

MCPHERSON COUNTY ORDINANCE # 21-_____

**AN ORDINANCE CREATING LICENSING PROVISIONS
FOR CANNABIS ESTABLISHMENTS**

WHEREAS, the State of South Dakota permits the sale and consumption of medical cannabis pursuant to South Dakota Codified Law (SDCL) Chapter 34-20G and,

WHEREAS, pursuant to SDCL 34-20G-58, county government may require a local registration, license, or permit for a medical cannabis establishment to operate within that county, and

WHEREAS, pursuant to SDCL 34-20G-58, county government may enact ordinances or regulations governing the time, place, manner, and number of licensees operating within its jurisdiction; and

WHEREAS, also pursuant to SDCL 34-20G-58, county government may establish civil penalties for violation of an ordinance governing the time, place, and manner of medical cannabis establishments that operate locally, and

WHEREAS, under the provisions of SDCL 34-20G-60, county government may require a medical cannabis establishment to obtain a county license, permit, or registration prior to operating, and may charge a reasonable fee for that license, permit, or registration, and

WHEREAS, the County believes that regulation of medical cannabis is necessary for the health and safety of this community; then and therefore,

BE IT ORDAINED BY THE MCPHERSON COUNTY COMMISSION AS FOLLOWS:

1.1 Authority:

This Ordinance is enacted under the authority of SDCL 34-20G-58, SDCL 34-20G-60, and the provisions of SDCL Chapter 34-20G.

1.2: PURPOSE AND INTENT

The Board of County Commissioners of McPherson County enacts the following licensing ordinances in order to ensure that cannabis establishments 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.

1.3: JURISDICTION

These provisions shall, to the extent not in contradiction of any state law or regulation, govern the operations of medicinal cannabis establishments in McPherson County, South Dakota, outside the incorporated areas of any municipality.

1.4: 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.

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.

1.5: LICENSE REQUIRED

- (a) No cannabis establishment may be located or operate in the unincorporated area of the county without the appropriate valid and current cannabis establishment license issued by the County pursuant to this article. A violation of this provision is a Class 2 Misdemeanor. Each day of the violation constitutes a separate offense.
- (b) No cannabis establishment may be located or operate in the unincorporated area of the county without the appropriate valid and current cannabis establishment registration certificate issued by the Department pursuant to rules promulgated under SDCL 34-20G. A violation of this provision is a Class 2 Misdemeanor. Each day of the violation constitutes a separate offense.

1.6: LICENSE APPLICATION

- (a) An application for a cannabis establishment 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 \$10,000. The County will reimburse \$7,500.00 for applicants who fail to obtain a registration certificate from the South Dakota Department of Health or are not issued a license from the County.
 - 2. An application that will include, but is not limited to, the following:
 - i. The legal name of the prospective cannabis establishment;
 - ii. The physical address of the prospective cannabis establishment that meets the location requirements in 1.7, as well as any location requirements pursuant 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 cannabis establishment.
 - 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.

1.7: ISSUANCE OF LICENSE

- (a) The County will issue a license 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;
 4. The proposed location does not meet the applicable location requirements found in 1.7 and under SDCL 34-20G;
 5. The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder;
 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, or an owner, principal officer, or board member thereof, is overdue in payment to the County of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment; or
 9. The applicant will not be operating the business for which the license would be issued.
- (b) In the case of an application for a cannabis dispensary license, the County will reject the application if the limit on the number of cannabis dispensaries has been reached.
- (c) 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.
- (d) The County will review license applications for a cannabis facility in the order in which they are received.
- (e) The County reserves the right to deny any cannabis facility license application for good cause.

1.8: 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 community.

1.9: LOCATIONS

(a) Cannabis Dispensary

1. Dispensary shall not be located within a prescribed distance from certain existing uses as measured from the lot line of the property where the dispensary is proposed, to the lot line of the protected uses listed below:
 - i. Shall not be located within 1,000 feet of a public or private school existing before the date of the cannabis dispensary establishment application. (34-20G-55)
 - ii. Shall not be located within 1000 feet from a nonresidential daycare facility.
 - iii. Shall not be located within 1000 feet from a public park, public pool or public recreational facility or library.
 - iv. Shall not be located within 1000 feet of a religious institution.
 - v. Shall not be located within 1000 feet of a non-applicant residence.
 - vi. No future development will cause a dispensary to become nonconforming due to the establishment of a protected use within the distance prescribed herein.

2. Other location standards are as follows:
 - i. No cannabis dispensary shall share premises with or permit access directly from another cannabis establishment or a business that sells alcohol or tobacco.
 - ii. It shall be unlawful to operate a dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.

3. General Provisions and Performance Standards for Dispensaries are shown below:
 - i. No more than two (2) cannabis dispensaries shall be allowed to operate in the unincorporated area of the County at any time.
 - ii. No dispensary shall allow access entry to anyone under 18 years of age.
 - iii. Access control methods shall be installed pursuant to state requirements.
 - iv. Shall be located within a completely enclosed permanent structure. Mobile dispensaries are prohibited.
 - v. Drive-through dispensaries are prohibited.
 - vi. Cannabis dispensaries may only operate between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday and not on Memorial Day and Christmas Day.
 - vii. Shall provide for proper disposal of cannabis remnants and/or by-products and shall not place waste items in exterior refuse containers.
 - viii. Retail products, storage, sales, and display areas shall be kept out of the public view and shall not be visible from the exterior of the building.
 - ix. Signage and advertising shall be limited to on premise signage only, no billboard

advertising, pole signage is prohibited, and signage is limited to text only with no graphic displays or video.

(b) Cannabis Cultivation Facility

1. Cannabis Cultivation Facility shall not be located within a prescribed distance from certain existing uses as measured from the lot line of the property where the cultivation facility is proposed, to the lot line of the protected uses listed below:
 - i. Shall not be located within 1,000 feet of a public or private school existing before the date of the cannabis cultivation establishment application. (34-20G-55)
 - ii. Shall not be located within 1000 feet from a nonresidential daycare facility.
 - iii. Shall not be located within 1000 feet from a public park, public pool or public recreational facility or library.
 - iv. Shall not be located within 1000 feet of a religious institution.
 - v. Shall not be located within 1000 feet of a non-applicant residence.
 - vi. No future development will cause a cultivation facility to become nonconforming due to the establishment of a protected use within the distance prescribed herein.

2. General Provisions and Performance Standards for Cannabis Cultivation Facilities

- i. No more than two (2) Cannabis Cultivation Facilities shall be allowed to operate in the unincorporated area of the County at any time.
- ii. All cultivation operations shall be within a completely enclosed permanent building.
- iii. Shall provide for proper disposal of cannabis remnants and/or by-products and shall not place waste items in exterior refuse containers.
- iv. Shall provide for a ventilation and filtration system designed to ensure that odors from cultivation are not detectable beyond the property line. Ventilation and filtration systems shall meet the standards set forth by the State of South Dakota. All cultivation operations shall be within a completely enclosed permanent building or secured greenhouse facility.
- v. Security measures shall be installed as required by state regulations.
- vi. Perimeter of the property shall be fenced with minimum of a six (6) foot high solid fence and security access gates.
- vii. Signage and advertising shall be limited to on premise signage only, no billboard advertising, pole signage is prohibited, and signage is limited to text only with no graphic displays or video.

(c) Cannabis Testing Facility

1. Cannabis Testing Facility shall not be located within a prescribed distance from certain existing uses as measured from the lot line of the property where the testing facility is proposed, to the lot line of the protected uses listed below:

- i. Shall not be located within 1,000 feet of a public or private school existing before the date of the cannabis testing establishment application. (34-20G-55).
- ii. Shall not be located within 1000 feet from a nonresidential daycare facility.
- iii. Shall not be located within 1000 feet from a public park, public pool or public recreational facility or library.
- iv. Shall not be located within 1000 feet of a religious institution.
- v. Shall not be located within 1000 feet of a non-applicant residence.
- vi. No future development will cause a testing facility to become nonconforming due to the establishment of a protected use within the distance prescribed herein.

2. General Provisions and Performance Standards for Cannabis Testing Facilities

- i. No More than two (2) Cannabis Testing Facilities shall be allowed to operate in the unincorporated area of the County at any time.
- ii. All testing operations shall be within a completely enclosed permanent building.
- iii. Shall provide for proper disposal of cannabis remnants and/or by-products and shall not place waste items in exterior refuse containers.
- iv. Shall provide for a ventilation and filtration system designed to ensure that odors from cultivation are not detectable beyond the property line. Ventilation and filtration systems shall meet the standards set forth by the State of South Dakota. All cultivation operations shall be within a completely enclosed permanent building or secured greenhouse facility.
- v. Security measures shall be installed as required by state regulations.
- vi. Perimeter of the property shall be fenced with minimum of a six (6) foot high solid fence and security access gates.
- vii. Signage and advertising shall be limited to on premise signage only, no billboard advertising, pole signage is prohibited, and signage is limited to text only with no graphic displays or video.

(d) Cannabis Product Manufacturing Facility

- 1. Cannabis Product Manufacturing Facility shall not be located within a prescribed distance from certain existing uses as measured from the lot line of the property where the manufacturing facility is proposed, to the lot line of the protected uses listed below:
 - i. Shall not be located within 1,000 feet of a public or private school existing before the date of the cannabis testing establishment application. (34-20G-55).
 - ii. Shall not be located within 1,000 feet from a nonresidential daycare facility.
 - iii. Shall not be located within 1,000 feet from a public park, public pool or public recreational facility or library.
 - iv. Shall not be located within 1,000 feet of a religious institution.
 - v. Shall not be located within 1,000 feet of a non-applicant residence.
 - vi. No future development will cause a manufacturing facility to become nonconforming

due to the establishment of a protected use within the distance prescribed herein.

2. General Provisions and Performance Standards for Cannabis Testing Facilities

- i. No more than two (2) Cannabis Product Manufacturing Facilities shall be allowed to operate in the unincorporated area of the County at any time.
- ii. All manufacturing operations shall be within a completely enclosed permanent building.
- iii. Shall provide for proper disposal of cannabis remnants and/or by-products and shall not place waste items in exterior refuse containers.
- iv. Shall provide for a ventilation and filtration system designed to ensure that odors from cultivation are not detectable beyond the property line. Ventilation and filtration systems shall meet the standards set forth by the State of South Dakota. All cultivation operations shall be within a completely enclosed permanent building or secured greenhouse facility.
- v. Security measures shall be installed as required by state regulations.
- vi. Perimeter of the property shall be fenced with minimum of a six (6) foot high solid fence and security access gates.
- vii. Extraction processes utilizing flammable liquefied gas shall not be located in any building containing Group A, E, I, or R occupancies as defined by the International Building Code.
- viii. Exit doors from extraction rooms shall swing in the direction of egress and be self-closing. Panic hardware shall be provided on door and where latching door hardware is provided panic hardware shall also be provided.
- ix. Extraction rooms, booths, or hoods, including ductwork where required for hazardous exhaust systems shall be protected by an approved automatic fire extinguishing system.
- x. Signage and advertising shall be limited to on premise signage only, no billboard advertising, pole signage is prohibited, and signage is limited to text only with no graphic displays or video.

1.10: BUILDING CODE

All Cannabis Establishments are required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.

1.11: EXPIRATION OF LICENSE AND RENEWAL

- (a) Each license expires one year from the date of issuance and may be renewed only by making application as provided in Section 1.4. 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 \$5,000.00 The County will reimburse \$2,500 for applicants who fail to obtain a renewal of their registration certificate from the Department or the County.
- (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 cannabis establishment.
- (d) If a license holder has not operated an establishment for which it holds a license in the preceding twelve (12) months, the license will not be renewed.

1.12: 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 article.
 - 2. Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment.
 - 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 may 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 cannabis establishment.

1.13: REVOCATION

- (a) A license may be revoked if the license is suspended under Section 1.11 and the cause for the suspension is not remedied.
- (b) A license may be revoked if the license is subject to suspension under Section 1.11 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 cannabis establishment or the business of the cannabis establishment for which a license is required under this article while the license was suspended;
4. Repeated violations of Section 1.12;
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 city, county, or state for any taxes or fees related to the cannabis establishment;
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.

1.14: 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 cannabis establishment.
- (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, Auditor 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.

1.15: 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 article 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 McPherson County Courthouse, P.O. Box 390, Leola, South Dakota, 57456. 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.

1.16: 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.

1.17: 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.

1.18: PENALTIES

Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this article 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.

1.19: 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.

Dated the _____ day of _____, 2021 at Leola, South Dakota.

Anthony Kunz
Chair, McPherson County Commission

Attest: _____
Lindley Howard
McPherson County Auditor

First Reading: October 5th, 2021
Second Reading: October 14th, 2021
Adopted: _____
Publication Date: _____
Effective Date: _____