

TITLE SEVENTEEN

MEDICAL CANNABIS

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CHAPTER 17-1

PURPOSE & DEFINITIONS & SEVERABILITY

17-1-1 PURPOSE AND INTENT

The City Council of the City of Brandon enacts the following ordinances to ensure that medical cannabis establishments within the municipal boundaries of the City operate in a manner which complies with state laws and regulations, protects the health, safety, and welfare of the general public, prevents potential conflicts and issues arising from ownership and employees, recognizes certain safety and security considerations, to minimize risk of unauthorized use or access of cannabis by the general public, to preserve the present and future character of the City's residential and commercial neighborhoods, to prevent concentration of certain cannabis establishments in any one area, and to minimize the negative effects cannabis establishments have on adjacent land use. Adoption of the ordinance is not intended to unreasonably restrict the opportunity of cannabis establishments to locate in the City.

17-1-2 DEFINITIONS

Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for cannabis-related terms which are defined by SDCL 34-20G-1 and the administrative rules promulgated thereunder.

APPLICANT: a person or entity seeking or renewing a cannabis establishment license.

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

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

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

CANNABIS ESTABLISHMENT: cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

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

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

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

DEPARTMENT: the South Dakota Department of Health.

LICENSEE: a person, people, or entity in possession of a cannabis establishment license issued pursuant to this chapter.

PUBLIC GROUNDS: means any public place including, but not limited to, parks, sidewalks, streets, highways, alleys, rights-of-way, sports complexes, publicly owned property whether in or out of a building, commonly and customarily open to or used by the general public, or in any place that is open to the public.

REGISTRATION CERTIFICATE: the certificate of registration issued by the Department or hiring operator of a cannabis establishment.

17-1-3

SEVERABILITY

The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

CHAPTER 17-2 GENERAL

17-2-1 PROHIBITIONS ON USE

No person shall:

- A. Undertake any task under the influence of cannabis, when doing so would constitute negligence or unprofessional malpractice.
- B. Smoke, inject or consume cannabis on any public ground or public vehicle within the City of Brandon.
- C. Allow any cannabis odor to exist at or beyond the property line of a cannabis establishment, or near places where people live or (except as inside a cannabis establishment) near where people work.
- D. While operating, navigating, or being in actual physical control of any vehicle be under the influence of cannabis, except that a registered qualifying patient or nonresident cardholder is not considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.
- E. While operating, navigating, or being in actual physical control of any vehicle have a package or any receptacle containing cannabis in that person's possession unless the seal of the original package remains unbroken or the cannabis is so removed from the area of the vehicle so that the driver of the vehicle does not have access to it.

17-2-2 INAPPLICABILITY

Nothing in this chapter:

- A. Requires an employer to allow ingestion or use of cannabis in the workplace or to allow an employee to work while the employee is under the influence of cannabis.
- B. Requires a person or establishment to allow a guest, client, customer, or other visitor to smoke or use cannabis on or in that property.
- C. Prohibits an employer from disciplining an employee for ingesting cannabis in the workplace or disciplining an employee for working while under the influence of cannabis

17-2-3 PENALTY

A violation of this Chapter is subject to prosecution and each violation is punishable by a maximum fine of five hundred dollars (\$500.00).

CHAPTER 17-3 LICENSEES

17-3-1 LICENSE & REGISTRATION CERTIFICATE REQUIRED

No cannabis establishment may be located or operate in the City without the appropriate valid and current cannabis establishment license issued by the City pursuant to Chapter 17, a valid and current registration certificate issued by the State of South Dakota Department pursuant to rules promulgated under SDCL 34-20G, and a valid and current certificate of occupancy issued by the City. A violation of this provision is subject to the general penalty provision in 17-4-10. Each day of the violation constitutes a separate offense.

17-3-2 NUMBER OF CANNABIS ESTABLISHMENTS

- A. Under the authority granted by SDCL 34-20G-56, there shall be no more than three (3) active medical cannabis dispensaries and no more than ten (10) of each active medical cannabis testing, cultivation or manufacturing facilities that may be registered by the state of South Dakota to operate within the jurisdictional limits of the City at any given time.
- B. For all other cannabis establishment licenses, no numerical limit is set at the time of adoption.
- C. The numerical limits for each class of cannabis establishment may be altered at any time by Resolution of the City Council.
- D. In the event the numerical cap is lowered to an amount less than the number of the existing licenses in that class, no existing Licensee shall be prevented from continuing operation during the license term, requesting modifications to application information, or from renewing such license for consecutive, subsequent years, on the basis that the numerical limit would otherwise prohibit the issuance of a license to a new Applicant. However, this exception shall not prevent a license from being suspended or revoked, nor shall it prevent a license from not being renewed, based upon grounds other than the numerical limit being exceeded.
- E. The special procedure set forth in 17-3-6 shall apply to both any initial license licenses issued under this Title as well as when any new cannabis dispensary license becomes available.

17-3-3 FEES

The fees for the Initial Application and Renewal Application shall be set by Resolution of the City Council. The fees set shall be used to defray the cost incurred by the City for investigations, review, inspections of the premises, and other costs related to processing the application and renewal application. A fee is required to be paid for each type of cannabis establishment that is to be or actually is licensed.

- A. Initial Application fee. At the time an applicant files an application, the applicant shall pay a nonrefundable fee for each application to the City.
- B. Renewal Application fee. At the time the applicant files an application for a renewal, the applicant shall pay to the City a nonrefundable fee for the renewal application.
- C. Initial license fee. At the time an applicant files an application according to 17-3-4, it shall tender to the City an initial license fee in the amount of \$1.00 per capita according to the most recent Census Bureau. The initial license fee shall cover the first issued license . The

initial license fee is in addition to the application fee. In the event the applicant is denied a registration certificate from the Department or the City, the license fee shall be refunded.

- D. **Renewal License Fee.** At the time an applicant files a renewal application, it shall tender to the City a renewal license fee in the amount of \$1.00 per capita according to the most recent Census Bureau. The renewal license period shall be for the calendar year applicable to the renewal. The renewal license fee is in addition to the renewal application fee. In the event the applicant is denied a registration certificate from the Department or the City, the renewal license fee shall be refunded.

17-3-4

LICENSE APPLICATION

- A. A prospective cannabis establishment seeking to operate in the City must first obtain a license for the specific establishment to operate from the City prior to seeking registration as from the South Dakota Department of Health under the provisions of SDCL 34-20G-55.
- B. An application for a cannabis establishment license must be made on a form provided by the City. No other application form will be considered. An applicant seeking to obtain a license for more than one type of cannabis establishment at one location may submit one combined application.
- C. The Applicant must submit the following with the application:
1. The required Initial Application, Renewal Application, Initial License and/or Renewal License fees for each type of cannabis establishment as set by Resolution of the City Council.
 2. An application that will include, but is not limited to, the following:
 - a. The legal name of the prospective cannabis establishment.
 - b. The physical address of the prospective cannabis establishment that meets the zoning requirements in Title 15, as well as any location requirements pursuant SDCL 34-20G and the administrative rules promulgated thereunder, and certification from the property owner authorizing tenant to engage in business as a medical cannabis establishment. Only one application per location is allowed.
 - c. A certification that the location of the prospective cannabis establishment is not within one thousand feet (1,000 feet) of a public or private school, meets any other location requirements pursuant to SDCL Chapter 34-20G and the administrative rules promulgated thereunder, is in compliance with all City zoning and land use requirements and, if applicable, applicant will apply for any City conditional use permitting within 10 days of notification of license eligibility and that the conditional use process will be completed within 60 days of the filing of the application for the conditional use permit unless extended by the City Planning & Zoning Commission or City Council.
 - d. A description of the type of cannabis establishment for which the license is sought (e.g. cultivation, testing, manufacturing, dispensary).
 - e. An estimate of the water and sewer needed for operations set forth in both the average and the maximum daily amounts. If any usage is expected to change for the April to September months, the disclosure shall provide estimates of the average and maximum daily amounts in

the April to September months compared to the October to March months.

- f. The name, date of birth, and a photocopy of a valid form of identification issued in South Dakota, or its equivalent issued in another U.S. jurisdiction, for each principal officer and board member of the prospective cannabis establishment.
- g. A sworn statement that no principal officer, owner, or board member has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction.
- h. Previous experience operating a legal cannabis establishment, if any.
- i. Confirmation that none of the principal owner, officers or board members has served as a principal owner, officer or board member for a cannabis establishment that has had governmental license or certification revoked in any jurisdiction.
- j. A confirmation of a completed current background check for each owner, officer, board member, agent, volunteer, and employee associated with or working in the prospective cannabis establishment, which has been completed within 30 days prior to submission of the application.
- k. A certification that at least one owner, officer or board member of the prospective cannabis establishment is a resident of the state of South Dakota.
- l. A certification that the employees of the prospective cannabis establishment are over the age of 21 years.
- m. A copy of the operating documents or a summary of operating procedures, that detail procedures to ensure accurate record keeping, adequate security measures, sufficient fire and building code considerations, and compliance with all other requirements of this chapter.
- n. A description of appropriate security measures designed to deter and prevent theft of cannabis and unauthorized entry into any area containing cannabis as set forth by Chapter 34-20G and the administrative rules promulgated thereunder and as otherwise required by the City.
- o. A copy of the Applicant's sales tax license.
- p. Proof that all property taxes, business improvement district taxes, and pending assessments relating to the cannabis establishment location have been paid.
- q. Proof of financial responsibility in the amounts and manner established in this chapter below.
- r. A signed agreement permitting upon the issuance of a license law enforcement and the City's employees access at any time to the premises and all buildings for purposes of inspection, and to the applicant's books

dealing with the sale and ownership of the establishment.

- s. A signed agreement that the Licensee(s) agree(s) to indemnify, defend and hold harmless the City are required in 17-3-14.
- t. A sworn statement that the application contains no false statements made or omissions of any material matter in any application for a license.
- u. The Applicant's notarized signature.
- v. Any additional information requested by the City.

17-3-5

ISSUANCE OF LICENSE

- A. Except as otherwise set forth in 17-3-6, within fifteen (15) days after an application has been submitted to the City, the City Administrator or designee shall review the application and for any application that s/he deems to be complete shall have scheduled at the next applicable Planning & Zoning meeting a conditional use permit hearing. Within ten (10) days after the hearing if the conditional use permit is issued then the City Administrator or designee shall issue a Written Opinion as to whether any of the factors listed in 17-3-4 have been met and whether any conditions for approval are recommended. Any application deemed incomplete will not be submitted for a conditional use permit hearing. Any application where a conditional use permit is denied will not be submitted to the City Council.
- B. After the Written Opinion is submitted to the City Council, the City Council shall consider the application at the next available City Council meeting. The City Council may approve or deny an application in full or on condition. Such action of the City Council must take place within thirty (30) days after the application's first presentment to the City Council.
- C. If approved, the Finance Officer will endorse the application and notify the Applicant of approval within four (4) business days following the City Council's approval. If the Council imposes any conditions, such conditions shall be listed on the license at the time of issuance.
- D. The City shall reject an application for a cannabis establishment if:
 - 1. The application is incomplete or insufficient regarding the information required pursuant to 17-3-4 or provides a false statement or documents with the application.
 - 2. The City determines the applicant has failed to comply with 34-20G or has a history of violating state or City rules governing medical cannabis establishments or county ordinances.
 - 3. The applicant or any officer, board member, agent, volunteer, or employee fails to pass a background check.
 - 4. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation.
 - 5. Any owner, principal officer, or board member of the Applicant has had a cannabis establishment license revoked by the City or a registration certificate revoked by the state.

6. An Applicant, or an owner, principal officer, or board member thereof, is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the Applicant in relation to any cannabis establishment.
 7. The City determines it cannot provide the water and/or sewer estimated to be needed for the operations.
 8. The number of the cannabis establishment limits within the City have been reached.
- E. Any medical cannabis establishment license under this chapter shall be the owner or actual lessee of the premises where the business is conducted, and the sole owner of the business operated under the license.
 - F. The issuance of a medical cannabis establishment license under this chapter shall not confirm any property right upon the licensee.

17-3-6

SPECIAL PROCEDURAL FOR INITIAL CANNABIS DISPENSARY LICENSE ISSUANCE

In addition to the requirements of 17-3-4, these special procedures will apply any time new licenses to operate a medical cannabis dispensary become available from the City:

- A. When licenses to operate a medical cannabis dispensary become available from the City, the City shall publish an invitation for applications on the City's website stating the deadline to apply and the location(s) applications may be submitted. No applications will be accepted prior to publication of the invitation nor after the deadline established in the published invitation.
- B. Applications must otherwise adhere to the requirements of 17-3-4, but must also be sealed. No supplementing of an application may be done after the deadline has passed.
- C. Once the deadline has passed, all applications shall be placed into order by the City Finance Officer utilizing a lottery system to establish the order in which applications will be considered. Prior to conducting the lottery, the City Finance Officer shall publish notice of the lottery on the City's website a minimum of 24 hours in advance of the lottery being conducted and such lottery shall be open to the public.
- D. After placed in order, the City Finance Officer shall open all sealed applications received during the invitation submittal window. The City Administrator shall then review each application for completeness and requirements of 17-3-4. Any application that is incomplete shall be rejected and ineligible for further consideration.
- E. Applications not rejected shall then be submitted to the Planning & Zoning Commission for possibly issuance of a Conditional Use Permit based on the lottery order up to the number of available licenses. If Conditional Use Permit is denied or City Council approval denied, then the next lottery ordered application shall be processed with such process being followed until the Department has issued a registration for all available operations in the City. After such registration has been issued, then the time period for these special procedures will have deemed to have passed. All applications not drawn and approved for a new dispensary license are denied and a new application will be required when a new dispensary license next becomes available.

17-3-7

CITY NEUTRALITY AS TO APPLICANTS

Upon request from the Department as to the City's preference of Applicants, the City will direct the State to give registration preference only to those applicants that have received a medical establishment license issued by the City. The City will otherwise abstain from endorsing any applicant.

17-3-8

EXPIRATION OF LICENSE AND RENEWAL

- A. Except for licenses issued in 2021, each license expires on December 31st of the year of issuance. Licenses issued in 2021 expire December 31, 2022.
- B. A complete application for renewal must be submitted no earlier than October 15th and no later than November 15th of each year. The license holder must continue to meet the license requirements to be eligible for a renewal.
- C. A license may be renewed only by making renewal application containing the information provided in 17-3-4, with the addition that the Applicant shall also specify if any information has changed from its prior application, submit the renewal application fee, and submit a copy of the Licensee's state certification. A complete application for renewal must be submitted no earlier than October 15th and no later than November 15th of each year.
- D. The renewal application process shall conform to the initial application process, except:
 - 1. The City Administrator or designee shall provide the written report and, if applicable, recommendations within two (2) weeks after the renewal application has been submitted; and
 - 2. The City Council in considering a renewal application may also consider concerns over actual operations or violations, nonpayment of obligations, or any on other information reasonably related to the continued operation of the cannabis establishment.
- E. Failure to timely obtain a renewal license in accordance with this section will result in expiration of the license, and the City may order closure of the cannabis establishment.
- F. If a license holder has not operated an establishment for which it holds a license as required in 17-3-9.
- G. An applicant is not automatically entitled to renewal of their license. The license will be renewed by City Council after full consideration of a timely completed application and the unique facts and circumstances pertaining to each individual renewal application.

17-3-9

LICENSE TO REMAIN ACTIVE

Any license issued under this chapter must remain in continuous, active use. A licensee shall have 60 days after issuance of the certificate of occupancy to begin active use of the license. Any license not actively used within those 60 days shall be deemed inactive. Once an initial annual license is in active use or any annual renewal license is issued, any license not actively used for a period of more than 60 cumulative days per calendar year may be deemed inactive by the City. Active use means times where the licensee is open and available to conduct business authorized by the license. However, days where the license is suspended by the City shall not be used for purposes of calculating inactivity. A license may not be reissued or renewed pursuant to this Chapter to the same licensee if the license has not been actively used by the licensee.

17-3-10

SUSPENSION AND REVOCATION

The City Administrator may revoke or suspend any license upon proof by a preponderance of the evidence of violation by the licensee, by the licensee's agents or employees, or by the manager or contractual operators of the medical establishment and their agents or employees operating under a City license, of any of the following:

- A. Any provision of SDCL 34-20G or other state law relevant to medical cannabis dispensary or testing facility control.
- B. Any rule promulgated by the Department.
- C. Any rule promulgated by any applicable county ordinance.
- D. False material statements made by a licensee to the city or state of South Dakota during the application process.
- E. Failure to pay taxes owed to the state of South Dakota or any political subdivision of the state of South Dakota including the city.
- F. Failure to prevent diversion or theft of medical cannabis.
- G. Failure to allow entry to the licensed premises to any law enforcement officers in the course and scope of their employment.
- H. Creation of a public nuisance or a public safety concern that may or may not risk to the level of a violation.
- I. Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises.
- J. A license holder, or an owner, principal officers, or board member thereof, has been convicted of, or continues to employ an employee who has been convicted of, a disqualifying felony offense as defined by SDCL 34-20G.
- K. Failure to maintain operational alarm systems and video surveillance systems.
- L. Failure to maintain or keep any record required by these rules or South Dakota law.
- M. Failure to comply with advertising and marketing restrictions.
- N. Failure to properly package or secure medical cannabis on the licensed premises or during transport.
- O. Failure to properly dispose of medical cannabis.
- P. Operating a testing facility or dispensary when a license has been suspended or revoked.
- Q. Failure to comply with any rule or regulation promulgated by the Department or the city regarding medical cannabis.
- R. Failure to comply with any law of the state of South Dakota or the city concerning medical cannabis.
- S. Failure to comply with any local regulation regarding medical cannabis.
- T. Failure to maintain an active license, as defined in 17-3-9.

- U. Any violation of any municipal ordinance or regulation relevant to medical establishments adopted by the City.
- V. Any violation of any county ordinance relevant to medical cannabis dispensary or testing facility control.

For any licensee with multiple licenses, upon suspension or revocation of any license pursuant to this chapter, the licensee shall cease operation under all cannabis establishment licenses held by the licensee for the same period as the suspension or revocation.

17-3-11 SUSPENSION AND REVOCATION PROCESS

- A. The license holder will receive a notice of intent to suspend or notice of intent to revoke informing the license holder of the violation and the City's intention to suspend or revoke the license. The notice will be hand delivered to the license holder or an employee or agent of the license holder or sent by certified mail, return receipt requested to the physical address of the cannabis establishment.
- B. If the license holder disputes its license should be suspended or revoked, the license holder has ten (10) days from the postmark date on the notice or the date the notice was hand delivered to request a hearing before a hearing panel, which will consist of the Mayor, City Administrator, and Police Chief or their designee.
- C. A suspension will be for thirty (30) days and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder exercises its rights to process and appeal, in which case the suspension takes effect upon the final determination of suspension.
- D. A revocation will be for one (1) year and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder appeals the revocation, in which case the revocation takes effect upon the final determination of revocation.
- E. The license holder who has had the license revoked may not be issued any cannabis establishment license for one year from the date the revocation became effective and must apply for a license at the end of that year. Should in the interim the maximum number of cannabis establishments be met through reduction of licenses by the City Council or issuance to any other licensee, then no license shall be issued.
- F. A license holder whose license has been suspended or revoked and who may no longer legally possess cannabis, cannabis products or other restricted items shall be responsible to pay the actual costs incurred by the City for securing, storing, safeguarding, transferring or disposing of any such items.

17-3-12 APPEAL

Any licensee or applicant aggrieved by a decision regarding the issuance of a license, rejection of an application, suspension of a license or revocation of a license under this chapter may file an appeal to the City Council by submitting a written appeal within ten (10) days of the postmark on the notice of denial, nonrenewal, suspension, or revocation. The written appeal must be submitted to City of Brandon, City Administrator, P.O. Box 95, Brandon, South Dakota 57005-0095. The appeal will be considered by the City Council at a regularly scheduled or special meeting within one month of the receipt of the appeal. The Council will issue a written decision within two weeks after the meeting. The Council's decision may be appealed thereafter pursuant to South Dakota law.

17-3-13 LICENSES NOT TRANSFERRABLE

No cannabis establishment license holder may transfer the license to any other person or entity either with or without consideration, nor may a license holder operate a cannabis establishment at any place other than the address designated in the application. A license issued under this Chapter is not a property right.

17-3-14

NO CITY LIABILITY; INDEMNIFICATION; NO DEFENSE

- A. By accepting a license issued by the City, 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 by the City, 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 dispensary that is the subject of the license.
- 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.

CHAPTER 17-4 PROVISIONS FOR OPERATION OF ESTABLISHMENTS & REGULATIONS

17-4-1 CANNABIS ESTABLISHMENT LOCATIONS

No cannabis establishment shall be owned or operated at a location within the City's zoning jurisdiction except as provided in this section.

- A. All cannabis establishments must be located not less than 1000 feet from any public or private school, including an elementary, intermediate, middle or high school. The distance shall be located at least the specified distance measured radially in a straight line from the closest point of the building or actual leased space of the cannabis establishment to the closest point of the building or actual leased space of the school, whether located in Brandon or an adjoining community.
- B. A cannabis dispensary, cannabis cultivation facility, a cannabis testing facility, and/or a cannabis product manufacturing facility may all be located at one enclosed property location and/or in a shared use building provided the requirements of ARSD 44:90:04:04 are met. In addition, 300 feet between cannabis establishments must otherwise exist, measured from closest point of the buildings.
- C. A cannabis cultivation facility and a cannabis product manufacturing facility shall be considered a conditional use in the following districts: Light Industrial or Heavy Industrial. Permanent or temporary such cannabis establishments are prohibited in all other zoning districts and not eligible for home occupation use and it shall be unlawful for any such cannabis establishment to operate in a building which contains a residence or a mixed-use building with commercial and residential uses.
- D. A cannabis dispensary and cannabis testing facility shall be considered a conditional use in the following districts: General Business, Central Business, Light Industrial or Heavy Industrial. Permanent or temporary dispensaries are prohibited in all other zoning districts and not eligible for home occupation use, and it shall be unlawful for any cannabis dispensary to operate in a building which contain a residence or a mixed-use building with commercial and residential uses.

17-4-2 CONDITIONAL USE PERMIT

All cannabis establishments shall require a conditional use permit. In granting a conditional use permit for any cannabis establishment, the City may impose such additional reasonable requirements as it deems appropriate to mitigate or prevent harmful secondary effects of cannabis establishments. In imposing such conditions, the City may rely on studies and information available at the time the permit is issued. The cannabis establishment must positively comply with all the current zoning, health and building regulations that apply to the site and building at the time of application for the Conditional Use Permit. In addition to other factors that may be properly considered in the grant of denial of a variance or conditional use permit, the following factors shall be relevant for variance and conditional use requests relating to cannabis establishments:

- A. That the proposed land use is consistent with the intent of this chapter and will not be contrary to public interest or injurious to nearby properties.
- B. That the proposed land use will not cause or contribute to the formation or expansion of blighted area.
- C. That the City is able to provide the estimated water and sewer needs for the cannabis

establishment(s)' operations.

- D. That all applicable ordinances and regulations will be observed.

17-4-3

ISSUANCE OF PERMITS

The zoning official is authorized to issue permits (building/use) for a cannabis establishment subject to following:

- A. Submission of a site plan containing the following:
 - 1. Any information required for applicable building permit;
 - 2. Ingress and egress plan;
 - 3. Parking plan;
 - 4. Lighting plan (including security lighting);
 - 5. Screening/security fencing plan;
 - 6. Refuse plan;
 - 7. Hours of operation; and
 - 8. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance.
- B. Documentation of ability to meet setback/separation requirements.
- C. Documentation of State Registration Certificate.

17-4-4

CERTIFICATE OF OCCUPANCY & LICENSE DISPLAY

- A. A Licensee shall not begin operation or open its doors to the public until it receives from the City a certificate of occupancy. The City shall not issue a certificate of occupancy until the City's Building Official-Code Enforcement Officer and Police Chief or designee have fully inspected the licensed premises and security plan and determined that the establishment satisfies all requirements of licensure as set forth in this ordinance, all applicable zoning requirements, and all other applicable federal, state, and local laws and building codes, and that the licensed establishment is ready for occupancy with such equipment and security measures in place as may be necessary to comply with the applicable provisions of this Ordinance and state law. The City shall not issue a certificate of occupancy until the Licensee provides written evidence that the Licensee has paid the License Fee and all registration application fees due to the state in connection with the South Dakota Department of Health's review of the application.
- B. The license must be posted in a conspicuous place at or near the entrance to the cannabis establishment so that it may be easily read at any time.

17-4-5

GENERAL OPERATION OBLIGATIONS OF LICENSEES

All cannabis establishments in the City must:

- A. Comply with zoning and land use requirements and obtain all necessary zoning and land use approvals.

- B. Comply with building and fire codes applicable to the type of facility and license, including, but not limited to, compliance with the requirements for fire suppression, signage, and parking.
- C. Only operate between the hours stated on its operating plan of record.
- D. Keep any information stated in an approved application current and up to date.
- E. Have written policies, procedures, or plans detailing appropriate security measures designed to deter theft of cannabis and have at minimum the following security system:
 - 1. Electronic video security recording system, internal and external, which retains recordings for 90 days.
 - 2. Well-lit perimeter.
 - 3. Locked, fully enclosed facility.
 - 4. Internal security to track access to building and all cannabis.
 - 5. Any additional security to comply with the requirements of SDCL 34-20G and Department and City rules.
- F. Conduct a valid background check of anyone who is a board member, principal officer, agent, volunteer, or employee.
- G. Not employ any person who has been convicted of a disqualifying felony offense or who is under 21 years old.
- H. Not allow smoking or consumption of cannabis at the cannabis establishment.
- I. Conduct all business and activities within the respective facilities within an enclosed structure and outside of the public view, including but not limited to, cultivating, growing, processing, displaying, manufacturing, selling and storage except such loading and unloading which is incidental to such indoor activities, and as otherwise authorized and licensed by the Department and City.
- J. Insure that cannabis or related paraphernalia shall be displayed or kept in a business so as to be visible from outside the cannabis establishment.
- K. Have written policies, procedures or plan detailing an odor control plan.
- L. Not allow the emission of any gas, vapors, odors, smoke, dust, heat, or glare that is noticeable at or beyond the property line of the cannabis establishment. Sufficient measures and means of preventing the escape of such substances from a cannabis establishment must be provided at all times. In the event that any gas, vapors, odors, smoke, dust, heat, or glare or other substances exit a cannabis establishment, the owner of the subject premises and the Licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The cannabis establishment shall properly dispose of all such materials, items, and other substances in a safe, sanitary, and secure manner and in accordance with all applicable federal, state, and local laws and regulations.
- M. Only allow access by authorized agents of the medical cannabis dispensary or testing facility, emergency personnel, and authorized visitors, such as contractors or vendors, who

are at least 21 years of age and are accompanied by an authorized medical cannabis establishment agent.

- N. Require all authorized visitors to comply with the requirements set forth by Department and City Rules, and all document in a visitor log all visitor names, times of visit, and purpose of visit, of which records must be maintained for at least five (5) years by the medical cannabis establishment, and must be made available upon request to state or local regulatory authorities or law enforcement, as part of any official audit, inspection, or investigation.
- O. Retain all books and records necessary to show fully the business transactions of the Licensee for a period of the current tax year and the three immediately prior tax years. Such records shall be maintained in a manner which, if released to the City, would not contain information protected by state law. Such records must be provided to the City upon request.
- P. Pay all delinquent court judgments arising out of their operations.
- Q. Not permit the general public to access any part of a cannabis establishment except where such access is permitted by law.

17-4-6

ADDITIONAL REQUIREMENTS FOR CANNABIS DISPENSARIES

In addition to compliance with the requirements in 17-4-5, all cannabis dispensaries shall:

- A. Not allow more than 10 non-employees within the secured area at one time.
- B. Operate only between the hours of 8:00 a.m. and 10:00 p.m.
- C. Make all sales of cannabis in person, directly to the purchaser, within the retail area of the cannabis dispensary. No sales shall be made via telephone, internet, or other means of remote purchase. Deliveries shall occur only in person to the purchaser at the time of purchase within the retail area of the cannabis dispensary. No drive up windows or other similar delivery process shall be allowed.
- D. Not share any physical location with any practitioner.
- E. Permit access to the facility to cardholders only upon verification of identity and verification of the validity of the registry identification card, and only during authorized hours of operation and in accordance with Department and City rules.
- F. Not issue cannabis to anyone who is not a qualifying patient or a designated caregiver with a current and valid registry identification card issued by the Department.
- G. Maintain their cannabis dispensary and premises within the following minimum requirements:
 - 1. Every dispensary Licensee shall inspect their premises from lot line to lot line, all adjacent streets, sidewalks and alleys adjoining their premise, and sidewalks and alleys within one hundred (100) feet of such premise lot lines and shall remove any litter and debris found there on a daily basis to prevent the accumulation of litter and debris and the accidental or uncontrolled release of cannabis or cannabis products.
 - 2. A secured door at both its entrance and exist that allows eligible person to exit the retail area, along with a controlled location between the entrance and retail floor where verification of entrance eligibility into the retail floor may be conducted.

3. All solid waste and recyclable materials shall be stored in refuse containers made of metal or approved plastic and shall be equipped with secure lids or covers, and such covers shall remain closed so as to prevent the intrusion of storm water or vermin.
4. Refuse storage containers shall be enclosed on all four sides by screening compatible with the principal structure and not less than two feet higher than the refuse container or shall be otherwise effectively screened from the street and adjacent properties.

17-4-7

SIGNAGE AND ADVERTISING

- A. Cannabis establishments shall apply for a sign permit from the City. All exterior signage associated with a cannabis establishment must meet the standards established in the City code. In addition, no exterior signage shall use the word "marijuana," "cannabis," or any other word, phrase, or symbol commonly understood to refer to cannabis, shall display a marijuana leaf or a depictions of a person holding or smoking cannabis in any location visible to the public.
- B. Within each cannabis dispensary, there shall be posted in a conspicuous location a legible sign containing the following warnings:
 1. A warning that the use of cannabis may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or operate machinery when under the influence of or impaired by cannabis;
 2. A warning that possession and distribution of cannabis is a violation of federal law;
 3. A warning that consumption of cannabis on the property of a cannabis establishment is prohibited by law; and
 4. A warning that smoking or ingesting cannabis in public or on any form of public transportation is prohibited by City law.

17-4-8

FINANCIAL RESPONSIBILITY

- A. A Licensee must file with the City finance officer certificates or policies of insurance issued by a responsible insurer in the amounts and for the purposes established below. The Applicant must list the City as an additional insured on each policy.
- B. A Licensee must maintain a commercial general liability policy, or equivalent, with a limit of not less than two million dollars (\$2,000,000.00) for each occurrence. If such insurance contains a general aggregate limit, it must be no less than double the occurrence limit.
- C. Upon request, the City may demand and the Applicant or Licensee must provide proof of any other type of insurance required by law.

17-4-9

LIABILITY FOR VIOLATIONS

Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee or agent of a cannabis establishment that constitutes grounds for suspension or revocation will be imputed to the cannabis establishment license holder for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director or general partner or a person who managed, supervised or controlled the operation of the cannabis

establishment, knowingly allowed such act to occur on the premises.

17-4-10

PENALTIES

Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this Chapter is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations are punishable by a maximum fine of five hundred dollars (\$500.00). Each day a cannabis establishment so operates is a separate offense or violation.

Legislative History:

Ordinance No. 637, 9/29/21

Ordinance No. 650, 12/15/21