



## **Spearfish Planning Commission Agenda**

**Please note special starting time**

June 1, 2021 at **2:00 p.m.**

**Meeting Location: City Council Chamber, 625 Fifth Street, Spearfish, SD  
And Zoom Online Meeting**

Join Zoom Meeting

<https://us02web.zoom.us/j/87635692470>

Meeting ID: 876 3569 2470

Dial in: 1 253 215 8782 and enter Meeting ID: 876 3569 2470

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**A. Call To Order**

**B. Roll Call**

**C. Approve the Minutes from May 18, 2021**

**D. Declaration of Conflicts of Interest**

**E. Items for Action**

1. **Request:** Amend Appendix A Zoning to incorporate regulations for Cannabis Establishments  
**Location:** Agriculture, Commercial, and Industrial Districts  
**Applicant:** City of Spearfish  
**Action:** Hold a public hearing and make a recommendation to City Council

**F. City Council Update**

**G. Public Comment** - Public comments are welcome at this time, however, no action will be taken.

**H. Adjournment**



**Spearfish Planning Commission**  
Regular Session Minutes  
May 18, 2021 at 3:00 p.m.

The Spearfish Planning Commission met in regular session on Tuesday, May 18, 2021 at 3:00 p.m. in the council chambers of city hall and via Zoom video conference. Chairman Bordewyk called the meeting to order. Roll call was taken with the following members present: Toby Bordewyk, Meghan Byrum, Abe Kean, Greg Kruskamp, Bob Meyer, Larry Vavruska and Barbara Zwetzig. Also present: City Planner Jayna Watson, and City Attorney Ashley McDonald.

**APPROVAL OF MINUTES:**

**Meyer moved, Byrum seconded, and all voted to approve the minutes of the May 4, 2021 Commission meeting.**

**DECLARATIONS OF CONFLICTS OF INTEREST:**

Bordewyk called for any potential conflicts of interest to be identified. None were stated.

- Request:** Amend Appendix A Zoning to incorporate regulations for Cannabis Establishments  
**Location:** Agriculture, Commercial, and Industrial Districts  
**Applicant:** City of Spearfish  
**Action:** Set a public hearing for June 1, 2021

Watson provided a review of the staff report and recommendation. Comments from the Commission included: security for cannabis establishments, a refinement of the dispensary definition to add possible language concerning a retail function, how the drive-up or drive-through and delivery dispensary services would be regulated, prohibition of a residence on the same AG zoned land as where cultivation would be permitted, coordination with how the zoning code defines a lot or platted lot, and consistency with language provided in statute as it relates to these regulations. **Vavruska moved, Byrum seconded, and all voted to set public hearing for June 1, 2021.**

**City Council Update** – Watson noted that the Board of Adjustment approved the variance on Monday night for the Buggy Bath car wash. Officer Sam Rosenau was promoted to Sergeant, and the City Council acknowledged Emergency Medical Services Week. McDonald noted that City Council approved first reading last night to prohibit the use of cannabis in public. Watson reminded the Planning Commission that the meeting on June 1 will start at 2:00 pm to avoid a conflict with the Public Works committee meeting that same day which starts at 4:15 p.m.

**Public Comment** – No comments were provided.

**Adjournment** - Bordewyk adjourned the meeting at 3:55 p.m.



**Spearfish Planning Commission Staff Report**

**Meeting Location: Council Chamber of City Hall, 625 Fifth Street, Spearfish, SD 57783**  
**See page 2 to join via zoom video conference**

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**Meeting Date and Time:** June 1, 2021 at 2:00 p.m.

**Applicant:** City of Spearfish

**Request:** Amend Appendix A Zoning to incorporate regulations for Cannabis Establishments

**Action:** Hold a public hearing and make a recommendation to City Council

**Location:** Agriculture, Commercial, and Industrial Districts

**Proposal Summary:** This will update the city's zoning ordinance to provide locations for the cultivation, testing, manufacture, and dispensing of medical cannabis in accordance with SDCL 34-20G.

**Background and History:**

State law identifies four classifications and definitions of medical cannabis establishments (CE): cultivation, testing, manufacturing, and dispensary. The purpose of this update is to identify appropriate locations for each of the CE functions of the cannabis industry as these relate to land use. A separate effort is underway to create the licensing structure whereby a cannabis establishment may operate within the city per state law as well as any Spearfish specific regulations. This licensing ordinance addresses topics concerning the legal requirements for owners and operators and requires no recommendation from the Planning Commission. As this topic is evolving around the state, it is likely that additional updates will emerge for both zoning and licensing.

**Update Since Last Staff Report:**

At the last meeting, discussion took place for what may be necessary to include in the zoning code update as it relates to security, hours of operation, and building access. These topics are unrelated to land use and will not be addressed in this update.

After additional review and research, staff recommends the following changes to the ordinance text:

- 1) Clarified the dispensary definition related to it being a Retail Type 1 function.

- 2) Since it is possible that a cannabis grower will also reside on the same Ag zoned property, the 1,000 foot distance between a cultivation facility to the residence on that same lot would not apply as it would to other residences not associated with a growing operation.
- 3) Religious institutions have been removed from the list of land uses that are included in the 1,000 foot separation from any cannabis facility. This is because of the difficulty in determining whether this use exists given that not all religious groups own the building they meet in, many are informally organized, and lack any means by which they identify themselves. Defining these uses to capture the appropriate segment of the community will be unsuccessful.
- 4) The 1000 foot separation between a residence and a dispensary or a testing facility has also been eliminated. Dispensaries are retail, and retail operations exist for all types of products within this distance to a residence throughout the city. Testing facilities are laboratory environments within an enclosed building and the public does not have contact with these locations.
- 5) Because land uses within the Development Review zoning district are regulated according to an approved concept plan and not traditional zoning districts with clear zoning boundaries, none of the four types of cannabis establishment may exist within this district.

Note that not every zoning district requires an update to add the relevant CE. For example, in C-1 Central Commercial, the dispensary is listed as primary permitted use. Dispensaries will be permitted in CC Central Core and C-2 Highway Commercial also; however, they are not specifically identified since both these land use lists refer to the primary permitted uses of the C-1.

**STAFF RECOMMENDATION: Approve**

**ATTACHMENTS:**

Page 3 – Proposed ordinance language

**STAFF CONTACT:** Jayna Watson, City Planner, 605-717-1122

[jayna.watson@cityofspearfish.com](mailto:jayna.watson@cityofspearfish.com)

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**ORDINANCE NO. 1345**

**AN ORDINANCE CREATING ZONING REGULATIONS FOR  
CANNABIS ESTABLISHMENTS**

**BE IT ORDAINED** by the Common Council of the City of Spearfish that Appendix A. Zoning Regulations of the Revised Ordinances of the City of Spearfish is hereby amended—with ~~striketrough~~ indicating text to be deleted, underline indicating text to be added, and the remainder of the Article left unaffected—as follows:

Appendix A. Zoning Regulations.

Article IV. District Regulations

\* \* \*

[...]

**Section 1b. AG agricultural district.**

[...]

B. *Primary uses permitted.* Property and structures in the AG agricultural district shall be used for the following purposes:

[...]

- 8. Cannabis Cultivation Facilities
- 9. Cannabis Testing Facilities
- 10. Cannabis Product Manufacturing Facilities

[...]

**Section 5. C1 central commercial district.**

[...]

B. *Primary uses permitted.* Property and structures in the C1 central commercial district shall be used for the following purposes:

[...]

- 25. Cannabis Testing Facilities
- 26. Cannabis Dispensaries

[...]

**Section 7. C2 highway service commercial district.**

[...]

B. *Primary uses permitted.* Property and structures in the C2 highway service commercial district shall be used for the following purposes:

[...]

15. Cannabis Product Manufacturing Facilities

[...]

**Section 7a. C3 office commercial district.**

[...]

B. *Primary uses permitted.* Property and structures in the C3 office commercial district shall be used for the following purposes:

[...]

10. Cannabis Testing Facilities

[...]

**Section 8. ILR light/restrictive industrial district.**

[...]

B. *Primary uses permitted.* Property and structures in the ILR light/restrictive industrial district shall be used for the following purposes:

[...]

37. Cannabis Cultivation Facilities

38. Cannabis Testing Facilities

39. Cannabis Product Manufacturing Facilities

40. Cannabis Dispensaries

[...]

**Section 9. IH heavy industrial district.**

[...]

B. *Primary uses permitted.* Property and structures in the IH heavy industrial district shall be used for the following purposes:

[...]

- 12. Cannabis Cultivation Facilities
- 13. Cannabis Testing Facilities
- 14. Cannabis Product Manufacturing Facilities
- 15. Cannabis Dispensaries

[...]

### **Section 15. Cannabis establishments**

(A) In order to balance the various interests and manage the effects cannabis establishments have on adjacent land uses and to promote the public health, safety, and general welfare of the city, the Common Council adopts the following regulations, recognizing that it has a great interest in the present and future character of the city's residential and commercial neighborhoods. Adoption of these regulations is not intended to unreasonably restrict the opportunity of cannabis establishments to locate in the city but is for the purpose of preventing a concentration of certain cannabis establishments in any one area.

(B) 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. (hemp) 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 is a retail type 1 setting and acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

Cannabis Establishment: a 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.

Public or private school. Any preschool, elementary school, middle school, secondary school, or high school. The term also includes any daycare or childcare center.

Unlicensed Cannabis Establishment: an entity that would otherwise meet the definition of a cannabis establishment, but which is not legally licensed by the City of Spearfish and does not have a current and valid registration certificate issued by the South Dakota Department of Health.

(C) Regulations Relating to Cannabis Cultivation Facilities. No cannabis cultivation facility may be located or operate at a location within the city's zoning jurisdiction except as provided in this section. A cannabis cultivation facility is a permitted use in the following zoning districts: Ag (Agriculture), IH (Heavy Industrial), ILR (Light/Restrictive Industrial).

No cannabis cultivation facility may be located or operate within one thousand (1000) feet of a public or private school or a residence. The one thousand (1000) foot distance requirement for a residence does not apply to a residence located on the same lot as a cannabis cultivation facility.

(D) Regulations Relating to Cannabis Testing Facilities. No cannabis testing facility may be located or operate at a location within the city's zoning jurisdiction except as provided in this section. A cannabis testing facility is a permitted use in the following zoning districts: Ag (Agriculture), CC (Central Core), C-1 (Central Commercial), C-2 (Highway Service Commercial), C-3 (Office Commercial District), ILR (Light/Restrictive Industrial), and IH (Heavy Industrial).

No cannabis testing facility may be located or operate within one thousand (1000) feet of a public or private school.

(E) Regulations Relating to Cannabis Product Manufacturing Facilities. No cannabis product manufacturing facility may be located or operate at a location within the city's zoning jurisdiction except as provided in this section. A cannabis product manufacturing facility is a permitted use in the following zoning districts: Ag (Agriculture), C-2 (Highway Service Commercial), ILR (Light/Restrictive Industrial), and IH (Heavy Industrial).

No cannabis product manufacturing facility may be located or operate within one thousand (1000) feet of a public or private school or a residence.

(F) Regulations Relating to Cannabis Dispensaries. No cannabis dispensary may be located or operate at a location within the city's zoning jurisdiction except as provided in this section. A cannabis dispensary is a permitted use in the following zoning districts: CC (Central Core), C-1 (Central Commercial), C-2 (Highway Service Commercial), ILR (Light/Restrictive Industrial), and IH (Heavy Industrial).

No cannabis dispensary may be located or operate within one thousand (1000) feet of a public or private school.

(G) Unlicensed cannabis establishments are prohibited from being located or operating in any zoning district.

(H) For the purposes of this section, measurements shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing a cannabis establishment to the nearest point on the property line of a parcel containing a use listed in Sections 15(C) through (F).

(I) A cannabis establishment lawfully operating in conformity with this section does not violate this section if any of the uses in Sections 15(C) through (F) subsequently locates within one thousand (1000) feet of the cannabis establishment.

(J) It is unlawful to own, manage, or operate a cannabis establishment in a Development Review District or zoning districts other than the zoning districts permitted by the criteria of this section. A violation of this provision is subject to the general penalty provision in Section 1-14. Each day of violation constitutes a separate offense.

\* \* \*

**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.

**Effective Date.** This Ordinance will become effective 20 days following publication, which will occur after the ordinance receives second and final reading by the City Council and is signed by the Mayor.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF SPEARFISH**

By: \_\_\_\_\_  
Dana Boke, Its Mayor

(Seal)

Attest:

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Michelle DeNeui, Finance Officer

First Reading:

Second Reading:

Published:

Effective: