

ORDINANCE 1333

AN ORDINANCE ADDING CHAPTER 5.56 TO THE REVISED ORDINANCES OF THE CITY OF DEADWOOD CREATING LICENSING PROVISIONS FOR MEDICAL CANNABIS ESTABLISHMENTS

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

WHEREAS, pursuant to SDCL 34-20G-55, local municipal government may require a local registration, license, or permit for a medical cannabis establishment to operate within that municipality;

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

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

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

WHEREAS, the City of Deadwood believes that regulation of medical cannabis is necessary for the health and safety of this community:

BE IT ORDAINED by the City Council of the City of Deadwood that Title 5 of the Revised Ordinances of the City of Deadwood is hereby amended by adding new Chapter 5.56 as follows:

5.56.01: PURPOSE AND INTENT

The City Council of the City of Deadwood enacts the following licensing ordinances in order 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, and minimizes risk of unauthorized use or access of medical cannabis by the general public.

5.56.02: DEFINITIONS

Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for medical 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

5.56.03: LICENSE REQUIRED

- (a) No medical cannabis establishment may be located or operate in the city without the appropriate valid and current medical cannabis establishment license issued by the city pursuant to this article. A violation of this provision is subject to the general penalty provision in Chapter XX.16. Each day of the violation constitutes a separate offense.

- (b) No medical cannabis establishment may be located or operate in the city without the appropriate valid and current medical cannabis establishment registration certificate issued by the Department pursuant to rules promulgated under SDCL 34-20G. Any violation of the provisions of this chapter is a Class 2 misdemeanor punishable by the maximum punishment set forth by the laws of the state of South Dakota pursuant to SDCL 22-6-2. Each day of the violation constitutes a separate offense.

5.56.04: LICENSE APPLICATION

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

- (b) The applicant must submit the following:

1. Application fee of \$5,000. The City will reimburse \$2,500 for applicants who fail to obtain a registration certificate from the South Dakota Department of Health or who are unsuccessful bidders in the auction to obtain a medical cannabis establishment license from the City of Deadwood pursuant to Deadwood Municipal Ordinance 5.56.05.
2. The City of Deadwood may be a medical cannabis establishment license holder. The City's application for a medical cannabis establishment license will be given priority over any other application.
3. An application that will include, but is not limited to, the following:
 - i. The legal name of the prospective medical cannabis establishment;
 - ii. The physical address of the prospective medical cannabis establishment that meets the zoning and preservation requirements in Title 17, as well as any location requirements established 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 medical 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. Operating procedures consistent with rules for oversight of the proposed medical cannabis establishment, including procedures to ensure accurate record keeping and adequate security measures.
 - vi. Any additional information requested by the city.

5.56.05: ISSUANCE OF LICENSE

- (a) Application Process – The receipt of an application together with the requisite fee guarantees that the applicant will consummate the purchase of the medical cannabis establishment license if the applicant is successful during the auction process set forth below.
1. If the applicant fails or refuses to consummate the purchase of the medical cannabis establishment license by presenting the bid price for such license within 15 days of winning the successful bid, the applicant shall forfeit and the City shall be entitled to retain the application fee as liquidated damages.
 2. In the event the winning bidder for a medical cannabis establishment license shall not be able to meet the licensing standards set out by Deadwood Municipal Ordinance and SDCL 34-20G, the applicant shall forfeit and the City shall be entitled to retain the application fee as liquidated damages.
 3. Any winning bidder shall have the application fee credited toward the issuance fee for the medical cannabis establishment license.
 4. All unsuccessful bidders in the license auction shall have a portion of their application fee refunded pursuant to 5.56.04(b)(1) above.
- (b) Deadline. All applications from prospective bidders for a medical cannabis establishment license received at the City Finance Office by 5:00 on December 6, 2021 shall be included in the license auction.
- (c) Auction. The names of those applicants who have submitted a valid application for medical cannabis licenses shall be included in a sealed bid auction during the Deadwood City Commission meeting on December 20, 2021. Each applicant may bid on a medical cannabis establishment license with the minimum bid starting at one-hundred thousand dollars (\$100,000). If 10 or fewer applicants submit applications for a medical cannabis establishment license then all bidders shall receive licenses for the minimum bid price of one-hundred thousand dollars. In the event more than ten applicants apply for a medical cannabis establishment license then each prospective bidder shall submit their bid for a license on the form provided to them by the City Finance Officer at the December 20, 2021 Deadwood City Commission meeting. Following receipt of all bids the City Finance Officer shall determine the ten highest bids. These ten bidders shall receive a medical cannabis establishment license.
- (d) In the event less than 10 medical cannabis establishment licenses are sold by the City of Deadwood at its meeting on December 20, 2021 then the City shall retain any unused licenses until such time as an additional application is received by the Deadwood City Commission. Any such applicant shall be awarded a license by the Commission after a determination they meet the requirements of this ordinance necessary for the issuance of a medical cannabis establishment license upon receipt of the minimum bid of \$100,000.

- (e) All winning bidders' names will be presented to the City Commission and following a hearing in accordance with Deadwood Municipal Ordinances the medical cannabis establishment license shall be issued to the winning bidder.
- (f) In the event the applicant refuses to consummate the purchase of the medical cannabis establishment license or fails to meet the licensing standards set out by Deadwood Municipal Ordinance and SDCL 34-20G, the medical cannabis establishment license shall not be issued and a future applicant may acquire the same pursuant to 5.56.05(d).
- (g) Following Receipt of Applications – Once filed with the City Finance Officer, the application will be referred to the appropriate City Department Head for an investigation into the applicant's eligibility for a license. If a license is available the City will issue a license following a public hearing at the next regularly scheduled City Commission meeting 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 zoning requirements under Title 17;
 - 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 city 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 city 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.
- (h) In the case of an application for a medical cannabis establishment license, the city will reject the application if all authorized licenses have been issued.
- (i) The license must be posted in a conspicuous place at or near the entrance to the medical cannabis establishment so that it may be easily read at any time.

- (j) There shall be a fee for newly issued licenses under this chapter for any medical cannabis establishment that shall be equal to the fee for an on-sale, retail liquor license as provided in the City's fee schedule. In addition to this one time fee, each year the owner of a medical cannabis establishment must submit a renewal fee of set forth in paragraph 5.56.08.

5.56.06: CITY NEUTRALITY AS TO APPLICANTS

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

5.56.07: NUMBER OF MEDICAL CANNABIS DISPENSARIES

- (a) No more than ten medical cannabis dispensaries shall be allowed to operate in the City at any time.

5.56.08: EXPIRATION OF LICENSE AND RENEWAL

- (a) Each license expires one year from the date of issuance and may be renewed only by making a renewal application as provided in Section 5.56.04. Applications for renewal must be submitted at least sixty (60) 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 ten thousand dollars. (\$10,000). The City will reimburse seven thousand five hundred dollars (\$7,500) for applicants who fail to obtain a renewal of their registration certificate from the Department.
- (c) Failure to renew a license in accordance with this section will result in the immediate closure of the medical cannabis establishment. During this period of closure, a license may be revoked pursuant to Deadwood Municipal Ordinance 5.56.11. Following revocation, the City may re-issue a revoked license by following the procedure established by Deadwood Municipal Ordinance 5.56.05
- (d) If a license holder has not operated an establishment for which it holds a license for at least one-hundred and eighty (180) days in the preceding twelve (12) months, the license will not be renewed.

5.56.09: 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 medical 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 medical cannabis establishment.

5.56.10: REVOCATION

- (a) A license may be revoked if the license is suspended under Section 5.56.09 and the cause for the suspension is not remedied.
- (b) A license may be revoked if the license is subject to suspension under Section 5.56.09 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 establishment or the business of the medical cannabis establishment for which a license is required under this article while the license was suspended;
 4. Repeated violations of Section 5.56.11;
 5. Operated a function of a medical 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 medical 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 City.

5.56.11. 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 medical 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 the Deadwood City Commission
- (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.

5.56.12: 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 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 the Deadwood City Hall at the Finance Officer's Office, 102 Sherman Street Deadwood, SD 57732. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt of the appeal.

5.56.13: LICENSES NOT TRANSFERRABLE

No medical 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 medical cannabis establishment at any place other than the address designated in the application.

5.56.14: HOURS OF OPERATION FOR DISPENSARIES

No medical cannabis dispensary may operate between the hours of 10:00 P.M. and 7:00 A.M. any day of the week.

5.56.15: LIABILITY FOR VIOLATIONS

Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee or agent of a medical cannabis establishment that constitutes grounds for suspension or revocation will be imputed to the medical 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 medical cannabis establishment, knowingly allowed such act to occur on the premises.

5.56.16: PENALTIES

Any person who operates or causes to be operated a medical 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 as a Class II misdemeanor punishable by the maximum punishments set forth under State Statutes. Each day a medical cannabis establishment so operates is a separate offense or violation.

5.56.17 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 this 1st day of November, 2021

CITY OF DEADWOOD

David Ruth Jr., Mayor

ATTEST:

Jessicca McKeown, Finance Officer

First Reading:	October 18, 2021
Second Reading:	November 1, 2021
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