

ORDINANCE NO. 1346

AN ORDINANCE TO CREATE LICENSING PROVISIONS FOR
CANNABIS ESTABLISHMENTS

BE IT ORDAINED by the Common Council of the City of Spearfish that Chapter 10 of the Revised Ordinances of the City of Spearfish is hereby amended by adding new Article XIV— with ~~strikethrough~~ indicating text to be deleted, underline indicating text to be added, and the remainder of the Article left unaffected—as follows:

Chapter 10. Licenses, Permits, and Business Operations

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Article XIV. Cannabis Establishment Licenses

Sec. 10-501. Definitions and general provisions.

Article II of this Chapter does not apply to this Article.

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 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: 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.

License holder: a cannabis establishment that possesses a license under this article to operate the cannabis establishment for which the license was issued.

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.

Sec. 10-502. License required.

(a) No cannabis establishment 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. A violation of this provision is subject to the general penalty provision in Section 1-14. Each day of the violation constitutes a separate offense.

(b) No cannabis establishment may be located or operate in the city without the appropriate valid and current cannabis establishment registration certificate issued by the South Dakota Department of Health pursuant to rules promulgated under SDCL 34-20G. A violation of this provision is subject to the general penalty provision in Section 1-14. Each day of the violation constitutes a separate offense.

Sec. 10-503. License application.

(a) An application for a 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.

(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 zoning requirements in Appendix A, Zoning Regulations; Article IV. District Regulations, Section 15. Cannabis Establishments.

(iii) The name and birth date of each principal officer, owner, and board member of the proposed cannabis establishment.

(iv) Any additional information requested by the city.

(3) Proof of a valid and current registration certificate issued by the South Dakota Department of Health.

(c) Each principal officer, owner, and board member of the cannabis establishment must meet the qualifications of a license holder.

(d) The city may be a license holder. The city's application for a cannabis establishment license will be given preference over any other application.

Sec. 10-504. Issuance of license.

(a) Once filed, the application will be referred to the appropriate city departments for an investigation into the applicant's eligibility for a license. If a license is available, the city will issue a license unless:

- (1) The applicant has made a false statement on the application or submits false records or documentation; or
- (2) The applicant is under the age of twenty-one (21) years; or
- (3) The applicant has been convicted of a disqualifying felony offense as defined by South Dakota law; or
- (4) The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
- (5) The applicant has had a cannabis establishment license revoked by the city or a registration certificate revoked by the state in the 24 months preceding the application; or
- (6) An applicant 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
- (7) The applicant does not possess a valid and current registration certificate issued by the South Dakota Department of Health; or
- (8) The applicant will not be operating the business for which the license would be issued.

(b) 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.

Sec. 10-505 Number of cannabis establishment licenses.

(a) The number of cannabis cultivation facility licenses may not exceed two (2) for the first twenty thousand (20,000) of population or fraction thereof and may not exceed one for each additional five thousand (5,000) of population or fraction thereof.

(b) The number of cannabis testing facility licenses may not exceed two (2) for the first twenty thousand (20,000) of population or fraction thereof and may not exceed one for each additional five thousand (5,000) of population or fraction thereof.

(c) The number of cannabis manufacturing facility licenses may not exceed two (2) for the first twenty thousand (20,000) of population or fraction thereof and may not exceed one for each additional five thousand (5,000) of population or fraction thereof.

(d) The number of cannabis dispensary licenses may not exceed one (1) for the first twenty

thousand (20,000) of population or fraction thereof and may not exceed one for each additional five thousand (5,000) of population or fraction thereof.

For the purposes of this section, population is equal to ninety percent of the population estimates published by the United States Census Bureau for each even-numbered year, except for the decennial year. For a decennial year, population is equal to the amount determined by the decennial federal census.

Sec. 10-506. Activities authorized with license.

(a) A license for a cannabis cultivation facility authorizes the license holder to conduct the following activities

- (1) Possess, plant, propagate, cultivate, grow, harvest, produce, process, manufacture, compound, convert, prepare, pack, repack, or store cannabis;
- (2) Deliver, transfer, or transport cannabis to a testing facility and compensate a testing facility for services provided;
- (3) Accept cannabis offered by a cardholder or nonresident cardholder if nothing of value is exchanged in return;
- (4) Purchase or otherwise acquire cannabis from a cultivation facility;
- (5) Purchase cannabis seeds from a cardholder, nonresident cardholder, or the equivalent of a medical cannabis establishment that is registered in another jurisdiction; or
- (6) Deliver, sell, supply, transfer, or transport cannabis, cannabis paraphernalia, or related supplies or educational materials to a cultivation facility and dispensary.

(b) A license for a cannabis testing facility authorizes the license holder to conduct the following activities:

- (1) Acquire, possess, transport, and store cannabis or cannabis products obtained from a cardholder, nonresident cardholder or medical cannabis establishment;
- (2) Return the cannabis or cannabis products to a cardholder, nonresident cardholder, or medical cannabis establishment from whom it was obtained;
- (3) Test cannabis, including for potency, pesticides, mold, or contaminants; or
- (4) Receive compensation for services under this article.

(c) A license for a cannabis manufacturing facility authorizes the license holder to conduct the following activities:

- (1) Purchase or otherwise acquire cannabis from cultivation facility, and cannabis products or cannabis from a cannabis product manufacturing facility;
- (2) Possess, produce, process, manufacture, compound, convert, prepare, pack, repack, and store cannabis or cannabis products;
- (3) Deliver, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a dispensary or cannabis product manufacturing facility;
- (4) Deliver, transfer, or transport cannabis to testing facility and compensate testing facility for services provided; or
- (5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a cannabis product manufacturing facility or dispensary.

(d) A license for a cannabis dispensary authorizes the license holder to conduct the following activities:

- (1) Possess, transport, or store cannabis or cannabis products;
- (2) Deliver, transfer, or transport cannabis to a testing facility and compensate a testing facility for services provided;
- (3) Accept cannabis offered by a cardholder or nonresident cardholder if nothing of value is exchanged in return;
- (4) Purchase or otherwise acquire cannabis from a cultivation facility or dispensary, and cannabis products from cannabis product manufacturing facility or dispensary; and
- (5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a cardholder, nonresident cardholder, or dispensary.

Sec. 10-507. 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 10-503. 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 city 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.

Sec. 10-508. 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 registration certificate issued by the South Dakota Department of Health suspended, revoked, or not renewed by the South Dakota Department of Health 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.

Sec. 10-509. Revocation.

(a) A license may be revoked if the license is suspended under Section 10-508 and the cause for the suspension is not remedied.

(b) A license may be revoked if the license is subject to suspension under Section 10-508 because of a violation outlined in that section and the license has been previously suspended in the preceding 12 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 10-508(a)(3);
- (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 is delinquent in payment to the city, county, or state for any taxes or fees related to the cannabis establishment;
- (7) A license holder 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 registration certificate issued by the South Dakota Department of Health 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.

Sec. 10-510. 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 a hearing panel, which will consist of the Finance Officer, Director of Public Safety, and Planning Director.

(c) If the license holder disputes the determination made by the hearing panel, the license holder may request a review by the City Administrator. The City Administrator will review any documents and information relevant to the suspension or revocation but will not hold a hearing. The City Administrator will either affirm or reverse the hearing panel's decision.

(d) 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.

(e) 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.

(f) 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.

Sec. 10-511. 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 Common 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 city administration at 625 N. 5th Street, Spearfish, South Dakota, 57783. The appeal will be considered by the Common Council at a regularly scheduled meeting within one month of the receipt of the appeal.

Sec. 10-512. Licenses not transferable.

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.

Sec. 10-513. Hours of operation for dispensaries.

No cannabis dispensary may operate between the hours of 12:00 a.m. and 8:00 a.m. any day of the week.

Sec. 10-514. 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.

Sec. 10-515. 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.

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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 21st day of June, 2021.

CITY OF SPEARFISH

(Seal)

By: _____
Dana Boke, Its Mayor

Attest:

Michelle DeNeui, Finance Officer

First Reading: June 7, 2021

Second Reading: June 21, 2021

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