

ORDINANCE #2022-12

**An ordinance amending and replacing Clay County Ordinance 2021-05 in its entirety, providing for the regulation and licensing of Medical Marijuana establishments.**

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

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

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

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

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

WHEREAS, the County believes that regulation of medical cannabis is necessary for the health and safety of this community SDCL 7-18A-8; and

WHEREAS, the State of South Dakota permits the sale and consumption of cannabis pursuant to South Dakota Codified Law, medical cannabis establishments licensed under this ordinance may sell cannabis for qualifying patient's use so long as they comply with the provisions of South Dakota Codified Law and the South Dakota Department of Health.

BE IT ORDAINED BY THE COUNTY COMMISSION OF CLAY COUNTY, SOUTH DAKOTA AS FOLLOWS:

**Section 1. Intent**

The Board of Commissioners of Clay County hereby enacts the following licensing ordinances to ensure that medical cannabis establishments within the jurisdiction of Clay County operate in a manner that 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 particular safety and security considerations, and minimize s the risk of unauthorized use or access of medical cannabis by the general public.

**Section 2. 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.

APPLICANT: a person or entity seeking or renewing a cannabis establishment license.

License

AUDITOR: the auditor of Clay County, South Dakota.

CANNABIS ESTABLISHMENT LICENSE or LICENSE: a license issued under this chapter to operate a type of medical cannabis establishment under State law.

CITY OF VERMILLION- City of Vermillion, South Dakota.

COUNTY: Clay County, South Dakota.

COUNTY COMMISSION: the Board of County Commissioners of Clay County, South Dakota.

LICENSEE: a person, people, or entity possessing a medical cannabis establishment license issued under this chapter.

STATE: the state of South Dakota.

ZONING ADMINISTRATOR: the person charged with the responsibility of administering and enforcing the zoning ordinance.

### **Section 3. Medical Cannabis Establishment License Required**

- A. Classes of License: Each type of the four medical cannabis establishments shall have its own class of licenses relating to the activities unique to each type of cannabis establishment. The four license classes are Cannabis Cultivation License, Cannabis Dispensary License, Cannabis Product Manufacturing License, and Cannabis Testing License.
- B. License Required: It shall be unlawful for any person or entity to create or operate a medical cannabis establishment in the County without first having obtained a license from the County and a registration certificate from the state for each cannabis establishment to be operated in connection with such business. Such license and certification shall be kept current at all times, and the failure to maintain a current license and certification shall constitute a violation of this section.
- C. Multiple Licenses: A person or entity who intends to conduct activities that would meet the definition of multiple medical cannabis establishments must, prior to operating such cannabis establishments, obtain a license for each class of cannabis establishment that pertain to the intended activities. A person or entity may hold more than one class of license except when otherwise prohibited by this chapter.
- D. License Location: Each license issued under this chapter shall authorize a single medical cannabis establishment to operate at a single location. Licenses of different classes may overlap except when otherwise prohibited by this chapter.
- E. License Duration: Each license issued is effective from December 1 through November 30 of the year applied for, regardless of the time of year such license is approved. Each license expires at 11:59:59 P.M. on November 30 unless, prior to the expiration, the County Commission has approved, or conditionally approved, the renewal of such license for the following calendar year.

### **Section 4. Number of Licenses Restricted**

## License

- A. The number of cannabis establishment licenses that may be issued at a single time shall be restricted by license class.
  - 1. For Medical Cannabis Dispensary Licenses, no more than one (3) license shall be issued at any given time.
  - 2. For Medical Cannabis Manufacturing Licenses, no more than one (3) license shall be issued at any given time.
  - 3. For Medical Cannabis Cultivation Licenses, no more than one (3) license shall be issued at any given time.
  - 4. For Medical Cannabis Testing Licenses, no more than one (3) license shall be issued at any given time.
  - 5. For all other medical cannabis establishment licenses, there will be no (0) licenses available at the time of adoption. The numerical limits for each class of cannabis establishment may be altered at any time by the resolution of the County Commission.
  
- B. In the event the numerical cap is lowered to an amount less than the number of the existing licenses in that class, no existing licensee shall be prevented from continuing operation during the license term, requesting modifications to application information, from renewing such license for consecutive, subsequent years, or from transferring such license, on the basis that the numerical limit would otherwise prohibit the issuance of a license to a new applicant. However, this exception shall not prevent a license from being suspended or revoked, nor shall it prevent a license from not being renewed or a transfer approved, based upon grounds other than the numerical limit being exceeded.

### **Section 5. Application Process**

- A. Application for License: An applicant must submit a signed application, in writing, to the County Zoning Administrator's office using the form established by the County. Such application must include:
  - 1. The legal name and address of each principal officer(s), the owner(s), and/or board member(s) of the proposed cannabis establishment.
  - 2. The physical address and legal description for the proposed medical cannabis establishment.
  - 3. The legal business name of the proposed medical cannabis establishment.
  - 4. Previous experience operating a legal medical cannabis establishment, if any.
  - 5. Summary of operating procedures, including procedures to ensure accurate record-keeping, adequate security measures, and compliance with all other requirements of this chapter.
  - 6. Confirmation that none of the principal officers, owners, and/or board members has served as a principal officer or board member for a medical cannabis establishment that has had governmental license or certification revoked in any jurisdiction.
  - 7. Confirmation that none of the principal officers, owners, or board members is under twenty-one years of age.
  - 8. Payment of the applicable license fee.
    - i. The county will reimburse<sup>1</sup>/<sub>2</sub> the cost for applicants who fail to obtain a registration certificate from the South Dakota Department of Health.
  - 9. Proof of financial responsibility in the amounts and manner established in this chapter.
  - 10. A confirmation of a completed current background check for each officer, board member, agent, volunteer, and employee associated with or working in the prospective medical

cannabis dispensary or testing facility, which has been completed within 30 days prior to submission of the application.

11. Preliminary site and building plans detailing how the proposed buildings and structures will conform to County zoning rules and rules set forth in State law for medical cannabis establishments.
12. A sworn statement that the application contains no false statements made or omissions of any material matter in any application for a license with the applicant's notarized signature.

B. Action by County Commission:

1. The County Commission will consider a completed application at the next available Commission meeting following submittal, provided that such application must be submitted in advance of the general agenda item submission deadline established by the County Auditor. Applications are generally processed on a first-come, first-served basis.
2. The County Commission may reject an application upon making a specific finding that:
  - i. The applicant is unsuited or unqualified to perform the obligations of a permit holder based upon the finding that the applicant, any officer, owner, director, partner, or general manager of the facility for which application has been made:
    - a) Has intentionally misrepresented a material fact in applying for a permit;
    - b) as been convicted of a felony or any other crime involving moral turpitude; (to include but not limited to false impersonation, theft, shoplifting, housebreaking, theft of a motor vehicle, embezzlement, forging checks, or fraud, benefits fraud)
    - c) Has habitually and willfully violated the business operation laws of any state;
    - d) Has had any permit for a cannabis establishment revoked in South Dakota or any other state;
    - e) Has otherwise demonstrated through clear and convincing evidence of previous actions that the applicant lacks the necessary good character and competency to reliably carry out the obligations imposed by law upon the permit holder;
  - ii. The application substantially duplicates an application made by the same applicant denied within the past 12 months, which denial has not been overturned by the appropriate body. Nothing in this section may be construed to prohibit an applicant from submitting a new application for a previously denied permit if the new application represents a good faith effort by the applicant to correct the deficiencies that served as the basis for the denial in the original application.
3. The County Commission may approve or deny an application in full or on condition. Such action of the County Commission must take place within thirty (30) days after the application's first presentment to the County Commission.
4. If approved, the Commission Chairperson and County Auditor will endorse the application and notify the applicant of approval by close of business on the next business day following the County Commission's approval. If the Commission imposes any conditions, such conditions shall be listed on the license at the time of issuance. No approved application shall become effective, and no license shall be issued until the applicant provides to the County Auditor/County Zoning Administrator a copy of the

applicant's certificate of registration from the state relating to the cannabis establishment for which the license was approved.

5. If denied, the County Commission must state the basis on which the application was rejected, which may include, but is not limited to:
  - i. incorrect application information or missing required application criteria or insufficient detail in the application.
  - ii. nonpayment of any obligation.
  - iii. the proposed activity would violate County zoning ordinance.
  - iv. the proposed activity would violate state law or regulations.
  - v. no license is available due to the maximum number already issued.
  - vi. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation.
  - vii. Any disqualifying criminal history under State law.
  - viii. Any owner, principal officer, or board member of the applicant has had a cannabis establishment license revoked by the County or a registration certificate revoked by the state.

C. Renewal Process:

1. A person or entity operating under a license must apply for renewal of such license at least 30 days but not more than 90 days before the expiration of such license using the form provided by the Zoning Administrator. Such application must include payment of the renewal application fee.
2. The County Commission will consider renewal applications using the same factors and timelines applicable to new applications. In addition, the County Commission may also consider approving, denying, or conditionally approving a renewal application, any changed information from prior applications, concerns over actual operations or violations, nonpayment of obligations, or any other information reasonably related to the continued operation of the cannabis establishment.
3. Applications for renewal submitted within the applicable window will be given priority over new applications in a capped license class. Renewal applications submitted after the window has expired will be given no priority and must submit a new application.
4. The renewal application must specify if any information has changed from its prior application.
5. The renewal application must be accompanied by all payments relating to the renewal application and a copy of the licensee's state certification.
6. The renewal application must establish or confirm prove all the requirements applicable to new applications remain met, including but not limited to financial responsibility, background checks, age, residency, etc.
7. An applicant is not automatically entitled to renewal of their license, and the County Commission will only renew the license after full consideration of the facts and circumstances pertaining to each individual license.

**Section 6. Transfer or Modification of License**

- A. No license shall be transferred or modified except with the approval of the County Commission.

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- B. Before any transfer of a license from a licensee to an unaffiliated person, people, or entity, the licensee and the proposed transferee must complete a transfer application. Such a transfer application must include all information required for a new application to the proposed transferee and pay a transfer application fee. The County Commission shall then approve, deny, or conditionally approve the proposed transfer using the same factors and timetables as renewal applications. A transferred license is subject to all provisions and timelines applicable to a new or renewed license.
- C. Prior to any modification of ownership or management of a licensed cannabis establishment, the licensee must provide 30 days notice to the County Auditor in writing of the proposed changes.
- D. In relation to a change in ownership, management, location, or layout, the designated County official may approve minor changes administratively and charge an administrative modification fee. However, if the designated County official determines the proposed changes are not minor and may substantially alter the operation of the cannabis establishment as previously approved, the designated official shall direct the matter to be placed at the next available County Commission meeting. The County Commission shall then approve, deny, or conditionally approve the proposed changes using the same factors and timetables as apply to renewal applications. For changes referred to the County Commission, the applicant shall also pay a full modification fee.
- E. Transfers, modifications, and renewals occurring simultaneously for the same license require separate applications and payment of separate fees. However, the County Commission may waive one or more, but not all, of the fees and consider the matters as a joint application.

### **Section 7. License to Remain Active**

Every license issued under this chapter must remain in continuous, active use. A license that is not being actively used for a period of more than 14 consecutive days or for 60 cumulative days per year may be deemed inactive by the County Zoning Administrator. Active use includes times when the licensee is open and available to conduct business, but such business cannot occur due to factors outside of the control of the licensee. However, days where the County suspends the license, shall not be used for purposes of calculating inactivity.

### **Section 8. Fees Established**

Fees relating to cannabis establishment licenses are established as provided by this section. The fees apply to each class of cannabis establishment license unless expressly stated otherwise. All amounts set for fees in this section may be modified at any time by resolution of the County Commission. However, the change in fees will not apply until the following year.

The types and amounts of fees are as follows:

New medical cannabis establishment application fee- \$5,000.00  
Renewal medical cannabis establishment application fee- \$5,000.00  
Transfer medical cannabis establishment application fee- \$5,000.00  
Administrative modification fee- \$50.00

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Full modification fee- \$500.00.

The fees established are to defray the costs incurred by the County for background investigations, review of the application, inspection of the proposed premises, and any other costs and labor associated with processing the application. Fees for rezone petitions and conditional use applications are separate from the medical cannabis application fees.

### **Section 9. General Obligations of Licensee**

- A. The following obligations shall apply to each licensee and medical cannabis establishment:
1. Each licensee must keep any information stated in an approved application current and up to date.
  2. Each licensee shall have a continuing duty to maintain any eligibility criteria or certifications required by this chapter for an application.
  3. All medical cannabis establishments shall conduct all business activities within an enclosed structure, including but not limited to, cultivating, growing, processing, displaying, manufacturing, selling, and storage except such loading and unloading, which is incidental to such indoor activities.
  4. No medical cannabis or related paraphernalia shall be displayed or kept in a business so as to be visible from outside the cannabis establishment.
  5. The subject premises and the licensee shall be jointly and severally liable for proper clean-up of any environmental damage caused by the operation and /or ensure proper closure of the cannabis establishment's operation.
  6. The licensee shall properly dispose of all such materials, items, and other substances in a safe, sanitary, and secure manner and following all applicable federal, state, and local laws and regulations.
  7. A licensee shall be required to pay all delinquent court judgments arising out of their dispensary and dispensary operations.
  8. A licensee shall not permit the general public to access any part of a cannabis establishment except where such access is permitted by State law. A licensee must maintain reasonable security measures to prevent such access.
  9. A licensee must operate as provided in the application, comply with any conditions attached to their license, and comply with all state and local laws.
  10. All chain of custody, exit packaging, inventory record(s), inventory tracking system(s), transaction record(s), batch identifier(s), certificate of analysis, sample identifier(s), and any other required documentation shall be maintained to the standards of State law.
  11. A person or entity may not take any actions requiring a license without holding both a valid license issued under this chapter and a valid corresponding state license.
  12. 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.
- B. Additional Requirements for Medical Cannabis Dispensaries:
1. No medical cannabis dispensary may share any physical location with any other type of business or land use type. A cannabis dispensary may only sell cannabis, cannabis

products, and paraphernalia to consume these items and is prohibited from selling any other item or service.

2. Entry to a medical cannabis dispensary shall be restricted and conform to SDCL 34-20G
  3. A medical cannabis dispensary may be open to the public only between the hours of 8:00 a.m. and 8:00 p.m. daily.
  4. A medical cannabis dispensary shall not maintain any quantity of cannabis above the amount permitted by State law.
  5. All sales of cannabis shall be made in person, directly to the purchaser, within the retail area of the cannabis dispensary. No sales shall be made via telephone, internet, or other means of remote purchase.
  6. Deliveries shall occur only in-person to the purchaser at the time of purchase within the retail area of the cannabis dispensary. No drive-up windows or other similar delivery processes shall be allowed.
  7. Medical Cannabis Dispensaries may only sell
  8. No alcohol or cannabis may be consumed on the premises of a medical cannabis dispensary.
  9. All medical cannabis dispensaries licensed under this ordinance must maintain and operate their cannabis dispensary according to the requirements of State law.
- C. Additional Requirements for Cannabis Cultivation Facilities, Cannabis Manufacturing Facilities, and Cannabis Testing Facilities.
1. No cannabis cultivation facilities, cannabis manufacturing facilities, or cannabis testing facilities may share any physical location with any other type of business or land use type.
  2. May not share any physical location with any other type of business or land use type.
  3. Entry to a cannabis manufacturing facility shall be restricted and conform to South Dakota Department of Health rules SDCL Chapter 34-20G.
  4. A cannabis manufacturing facility shall not maintain any quantity of cannabis above the amount permitted by State law.
  5. All cannabis manufacturing facilities licensed under this ordinance are required to maintain and operate their cannabis manufacturing facility according to State law requirements.
- D. Crossover of Other Medical Cannabis Establishments:
1. Any crossover or co-location of medical cannabis establishments must be in accordance with State law.

### **Section 10. Surveillance Cameras, Alarms, Doors, Windows, and Lighting.**

Purpose. The County Commission finds that medical cannabis establishments can become targets of opportunity for theft and violent crimes. This section aims to protect public health, safety, and welfare by increasing security for patrons and employees of these dispensaries.

- A. Plans for medical cannabis facilities' surveillance cameras, alarms, doors, windows, lighting, and overall security shall conform to South Dakota Department of Health Rules and SDCL Chapter 34-20G for their respective cannabis facilities.



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- B. Licensees shall designate and maintain a point-of-contact person to assist in any requests or inquiries from the primary and local law enforcement & Fire/EMS services.
- C. A site plan & building plan for the cannabis establishments shall be submitted and updated to inform the primary and local Fire/EMS services of any potential fire issues.

### **Section 11. Unauthorized Conduct relating to Cannabis.**

- A. No person may engage in any of the following conduct:
  - 1. Undertaking any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice.
  - 2. Possessing cannabis or otherwise engaging in the use of cannabis in any correctional facility.
  - 3. Smoking cannabis on any form of public transportation, in any public place or any place that is open to the public, or on the property of any cannabis establishment.
  - 4. Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of cannabis.

### **Section 12. Signage and Advertising**

- A. All exterior signage associated with a cannabis establishment must meet the standards established in the County Zoning Ordinance.
- B. All signage and advertising shall conform to State law.
- C. No medical cannabis establishment shall distribute or allow the distribution of any cannabis without charge within a cannabis establishment or at any other place for purposes of promotion, advertising, or any other purpose.

### **Section 13. Suspension and Revocation**

- A. A license is subject to suspension or revocation under certain circumstances including, but not limited to:
  - 1. Violation of any provision of this ordinance and/or State law.
  - 2. The license has been deemed inactive.
  - 3. Nonpayment of any obligation, including utilities, County taxes, fees, fines, or penalties.
  - 4. Inadequate or faulty security measures or surveillance cameras.
  - 5. Consumption or smoking or allowing any person to consume or smoke cannabis on the premises of the cannabis establishment.
  - 6. Knowingly dispensing or providing cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.
  - 7. Any owner, principal officer, or board member of the applicant is convicted of a violent felony offense.
- B. Upon determination by the County Commission that grounds exist for the suspension or revocation of a license, a notice of suspension or revocation shall be physically delivered and posted at the licensed location. Such notice shall state the grounds for the suspension or revocation, the time and date of a hearing with the County Commission if the licensee wishes to contest the suspension or revocation, and whether or not the license is temporarily suspended pending the outcome of such hearing. Upon issuance of the notice, a hearing shall be scheduled for the next available County Commission meeting to consider the suspension or revocation of the license.

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- C. In deciding whether a license will be suspended or revoked, the County Commission shall consider all facts and circumstances relating to the grounds alleged in the notice to warrant suspension or revocation of the license. At the close of the hearing, the County Commission may uphold the suspension or revocation or reverse the suspension or revocation. If the suspension or revocation is reversed, the County Commission may impose any additional conditions on the license which are reasonably calculated to ensure that the aggrieved conduct does not reoccur, including an administrative penalty not to exceed \$500.00.
- D. In the event a licensee's state certification is suspended or revoked, the licensee's County license shall automatically be suspended until the state certification returns to good standing. If such state certification status persists long enough for the County license to be deemed inactive, such inactivity may serve as independent grounds for revocation of the County license.

### **Section 14. Liability and Indemnification.**

- A. By accepting a license issued pursuant to this chapter, the licensee, and all principal officers, owner(s), and board members thereof waive and release the County, its officers, elected officials, employees, attorneys, and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients, or customers for a violation of state or federal laws, rules, or regulations.
- B. By accepting a license issued pursuant to this chapter, each licensee agrees to indemnify, defend, and hold harmless the County, its officers, elected officials, employees, attorneys, agents, and insurers against all liability, claims, and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the cannabis establishment that is the subject of the license.

### Section 15. Compliance with other applicable laws

- A. Except as may be otherwise provided in this ordinance, any law or regulation adopted by the state governing the cultivation, production, possession, or distribution of cannabis use shall also apply to cannabis establishments licensed within the County.
- B. If the state prohibits the sale or other distribution of cannabis in such a manner as to make the operation of a cannabis establishment under this chapter conflict with such state prohibition, any license issued hereunder which would conflict with state law shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.
- C. The issuance of any license under this chapter shall not be deemed to create an exception, defense, or immunity for any person or entity regarding any potential criminal liability the person or entity may have under federal law for the cultivation, possession, sale, distribution, or use of cannabis.

### **Section 16. Enforcement, Penalty, and Nuisance.**

- A. No person, while acting as an agent of a licensee, shall take any action, or fail to take any action, that would cause a licensee to violate the provisions of this chapter. Such liability shall be in

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addition to any other penalty or remedy which may be applicable under the terms of this chapter or by law.

- B. In addition to any other remedy, the State's Attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this chapter. Continued violations of this chapter are deemed to be a public nuisance. Such application for relief may include seeking a temporary restraining order, temporary injunction, permanent injunction, or any other remedy available at law or in equity.
- C. In the event of a violation, suspension, or revocation where the licensee may no longer legally possess cannabis, cannabis products, or other restricted items, the licensee shall be responsible to pay the costs incurred by the County for securing, storing, safeguarding, transferring, or disposing of any cannabis, cannabis products, or other restricted items.

### **Section 17. Severability**

If any section, sentence, clause, or phrase of this chapter is for any reason held to be invalid, unenforceable, or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this code and the remainder shall remain in full force and effect.