

ORDINANCE NO. 1371

**AN ORDINANCE TO MODIFY 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

* * *

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.

Applicant: an individual or entity, or any principal, partner, officer, director, owner, or member of an entity that applies for a cannabis establishment license.

[...]

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) A non-refundable fee as set by resolution.

- (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, partner, officer, director, owner, or member ~~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, partner, officer, director, owner, or member ~~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. Receipt of applications and issuance ~~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 and there are not more applications received at the same time than licenses available, the city ~~will~~ may 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) Subject to Section 10-504(e), The ~~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; or
- (9) The location for the cannabis establishment does not comply with zoning requirements as set by Appendix A Zoning Regulations.

(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.

(c) For applications received by the city after July 1, 2022, the applications will be considered in the order in which they are received. If multiple applications that conform with ordinance requirements are received on the same business day for any a particular license, the city will choose the successful applicant by way of through a lottery.

(d) When a lottery is conducted, the applicants will be placed in a lottery queue based on the order in which they were selected. If the applicant selected first in the lottery is unable to comply with the terms of this article or state law, the next applicant in the lottery queue will be considered for the cannabis establishment license. The lottery queue will be active for twenty-four (24) months from the date the lottery was conducted, after which the lottery queue will expire.

~~(d) — Upon issuance of a license, the applicant shall pay a license fee as set by resolution. The license will not be in effect until the applicant pays the license fee in full. The license fee will not be prorated.~~

(e) If an applicant otherwise meets the requirements to be issued a cannabis establishment license but has not been issued a registration certificate from the South Dakota Department of Health, the city may issue the applicant a provisional license. A provisional license expires 180 days from the date of issuance. If the applicant is not issued a registration certificate from the South Dakota Department of Health prior to the expiration of the 180-day term of the provisional license, the city will not issue the applicant a cannabis establishment license. To be considered again for a cannabis establishment license, an applicant whose provisional license expired must submit a new initial application that conforms with all the requirements in this article and state law. This new initial application will not be given priority over other active applications and will be considered in the order in which it was received in relation to any other active applications on file with the city. This new initial application will not be placed in any active lottery queue.

(f) If a conforming application is submitted but no licenses are available, the application will be on file and active for twenty-four (24) months from the date it was submitted. If an applicable cannabis establishment license becomes available while an application is active under this section, the applicant may be considered for the cannabis establishment license without having to submit a new initial application. After twenty-four (24) months have elapsed since the application was submitted, the application will expire. Upon the expiration of an application, an applicant must submit a new initial application that conforms with all the requirements in this article and state law to be considered for a cannabis establishment license.

~~(g) — Upon issuance of a license, the applicant shall pay a license fee as set by resolution. The license will not be in effect until the applicant pays the license fee in full. The license fee will not be prorated.~~

[...]

Sec. 10-507. Expiration of license and renewal.

(a) Each license expires one year from the date of issuance ~~on December 31 each year, regardless of the date of issuance. The license and~~ may be renewed only by making application as provided in section 10-503. An Application 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 will be set by resolution.

(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. 10-512. Licenses not transferable.

No cannabis establishment license holder may ~~be transferred 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 prior to submitting a change of address form and paying a fee. A complete turnover of principals, partners, officers, directors, owners, or members of an entity that has a cannabis establishment license is a transfer. Such turnover will result in the license being void and will require a new initial application for a cannabis establishment license.

[...]

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~~ principal, partner, officer, director, owner, or general partner member, or a person who managed, supervised, or controlled the operation of the cannabis establishment, knowingly allowed such act to occur on the premises.

[...]

Sec. 10-516. Changes in application information.

If any information required under Section 10-503 changes at any time, the applicant or license holder must submit the new information to the city along with the associated fee. The fee will be set by resolution.

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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 5th day of July, 2022.

CITY OF SPEARFISH

(Seal)

By: _____
John Senden, Its Mayor

Attest:

Michelle DeNeui, Finance Officer

First Reading: June 21, 2022
Second Reading: July 5, 2022
Published: July 9, 2022
Effective: July 29, 2022