the provisions of this ordinance or by State law, any person, including but not limited to, any licensee, owner, manager or employee of a medical cannabis establishment or any customer of a medical cannabis establishment who violates any provisions of this ordinance may be cited for such violation and shall be subject to the penalties for violation of City ordinance.

II.

Any or all ordinances in conflict herewith are hereby repealed.

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CITY OF BROOKINGS, SD

ATTEST:

Oepke G. Niemeyer, Mayor

Bonnie Foster, City Clerk