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ORDINANCE MC 60-21

AN ORDINANCE ESTABLISHING THE LICENSING AND REGULATION OF MEDICAL CANNABIS DISPENSARIES IN MINNEHAHA COUNTY.

WHEREAS, Initiated Measure 26 “An initiated measure on legalizing marijuana for medical use” was passed by the voters at the General Election in November of 2020 and is codified in South Dakota Codified Laws (“SDCL”) Chapter 34-20G and became effective on July 1, 2021; and

WHEREAS, pursuant to SDCL 34-20G-58 a local government may enact an ordinance, not in conflict with SDCL Chapter 34-20G, governing the time, place, manner, and number of medical cannabis establishments in the locality and such ordinance may establish civil penalties for violations of the ordinance; and

WHEREAS, pursuant to 34-20G-60 a local government may require a medical cannabis establishment to obtain a local license, zoning permit, or registration to operate, and may charge a reasonable fee for the local license, zoning permit, or registration; and

WHEREAS, Minnehaha County (County) believes that regulation of medical cannabis is necessary for the health and safety of this community;

NOW THEREFORE, BE IT ORDAINED BY MINNEHAHA COUNTY, SD:

SECTION 1: DEFINITIONS.

- a. For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BACKGROUND CHECK means a criminal background investigation by means of a fingerprint check by the Division of Criminal Investigation pursuant to SDCL 34-20G-61. A completed fingerprint card shall be submitted to the Minnehaha County Sheriff’s Office or other South Dakota law enforcement agency. Upon completion of the criminal background investigation, the Division of Criminal Investigation shall forward to the County all information obtained as a result of the criminal background investigation.

CERTIFICATION means a signed and notarized affidavit affirming a truthful disclosure of information.

MEDICAL CANNABIS ESTABLISHMENT means a “medical cannabis dispensary” as that term is defined in SDCL §34-20G-1(15) and does not include:

a cultivation facility, a cannabis testing facility, or a cannabis product manufacturing facility.

PUBLIC PLACE and PLACE OPEN TO THE PUBLIC shall be defined to include:

- a. any area to which the public is invited,
- b. any area in which the public is permitted,
- c. any place of employment, and
- d. any area in, on, or around any public place including without limitation: parking lots, elevators, lobbies, hallways, corridors, and areas open to the public within any place of business, place of employment, or multifamily residential buildings.

RULE means official rule or regulation promulgated and enforced by the State of South Dakota, the South Dakota Department of Health (Department) or County.

- b. The definition of other terms shall correspond to the definitions set forth in SDCL 34-20G-1. Any interpretation of terms under that statute shall apply to the same term in this Ordinance.

SECTION 2: Operation of Medical Cannabis Establishments in Minnehaha County.

a. License Requirement.

- (1) To operate as a medical cannabis establishment in Minnehaha County, the prospective entity must obtain both a medical cannabis establishment license from the County, pursuant to this Ordinance, and a current state registration certificate issued by the Department.
- (2) Pursuant to the authority contained in SDCL 34-20G-56:
 - i. Minnehaha County shall only issue a medical cannabis establishment license to one (1) medical cannabis dispensary that may be registered by the State of South Dakota to operate within Minnehaha County at any given time;
 - ii. Minnehaha County shall not issue a medical cannabis establishment license to any cultivation facility, testing facility, or product manufacturing facility.
- (3) A County medical cannabis establishment license is nontransferable to any other owner, operator, or geographic location.
- (4) Any medical cannabis establishment license, or renewal of such license, is valid and effective for a period of one (1) year from the date of issuance or renewal by the County.

b. Compliance.

- (1) All medical cannabis establishments must comply with zoning and land use requirements and shall obtain all necessary zoning and land use approvals.
- (2) All medical cannabis establishments must comply with applicable building and fire codes, including, but not limited to, compliance with the requirements for fire suppression, signage, and parking.

c. Operation.

- (1) A medical cannabis establishment may only conduct business and activities within the respective facilities, outside the view of the public and as otherwise authorized and licensed by the County and Department.
- (2) A medical cannabis establishment must have written policies, procedures, or plans detailing appropriate security measures designed to deter theft of cannabis.
- (3) A medical cannabis establishment must have written policies, procedures, or plans detailing how the establishment will prevent unauthorized entrance to the facility and any area containing cannabis.
- (4) A medical cannabis establishment must have written policies, procedures, or plans detailing an odor control plan.
- (5) A medical cannabis establishment may only be accessed by authorized agents of the medical cannabis establishment, emergency personnel, and authorized visitors, such as contractors or vendors, who are at least 21 years of age and are accompanied by an authorized medical cannabis establishment agent. All authorized visitors must comply with the requirements set forth by Department and County Rules, and all visitor names, times of visit, and purpose of visit must be documented in a visitor log, of which records must be retained for at least five (5) years by the medical cannabis establishment, and must be made available upon request to state or local regulatory authorities or law enforcement, as part of any official audit, inspection, or investigation.
- (6) A licensed medical cannabis establishment may also permit access to cardholders but only upon verification of identity and verification of the validity of the registry identification card, and only during authorized hours of operation and in accordance with Department and County rules.
- (7) Medical cannabis dispensaries are prohibited from dispensing cannabis to anyone who is not a qualifying patient or a designated caregiver with a current and valid registry identification card issued by the Department.
- (8) A medical cannabis establishment may not share space with a practitioner, nor can a medical cannabis establishment refer any person to a practitioner.

- (9) A medical cannabis establishment may not share space with any other cannabis establishment.
- (10) No person may consume cannabis on the property of a medical cannabis establishment.
- (11) The County may inspect a medical cannabis establishment during normal business hours to ensure compliance with the Ordinances of Minnehaha County, SD.

d. Hours of Operation.

- (1) No medical cannabis establishment may sell any medical cannabis, cannabis or any cannabis products or otherwise permit entry onto the premises covered by a license issued pursuant to this ordinance by any member of the public between the hours of ten p.m. and eight a.m.
- (2) No medical cannabis establishment may operate in Minnehaha County on any legal holiday as designated pursuant to SDCL §1-5-1.

e. Security requirements.

All medical cannabis establishments shall have the following security system at a minimum:

- (1) Electronic security recording system, internal and external, which retains recordings for 180 days.
- (2) Well-lit external parking lot.
- (3) Locked, fully enclosed, facility.
- (4) Internal security to track access to building and all medical cannabis.
- (5) Any additional security necessary to comply with the requirements of SDCL Chapter 34-20G, or the Administrative Rules of South Dakota (ARSD) Title 44, Article 90.

f. Manner of Operation.

- (1) Anyone who is a board member, principal officer, agent, volunteer or employee of a medical cannabis establishment in Minnehaha County must have had a background check completed within ninety (90) days of the start of work in or with the medical cannabis establishment.
- (2) Any medical cannabis establishment in Minnehaha County may not employ any person who has been convicted of a disqualifying felony offense as defined by SDCL §34-20G-1(11).
- (3) All employees of a medical cannabis establishment in Minnehaha County must be over 21 years old.
- (4) No medical cannabis establishment may dispense cannabis to anyone who is not a qualifying patient with a current and valid registry

identification card issued by the South Dakota Department of Health or a designated caregiver for a qualifying patient.

SECTION 3: License Application Procedures.

- a. A prospective medical cannabis establishment seeking to operate in Minnehaha County must first obtain a license to operate as a medical cannabis establishment from Minnehaha County prior to seeking registration as a medical cannabis establishment from the South Dakota Department of Health.
- b. All license applications must be submitted to the County Auditor's Office on forms prescribed by the County and contain all the information required by the County to determine the eligibility of the applicant, along with the application fee and initial annual fee or renewal fee.
- c. The County shall reject or approve a license application within sixty (60) days following submission of the application or within sixty (60) days following the random selection process, pursuant to Section 3.f(3) below, whichever is later. This sixty (60) day period is tolled pending any applicant's appeal or application for conditional use permit.
- d. A license application to operate as a medical cannabis establishment requires:
 - (1) The name and date of birth of each principal officer and board member of the prospective medical cannabis establishment;
 - (2) The legal name of the prospective medical cannabis establishment;
 - (3) The location of the prospective medical cannabis establishment;
 - (4) A certification that the location of the prospective medical cannabis establishment is in compliance with all County zoning requirements, including without limitation distance from single family dwellings, schools, churches, public use facilities, parks, and other medical cannabis dispensaries;
 - (5) A certification that at least one officer or board member of the prospective medical cannabis establishment is a resident of Minnehaha County, South Dakota;
 - (6) A certification that the applicant has conducted a background check on each officer, board member, agent, volunteer or employee associated with or working in the prospective medical cannabis establishment within ninety (90) days prior to the date of the application;
 - (7) A certification that none of the employees of the prospective medical cannabis establishment has been convicted of a disqualifying felony offense;
 - (8) A certification that the employees of the prospective medical cannabis establishment are over the age of 21 years;

- (9) A copy of the operating documents for the prospective medical cannabis establishment that detail oversight of the establishment and procedures to ensure accurate recordkeeping;
- (10) A description of appropriate security measures designed to deter and prevent theft of cannabis and unauthorized entry into any area containing cannabis; and
- (11) The application fee and the applicable license or renewal fee.

e. Agreement by license applicant granting access to premises and records.

Each application for a license under this Ordinance shall include an agreement by the applicant that the applicant's premises, for the purposes of search and seizure laws of the state and this ordinance, are considered public premises. In addition, the agreement shall state:

- (1) The premises and all buildings, safes, cabinets, lockers, and storerooms on the premises are at all times, on demand of the Department, the attorney general, or officers charged with law enforcement in Minnehaha County, open to public inspection;
- (2) All of the applicant's records and books dealing with the sale and ownership of medical cannabis are open to the persons specified in Section 3.e(1) for inspection; and
- (3) The application and license issued on the application is a contract between the applicant and the County entitling the state or County, for the purpose of enforcing the law, rules and ordinances, to inspect the applicant's premises, records and books at any time.

f. Procedure for initial issuance of medical cannabis establishment license by the County.

In addition to the requirements of Section 3.a-e, above, the following procedures will apply any time a license to operate a medical cannabis establishment becomes available from the County.

- (1) When a license to operate a medical cannabis establishment becomes available from the County, the County Auditor shall publish an invitation for applications on the County's website stating the deadline to apply and the location(s) applications may be submitted. The notice shall be published at least two weeks before the application deadline. No applications will be accepted prior to publication of the invitation nor after the deadline established in the published invitation.
- (2) Applications must be sealed and must otherwise adhere to the requirements of Section 3.a-e, above. No supplementation to an application may be done after the deadline has passed.

- (3) Once the application deadline has passed, if the number of accepted license applications exceeds the available number of licenses, the County Auditor or designee shall utilize a random selection process to establish the order in which the license applications will be considered. Prior to conducting the random selection process, the County Auditor or designee shall publish notice of the selection process on the County's website a minimum of twenty-four (24) hours in advance of the random selection process being conducted and such selection process shall be open to the public.
- (4) After the applications are placed in order pursuant to such random selection process, the County Auditor or designee shall, in the order in which they were placed, open and review each application for completeness and the requirements of Section 3.a-e and this subsection.
- (5) Any application that is incomplete shall be rejected and ineligible for further consideration.
- (6) Applications that are complete and in compliance with the requirements of Section 3.a-e shall be submitted, in the order in which they were placed, to the County Commission for consideration pursuant to Section 3.g below.
- (7) All applications not drawn and approved for a medical cannabis establishment license are denied and a new application will be required when a medical cannabis establishment license next becomes available.

g. Application Approval/Rejection.

- (1) No license for a medical cannabis establishment may be issued to an applicant until a public hearing has been held before the Minnehaha County Commission.
- (2) The County may approve the application if the applicant is determined to be suitable to hold the license and the proposed location is suitable.
- (3) Any medical cannabis establishment licensee under this Ordinance shall be the owner or actual lessee of the premises where the business is conducted, and the sole owner of the business operated under the license.
- (4) The County shall reject an application for a medical cannabis establishment license if:
 - i. The application is incomplete or insufficient regarding the information required pursuant to this Ordinance;
 - ii. The County determines the applicant has failed to comply with SDCL Chapter 34-20G or has a history of violating state or county rules governing medical cannabis establishments or county ordinances;

- iii. The applicant fails to conduct a background check on every officer, board member, agent, volunteer, or employee associated with or working in the prospective medical cannabis establishment within ninety (90) days prior to the date of the application or any such person has a disqualifying felony; or
 - iv. Any applicable conditional use permit is not obtained as certified in the application.
- (5) Any application for the renewal a medical cannabis establishment license shall be processed by the County in the same manner as required by this Ordinance for initial applications.
- (6) Any application for the renewal of a cannabis establishment may be approved by the County without a hearing unless, in the past year, the licensee or one or more of the licensee's employees have been subjected to a criminal penalty for violation of the medical cannabis establishments control law or the license has been suspended.

SECTION 4: Fees, Expiration, and Duration.

a. Application fee.

At the time an applicant files an application in accordance with Section 3, applicant shall pay a nonrefundable fee for each application to the County in an amount established by resolution of the County to defray the costs incurred by the County for review of the application, inspection of the proposed premises, and any other costs and labor associated with processing the application. In the event the applicant is denied a registration certificate from the Department or a license from the County, the application fee will not be refunded.

b. Initial license fee.

At the time an applicant files an application in accordance with Section 3, the licensee shall tender to the County an initial license fee in an amount established by resolution. The initial license fee is in addition to the application fee required pursuant to Section 4a above. In the event the applicant is denied a registration certificate from the Department or a license from the County, the license fee shall be refunded.

c. Renewal License Fee.

At the time a licensee files an application for renewal of its license, the licensee shall tender to the County a license renewal fee in an amount established by resolution. The renewal license fee is in addition to the application fee required pursuant to Section 4a above. In the event the applicant is denied a registration certificate from the Department or the County, the renewal fee shall be refunded.

SECTION 5: Violations as grounds for revocation or suspension of license.

- a. The County Commission may revoke or suspend any license issued under this Ordinance upon proof by a preponderance of the evidence of violation by the licensee, by the licensee's agents or employees, or by the manager or contractual operators of the medical cannabis establishment and their agents or employees operating under a County license, of any of the following:
- (1) Any provision of SDCL Chapter 34-20G or other state law relevant to medical cannabis establishment.
 - (2) Any rule promulgated by the Department.
 - (3) Any rule promulgated by any applicable county ordinance.
 - (4) False material statements made by a licensee to the County or state of South Dakota during the application process.
 - (5) Failure to pay taxes owed to the State of South Dakota or any political subdivision of the State of South Dakota including the County.
 - (6) Failure to prevent diversion or theft of medical cannabis.
 - (7) Failure to allow entry to the licensed premises to any law enforcement officers in the course and scope of their employment.
 - (8) Failure to maintain operational alarm systems and video surveillance systems.
 - (9) Failure to maintain or keep any record required by these rules or South Dakota law.
 - (10) Failure to comply with advertising and marketing restrictions.
 - (11) Failure to properly package or secure medical cannabis on the licensed premises or during transport.
 - (12) Failure to properly dispose of medical cannabis.
 - (13) Operating a medical cannabis establishment when a license issued pursuant to this Ordinance has been suspended or revoked.
 - (14) Failure to comply with any rule or regulation promulgated by the Department or the County regarding medical cannabis.
 - (15) Failure to comply with any law of the state of South Dakota or the County concerning medical cannabis.
 - (16) Failure to comply with any local regulation regarding medical cannabis.
 - (17) Any violation of any municipal ordinance or regulation relevant to medical cannabis establishment control adopted by the County.
 - (18) Any violation of any county ordinance relevant to medical cannabis establishment control. For any licensee with multiple licenses, upon

suspension or revocation of any license pursuant to this Ordinance, the licensee shall cease operation under all medical cannabis establishment licenses held by the licensee for the same period as the suspension or revocation.

b. Suspension and revocation process.

- (1) 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 County'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.
- (2) 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 County Commission.
- (3) 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.
- (4) A revocation will terminate licensee's license and shall be effective 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.
- (5) No medical cannabis establishment license issued pursuant to this Ordinance may be reissued or renewed to the same licensee if the license has been revoked by the County.
- (6) Any medical cannabis establishment license which has been revoked shall be considered available pursuant to Section 3.f upon expiration of the time period set forth in Section 5.b(4) above.

c. License to remain active.

- (1) Any license issued under this Ordinance must remain in continuous, active use.
- (2) A licensee shall have 60 days after issuance of the County license and issuance of the State registration to begin active use of the license.
- (3) Any license not actively used for a period of more than 60 consecutive days may be deemed inactive by the County.
- (4) Active use means times where the licensee is open and available to conduct business authorized by the license. However, days where the license is suspended by the County shall not be used for purposes of calculating inactivity.

- (5) No medical cannabis establishment license issued pursuant to this Ordinance may be reissued or renewed to the same licensee if the license has been deemed inactive by the County.

SECTION 6: Restrictions.

- a. No cannabis odor shall exist at or beyond the property line of the medical cannabis establishment or at or near places where people live or work.
- b. No medical cannabis establishment shall display a marijuana leaf, the word marijuana, or depictions of a person holding or smoking cannabis in any location visible outside the establishment.
- c. Nothing in this Ordinance requires an employer to allow ingestion or use of cannabis in the workplace or to allow an employee to work while the employee is under the influence of cannabis.
- d. Nothing in this Ordinance requires a person or establishment to allow a guest, client, customer, or other visitor to smoke or use cannabis on or in that property.
- e. Nothing in this Ordinance prohibits an employer from disciplining an employee for ingesting cannabis in the workplace or disciplining an employee for working while under the influence of cannabis.

SECTION 7: Additional Provisions.

- a. Minnehaha County hereby directs the state to give registration preference only to those applicants that have received a medical cannabis establishment license issued by Minnehaha County.
- b. Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this Ordinance is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations may be enforced through a fine not to exceed the fine established by SDCL 22-6-2(2) for each violation or by imprisonment for a period not to exceed thirty (30) days for each violation, or by both the fine and imprisonment. Each day a cannabis establishment so operates is a separate offense or violation.

SECTION 8: Severability.

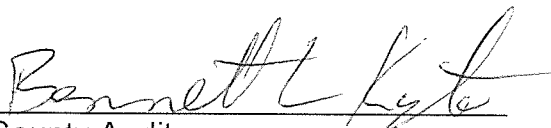
The provisions of this Ordinance are severable. If any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application.

Adopted this 5 day of October, 2021.
Effective: October 25, 2021

Minnehaha County
Board of County Commissioners

By: 
Chair, Board of County Commissioners

ATTEST:


County Auditor

