

ORDINANCE NO. 1352

AN ORDINANCE AMENDING CHAPTER 5.56 TO THE REVISED ORDINANCES OF THE CITY OF DEADWOOD CREATING LICENSING PROVISIONS FOR MEDICAL CANNABIS ESTABLISHMENTS INCLUDING DISPENSARIES, CULTIVATION FACILITIES, CANNABIS PRODUCT MANUFACTURING FACILITIES AND CANNABIS TESTING FACILITIES

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 previously enacted ordinance 5.56 regulating cannabis dispensaries;

WHEREAS, the City of Deadwood believes that regulation of medical cannabis dispensaries, cannabis cultivation facilities, cannabis product manufacturing facilities and cannabis testing facilities is necessary for the health and safety of this community:

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

5.56.01: PURPOSE AND INTENT

The City Commission of the City of Deadwood enacts the following licensing ordinances in order to ensure that cannabis establishments including cannabis dispensaries, cannabis cultivation facilities, cannabis product manufacturing facilities and cannabis testing facilities 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 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 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.

Co-locate: For the purpose of this chapter, co-locate is defined as on the same parcel or properties that share adjoining property lines with common ownership.

Department: the South Dakota Department of Health

5.56.03: LICENSE REQUIRED

- (a) No cannabis establishment including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility may be located or operate in the city without the appropriate valid and current cannabis establishment license issued by the City pursuant to this article. 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.
- (b) No cannabis establishment including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility and cannabis testing facility may be located or operate in the City without the appropriate valid and current 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 cannabis establishment including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility license must be made on a form provided by the City. No other application form will be considered.
- (b) An applicant shall submit a separate license application for each type of cannabis establishment the applicant wishes to license and operate. Licenses may overlap locations if the following criteria are met:
 - 1. The applicant seeking to co-locate multiple licenses is identical for all applications.
 - 2. The property upon which multiple applications are sought is either the same parcel for all applications, or the properties share adjoining property lines with common ownership.
 - 3. The applicant is in compliance with all State statutes and regulations regarding co-location of multiple cannabis establishments as well as Deadwood Municipal Ordinances.
- (c) The applicant must submit the following:
 - 1. Application fee of ten thousand dollars (\$10,000) which shall be considered a non-refundable application fee for each cannabis license sought.
 - 2. The City of Deadwood may be a medical cannabis establishment license holder. The City's application for a 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 cannabis establishment including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility;
 - ii. The physical address of the prospective cannabis establishment including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility that meets the zoning and preservation requirements in Title 17 of Deadwood Municipal Ordinances, 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, agent, and board member of the proposed cannabis establishment including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility.
 - iv. A sworn statement that no principal officer, owner, agent, or board member has been convicted of a violent felony offense as defined in SDCL 22-1-2 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 including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility license if issued by the State of South Dakota.

1. If the applicant fails or refuses to consummate the purchase of the medical cannabis establishment including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility license following approval by the State of South Dakota, the applicant shall forfeit and the City shall be entitled to retain the application fee.
2. In the event the applicant for a cannabis establishment license including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility 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.
3. In the event the applicant for a cannabis establishment license including

cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility is issued a license by the State of South Dakota, the initial application fee shall apply toward the First Annual Fee as set forth in in this chapter.

(b) All applications for medical cannabis establishment including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility licenses received at the City Finance Office shall be transmitted to the South Dakota Department of Health for their consideration following a determination by the City of Deadwood Finance Office that the applicant meets the zoning and licensing standards set forth in Deadwood Municipal Ordinances.

(c) In the event the applicant refuses to consummate the purchase of the medical cannabis establishment license including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility 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.

(d) Following Receipt of Applications – Once filed with the City Finance Office, the application will be referred to the appropriate City department for an investigation into the applicant’s eligibility for a license. The City shall then submit the completed application to the State for review. After the State approves the application, the license shall be issued after a public hearing has been set and held by the Deadwood City Commission unless:

1. The applicant has made a false statement on the application or submits false records or documentation; or
2. Any owners, principal officer, agent, or board member of the applicant is under the age of twenty-one (21) years; or
3. Any owner, principal officer, agent, or board member of the applicant has been convicted of a violent felony offense as defined in SDCL 22-1-2 in the previous ten (10) years in any jurisdiction; or
4. The proposed location does not meet the applicable zoning requirements under Title 17 of Deadwood Municipal Ordinances; 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, agent, 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, agent, 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.
- (e) The license must be posted in a conspicuous place at or near the entrance to the cannabis establishment including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility so that it may be easily read at any time.
- (f) Each year the owner of a medical cannabis establishment including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility must submit a renewal fee set forth in this chapter.

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: EXPIRATION OF LICENSE AND RENEWAL

- (a) Each cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility license expires on December 31st on an annual basis and may be renewed only by making a renewal application as provided in this Section. Applications for renewal must be submitted at least sixty (60) days before the expiration date together with the renewal fees set forth herein. The license holder must continue to meet the license requirements to be eligible for a renewal.
- (b) Following approval by the State of South Dakota, the First Annual Fee for a cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility license shall be due. The First Annual Fee for the first license held is thirty thousand dollars (\$30,000). This includes a five-thousand dollar (\$5,000) fee which shall be utilized to provide social **programs** in Deadwood. Any applicant who seeks multiple cannabis establishment licenses will receive a reduction in price for each license issued. The First Annual Fee and Subsequent Annual Fee for any cannabis establishment license held in addition to the first cannabis establishment license shall be twelve thousand five hundred dollars and 00/100 (\$12,500) per license. The First Annual Fee for each cannabis establishment license shall be provided to the City Finance Officer within five days of notice by the State of South Dakota that the applicant shall be issued a license for a cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility. For

the First Annual Fee, the Initial Application Fee shall serve as a credit of ten thousand dollars (\$10,000) toward the First Annual Fee.

- (c) Subsequent Annual Renewal Fee – Each year following payment of the **Initial** Annual Fee set forth in this chapter, the Annual Renewal Fee shall be thirty-thousand dollars (\$30,000) for the first license held. **This includes a five-thousand dollar (\$5,000) fee which shall be utilized to provide social programs in Deadwood.** The license holder of multiple cannabis establishment licenses will receive a reduction in price for each license issued. The Subsequent Annual Fee for any cannabis establishment license held in addition to the first cannabis establishment license shall be twelve thousand five hundred dollars and 00/100 (\$12,500) per license. The Annual Renewal fee shall be provided to the City Finance Officer at the time of receipt of the renewal application. In the event the license holder is deemed ineligible for renewal, the Annual Renewal Fee is considered non-refundable and shall be retained by the City of Deadwood.
- (d) Failure to renew a license in accordance with this section will result in the immediate closure of the medical cannabis establishment including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility. During this period of closure, a license may be revoked pursuant to this chapter.
- (e) 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.

5.56.08: 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 chapter.
 - 2. Consumes or smokes cannabis or allows any person to consume or smoke cannabis on the premises of the cannabis establishment.
 - 3. Sells cannabis or cannabis products without a cannabis dispensary license.
 - 4. 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.

5.56.09: REVOCATION

- (a) A license may be revoked if the license is suspended under this chapter and the cause for the suspension is not remedied.
- (b) A license may be revoked if the license is subject to suspension under this chapter 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 or renewal process; or
 - 2. Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises; or
 - 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; or
 - 4. Repeated violations of this chapter; or
 - 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); or
 - 6. A license holder, or an owner, principal officer, agent, or board member thereof, is delinquent in payment to the City, county, or state for any taxes or fees related to the cannabis establishment; or
 - 7. A license holder, or an owner, principal officers, agent, 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; or
 - 9. The license holder allows a public nuisance to continue after notice from the City.

5.56.10. 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 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.

5.56.11: 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.

5.56.12: LICENSES NOT TRANSFERRABLE

No cannabis establishment license including a cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility 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 except that a cannabis establishment license may be transferred to the license holders heirs upon the death of a license holder.

5.56.13: HOURS OF OPERATION FOR DISPENSARIES

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

5.56.14: 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 including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility 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.

5.56.15: PENALTIES

Any person who operates or causes to be operated a cannabis establishment including cannabis dispensary, cannabis cultivation facility, cannabis product manufacturing facility or cannabis testing facility 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 cannabis establishment so operates is a separate offense or violation.

5.56.16 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 18th day of January, 2022

CITY OF DEADWOOD

David Ruth Jr., Mayor

ATTEST:

Jessicca McKeown, Finance Officer

First Reading: February 7, 2022
Second Reading: February 22, 2022
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