

ORDINANCE 2021-06

AN ORDINANCE CREATING LICENSING PROVISIONS FOR MEDICAL CANNABIS DISPENSARIES

BE IT ORDAINED by the Board of County Commissioners of Brookings County as follows:

PURPOSE AND INTENT

The Board of County Commissioners of Brookings County enacts the following licensing ordinance in order to ensure that medical cannabis dispensaries located within the unincorporated areas of the County operate in a manner which complies with state laws and regulations, protects the health, safety, and welfare of the general public, prevents potential conflicts and issues arising from ownership and employees, recognizes certain safety and security considerations, and minimizes risk of unauthorized use or access of cannabis by the general public.

DEFINITIONS

This ordinance adopts the following definitions for cannabis-related terms which are defined by SDCL 34-20G-1:

Cannabis (or Marijuana)

Cannabis Cultivation Facility

Cannabis Product Manufacturing Facility

Cannabis Products

Cannabis Testing Facility

Department

Medical Cannabis Dispensary

Medical Cannabis Establishment

LICENSE REQUIRED

- (a) No medical cannabis dispensary may be located or operate in the unincorporated area of the County without an appropriate valid and current medical cannabis dispensary license issued by the County pursuant to this ordinance. A violation of this provision is subject to the general penalty provision herein. Each day of the violation constitutes a separate offense.
- (b) No medical cannabis dispensary may be located or operate in the unincorporated area of the County without an appropriate valid and current medical cannabis dispensary registration certificate issued

by the Department pursuant to rules promulgated under SDCL 34-20G. A violation of this provision is subject to the general penalty provision herein. Each day of the violation constitutes a separate offense.

- (c) No other medical cannabis establishment, other than a medical cannabis dispensary, may be licensed within the unincorporated areas of Brookings County.

LICENSE APPLICATION

- (a) An application for a medical cannabis dispensary license must be made on a form provided by the County. No other application form will be considered.

- (b) The applicant must submit the following:

1. Application fee of \$5,000.
2. A completed application including, but not limited to, the following:
 - i. The legal name of the prospective medical cannabis dispensary.
 - ii. The physical address of the prospective medical cannabis dispensary that meets the zoning requirements of the Brookings County Zoning Ordinance, as well as any location requirements pursuant to SDCL 34-20G and the administrative rules promulgated thereunder.
 - iii. The name, address, and birth date of each principal officer, owner, and board member of the proposed medical cannabis dispensary.
 - iv. A sworn statement that no principal officer, owner, or board member has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction.
 - v. Any additional information requested by the County.
 - vi. Receipt of a copy of an approved State license from the Department.
 - vii. Receipt of a copy of an approved conditional use permit from the Brookings County Planning & Zoning Commission.

ISSUANCE OF LICENSE

- (a) The County will issue a medical cannabis dispensary license, if available, unless:
 1. The applicant has made a false statement on the application or submits false records or documentation; or
 2. Any owners, principal officer, or board member of the applicant is under the age of twenty-one (21) years; or

3. Any owner, principal officer, or board member of the applicant has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction; or
 4. The proposed location does not meet the applicable zoning requirements under the Brookings County Zoning Ordinance; or
 5. The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder; or
 6. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
 7. Any owner, principal officer, or board member of the applicant has had a cannabis establishment license revoked by the County or a registration certificate revoked by the State; or
 8. An applicant, owner, principal officer, or board member thereof, is overdue in payment to the County or the State of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment.
- (b) In the case of an application for a medical cannabis dispensary license, the County will reject the application if the limit on the number of medical cannabis dispensaries in the County has been reached.
- (c) If granted, the license must be posted in a conspicuous place at or near the entrance to the medical cannabis dispensary so that it may be easily read at any time.

COUNTY NEUTRALITY AS TO APPLICANTS

- (a) Upon request from the Department as to the County's preference of applicants, the County will neither support nor oppose any registration certificate application under consideration by the Department. Likewise, if inquiry is made by the Department, the County will abstain from endorsing any application as beneficial to the County.

NUMBER OF CANNABIS DISPENSARIES

- (a) No more than five medical cannabis dispensaries shall be allowed to operate in the unincorporated area of the County at any one time.

EXPIRATION OF LICENSE AND RENEWAL

- (a) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided herein. Application for renewal must be submitted at least thirty (30) days before the expiration date. The license holder must continue to meet the license requirements to be eligible for a renewal.
- (b) The renewal fee is \$5,000.

- (c) Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the County may order closure of the medical cannabis dispensary.
- (d) If a license holder has not operated a medical cannabis dispensary for which it holds a license in the preceding twelve (12) months, the license will not be renewed.

SUSPENSION

- (a) A license may be suspended if the license holder or an employee or agent of the license holder:
 - 1. Violates or is otherwise not in compliance with any section of this ordinance.
 - 2. Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the medical cannabis dispensary.
 - 3. Knowingly dispenses or provides cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.
- (b) A license shall be suspended if the license holder has its Department-issued registration certificate suspended, revoked, or not renewed by the Department or if the registration certificate is expired.
- (c) A license may be suspended if the license holder creates or allows to be created a public nuisance at the medical cannabis dispensary.

REVOCACTION

- (a) A license may be revoked if the license is suspended as provided herein and the cause for the suspension is not remedied.
- (b) A license may be revoked if the license is subject to suspension as provided herein because of a violation outlined in that section and the license has been previously suspended in the preceding 24 months.
- (c) A license is subject to revocation if a license holder or employee of a license holder:
 - 1. Gave false or misleading information in the material submitted during the application process;
 - 2. Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises;
 - 3. Operated the medical cannabis dispensary or the business of the medical cannabis dispensary for which a license is required under this ordinance while the license was suspended;
 - 4. Repeated violations of this ordinance;
 - 5. Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility conducting cannabis testing functions without a cannabis testing establishment license);

6. A license holder, or an owner, principal officer, or board member thereof, is delinquent in payment to the County or State for any taxes or fees related to the medical cannabis dispensary;
7. A license holder, or an owner, principal officers, or board member thereof, has been convicted of, or continues to employ an employee who has been convicted of, a disqualifying felony offense as defined by SDCL 34-20G; or
8. The license holder has its Department-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired.
9. The license holder allows a public nuisance to continue after notice from the County.

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 County'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 medical cannabis dispensary.
- (b) If the license holder disputes the suspension or revocation, the license holder has ten (10) days from the postmark date on the notice or the date the notice was hand delivered to request a hearing before a hearing panel, which will consist of the County Commission Chairperson, Finance Officer, and Sheriff.
- (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.

APPEAL

An applicant or license holder who has been denied a license or renewal of a license or who has had a license suspended or revoked under this ordinance may appeal to the Board of County Commissioners 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 the Board of County Commissioners. The appeal will be considered by the Board of County Commissioners at a regularly scheduled meeting within one month of the receipt of the appeal.

LICENSES NOT TRANSFERRABLE

No medical cannabis dispensary license holder may transfer the license to any other person or entity either with or without consideration, nor may a license holder operate a medical cannabis dispensary at any place other than the address designated in the application.

HOURS OF OPERATION FOR DISPENSARIES

Medical cannabis dispensaries are allowed to be open between the hours of 8:00 AM and 8:00 PM on Monday – Saturday and the hours of 12:00 PM and 5:00 PM on Sunday.

PENALTIES

Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this ordinance is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations may be enforced through a fine not to exceed the fine established by SDCL 22-6-2(2) for each violation or by imprisonment for a period not to exceed thirty days for each violation, or by both the fine and imprisonment. Each day a cannabis establishment so operates is a separate offense or violation.

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.

Adopted this 21st day of September 2021.
Effective: October 20, 2021

BROOKINGS COUNTY
BOARD OF COUNTY COMMISSIONERS

By: _____
Larry Jensen, Chairperson
Board of County Commissioners

ATTEST:

Lori Schultz, Finance Officer
Brookings County

First Reading: August 17, 2021
Second Reading: September 21, 2021
Adopted: September 21, 2021
Effective Date: October 20, 2021