

Chapter 5.44

MEDICAL CANNABIS LICENSING

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5.44.010 Repealed

5.44.020 Repealed

5.44.030 Purpose and Intent

The purpose of this section is to provide for licensing of medical cannabis dispensaries within the jurisdictional limits of the City of North Sioux City in the interest of public health, safety, and general welfare. Nothing in this section is intended to promote or condone the sale, distribution, possession, or use of marijuana in violation of any applicable law.

5.44.040 Definitions

The following words and phrases, when used in this section, shall have the meanings ascribed to them. In addition to the definitions contained in this section, other terms used in this section shall have the meaning ascribed to them in South Dakota Codified Law Article

34, Chapter 20G, Section 1, and SDCL § 22-42-1, and such definitions are hereby incorporated into this section by this reference.

Applicant shall mean any person or entity who has submitted an application for a license or renewal of a license issued pursuant to this Division. If the applicant is an entity and not a natural person, applicant shall include all persons who are the members, managers, officers, directors and shareholders of such entity.

Cannabis products shall mean 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.

Cardholder shall mean any person who has been issued and possesses a valid registry identification card pursuant SDCL Chapter 34-20G.

Disqualifying felony offense shall mean a crime that was classified as a felony in the jurisdiction where the person was convicted.

Initial application shall mean the first application filed for a dispensary.

Licensed premises shall mean the building within which the dispensary operates.

Licensee shall mean any person or business entity that has been issued and holds a valid, current license pursuant to this Division. If the licensee is an entity and not a natural person, licensee shall include all persons who are the members, managers, officers, directors and shareholders of such entity.

Medical cannabis or cannabis shall mean marijuana as defined in SDCL § 22-42-1.

Medical cannabis dispensary or dispensary shall mean the entity registered with the South Dakota Department of Health pursuant to SDCL Chapter 34-20G and licensed by the City pursuant to this Ordinance that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders. Medical cannabis dispensary does not include a cannabis cultivation, testing or product manufacturing facility, or a recreational cannabis dispensary.

Medical cannabis establishment shall mean a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary as those terms are defined in SDCL§ 34-20G-1.

Registry identification card shall mean a document issued by South Dakota Department of Health that identifies a person as a registered qualifying patient or registered designated caregiver, or documentation that is deemed a registry identification card pursuant to §§ 34-20G-29 to 34-20G-42, inclusive.

5.44.050 Purpose and Intent.

The purpose of this section is to provide for licensing of medical cannabis dispensaries within the jurisdictional limits of the City of North Sioux City in the interest of public health, safety, and general welfare. Nothing in this section is intended to promote or condone the sale, distribution, possession, or use of marijuana in violation of any applicable law.

5.44.060 Other Laws.

If the state adopts any stricter regulation governing a medical cannabis dispensary than that set forth in this Division, the stricter regulation shall control the establishment or operation of any medical cannabis dispensary in the City. A licensee shall be required to demonstrate, upon demand by the City, or by law enforcement officers, that the source and quantity of any cannabis found upon the licensed premises are in full compliance with applicable state regulation. If the state prohibits the sale or other distribution of medical cannabis, any license issued under this Section shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress by the licensee.

5.44.070 Authority.

The City Council shall have authority pursuant to the SDCL Chapter 34-20G and this Division to grant or deny licenses, subject to Department of Health approval. The City Administrator and/or the Chief of Police shall have the authority to inspect the premises and business of a medical cannabis establishment to confirm compliance with all licensure requirements.

5.44.080 Medical Cannabis Establishment License Required.

No person or business entity shall operate a medical cannabis dispensary within the jurisdictional limits of the City unless that person or business entity has first obtained a medical cannabis dispensary license from the City. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Section.

5.44.090 Limitation on the Number of Medical Cannabis Establishments.

Under the authority granted by SDCL 34-20G-56, the following are the maximum number and type of medical cannabis establishments that may be registered by the State of South Dakota to operate within the jurisdictional limits of North Sioux City at any given time:

Type of Facility	# of Licenses
Cannabis Cultivation Facility	___2___
Cannabis Testing Facility	___2___
Cannabis Product Manufacturing Facility	___2___
Cannabis Dispensary	___4___

The City of North Sioux City hereby directs the State to give registration preference only to those applicants that have received a medical cannabis dispensary license certificate issued by the City of North Sioux City pursuant to this Division. No other medical cannabis establishment shall be permitted to operate within the jurisdictional limits of the City.

5.44.100 Term of License.

Each license issued under this Division shall be effective upon issuance and shall terminate on the last day of December of the year issued.

5.44.110 License Not Transferrable.

Licenses issued under this division shall not be transferable to any other person, business entity, or location and shall lapse automatically upon a change of ownership or location

5.44.120 Establishment Requirements.

A medical cannabis establishment licensee is subject to the following requirements:

- (a) No owner, LLC member or manager, shareholder, principal officer, or board member of a licensee may have served as an owner, LLC member or manager, shareholder, principal officer, or board member for a medical cannabis dispensary that has had its state registration certificate or any local, municipal, or county license revoked;
- (b) No owner, LLC member or manager, shareholder, principal officer, or board member may be under twenty-one years of age;
- (c) A licensee shall be prohibited from employing any employee convicted of a disqualifying felony offense;
- (d) A licensee shall be prohibited from employing any employee under twenty-one (21) years of age;
- (e) A medical cannabis dispensary shall not share office space with or refer a patient to any medical practitioner. See SDCL § 34-20G-67.
- (f) A medical cannabis dispensary shall not permit any person to consume cannabis upon the property of the licensed premises. See SDCL § 34-20G-68.
- (g) At least one of the owners, LLC members, or shareholders shall be a resident of this state;
- (h) A licensed dispensary shall be located only within the CB-1 Military Road Central Business District, CB-2 River Drive Central Business District, GB General Business District, or HC Highway Commercial District;
- (i) A licensed growing or processing facility shall be located only within the I Industrial District.
- (j) The licensed premises shall be located no less than five hundred (500) feet from the nearest property line of any school, church, licensed childcare facility, correctional facility, mental health facility, or substance abuse facility.
- (k) The licensed premises shall remain in compliance with applicable federal, state, and local laws and building codes (including, but not limited to, the prevailing building, plumbing, electrical, mechanical, fuel gas and fire codes adopted by the City of North Sioux City at the time of licensure).

The distances set forth in this section shall be computed by direct measurement in a straight line from the nearest property line of the land used for the purposes stated above, respectively, to the nearest portion of the building in which the medical cannabis dispensary is located. The locational criteria contained in this section shall apply to all proposed changes in the location of an existing license.

5.44.130 Application for Medical Cannabis Establishment License.

To obtain a medical cannabis establishment license, or to renew a license previously issued under this Chapter, the applicant shall file in the office of the finance officer an application on a form furnished by the finance officer or the finance officer’s designee, which shall provide the following additional information:

- (a) The name, address, and date of birth of each owner, shareholder, LLC member and manager, principal officer, and board member of the proposed medical cannabis dispensary, as well as the name address and date of birth of any current employees at the time such application is filed;
- (b) A copy of the deed reflecting the applicant’s ownership of, or a lease reflecting the right of the applicant to possess, the proposed licensed premises for the proposed use;
- (c) A “to scale” sketch of the floor plan of the proposed licensed premises reflecting compliance with the City’s cannabis dispensary design requirements;
- (d) A “to scale” site plan reflecting all structures and boundaries of the proposed licensed premises reflecting compliance with the City’s cannabis dispensary design requirements;
- (e) An elevation drawing or rendering of the exterior of the proposed licensed premises;
- (f) A description of safety and security measures reflecting compliance with the City’s dispensary design and operational requirements; and
- (g) Any other additional information as the City Manager or his or her designee may deem necessary for an investigator to evaluate the character and business responsibility of the applicant.

No more than one application may be submitted by any individual, partnership or corporation. Additionally, no more than one application may be submitted for the same physical address.

5.44.140 Application Fee.

At the time an applicant files an application according to Sec. 5.44.130, applicant shall pay a non-refundable fee to the City in an amount established by resolution of the City Council to defray the costs incurred by the City for background investigations, review of the application, inspection of the proposed premises, and any other costs and labor associated with processing the application.

5.44.150 License Fees.

Within thirty (30) days of receiving a cannabis dispensary registration from the State of South Dakota pursuant to SDCL Chap. 34-20G, and at the time an applicant files a renewal application, the licensee shall tender to the City an annual license fee as shown below:

Type of Facility	Annual Fee
Cannabis Cultivation Facility	\$__10,000.00__
Cannabis Testing Facility	\$__10,000.00__
Cannabis Product Manufacturing Facility	\$__10,000.00__
Cannabis Dispensary	\$__10,000.00__

The annual license fee may be amended by resolution on the City Council as deemed necessary.

The annual license fee is in addition to the initial application fee required pursuant to 5.44.140. The annual license fee shall be paid on the basis of a full calendar year regardless of the date

of issuance, and no proration or discount shall be given. A license issued pursuant to this Ordinance is in addition to and does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the medical cannabis dispensary including, but not limited to, the registration issued by the State of South Dakota pursuant to SDCL Chap. 34-20G, and any zoning related permits, plat approvals, or building or construction-related permits required by the North Sioux City Code of Municipal Ordinances or South Dakota law.

5.44.160 Background Checks, Inspections and Facility Standards.

During review of the application and at all reasonable times after a license is issued, the City Administrator and/or the Chief of Police may make any reasonable inquiry into the criminal history of any owner, shareholder, LLC member and manager, principal officer, board member, and employee. It shall be a violation of this Chapter and grounds for revocation of any license issued hereunder for a licensee to allow any new principal officer, board member, or employee to begin work before submitting the information required under section Sec. 5.34.130(a) for each prospective new principal officer, board member, or employee. In addition, the City Manager and/or the Chief of Police, during review of the application and at all reasonable times after a license is issued, may enter and inspect the premises designated in the application or license to determine if the premises meets or continues to meet the requirements of all city ordinances and state statutes, and is being maintained in accordance with the following facility standards:

- (a) The facility shall have an entry-only breezeway area securely locked and partitioned from the dispensary sales floor wherein each customer must remain until the customer's identity, age, and registry identification card can be verified before each customer is admitted entry into the dispensary sales area.
- (b) The facility shall have locked display cases only accessible to staff during business hours. The facility shall have a locked vault or Drug Enforcement Agency storage cage in which all cannabis, cannabis products, and undeposited funds shall be stored outside business hours.
- (c) All exterior entrances and exits, all parking areas, and all sidewalks adjacent to the dispensary facility shall be lighted at all times after dark.
- (e) High-definition cameras of sufficient quantity and quality shall be mounted in a manner to fully capture the facial features of all people entering the facility at each point of entry or exit, and to capture the facial features and actions of all people in all locations inside the facility, excepting only the restrooms. The camera system shall securely store high-definition camera footage for no less than thirty (30) days.
- (f) The facility shall have a functional commercial alarm system triggered by the press of a button, by the breaking of glass, and by forcing open a locked door.

5.44.170 Approval Process.

Upon receipt of a complete application, the City Administrator shall circulate the application to all affected service areas and departments of the City to determine whether the application is in full compliance with all applicable laws, rules, and regulations. No license shall be submitted to the City Council for consideration until after the City Administrator or the Chief of Police has caused the

proposed premises to be inspected to determine compliance of the premises with all applicable requirements of this Division and the Code of Municipal Ordinances, and with the plans and descriptions submitted as part of the application. The City Administrator or the Chief of Police shall not submit to the City Council for consideration any application that does not meet the requirements or limitations of this Ordinance.

If the City Administrator or the Chief of Police has determined that all requirements for a dispensary license have been met and they believe the issuance to be in the public's best interest and upon payment of the application fee in advance by the applicant, the City Administrator shall schedule a public hearing and submit the application to the City Council for consideration of approval.

Upon receipt of a completed application from the City Administrator or Chief of Police, the City Council shall hold a public hearing to discuss the merits of the application and to receive public input. In considering an application, the City Council shall consider all contents and proposals within the application, the observations and results of any inspection undertaken pursuant to section 5.44.160, the impact to the public that may result, whether the proposed dispensary is located in a zone that permits its operation, the manner in which the applicant previously operated a dispensary or other business licensed by the City, as well as the applicant's history of compliance with city ordinances and state law.

If approved by the City Council, the Finance Officer shall issue to the applicant a cannabis license certificate specifying the date of issuance, the period of licensure, the name of the licensee, the physical address of the licensed premises, the type of medical cannabis establishment being licensed, and a sworn statement certifying that the licensed establishment as proposed does not violate the City's enacted zoning restrictions as required under SDCL 34-20G-55(1)(d). The Finance Officer shall also promptly transmit a copy of the license certificate to the South Dakota Department of Health to satisfy SDCL 34-20G-55(1)(e).

5.44.180 Issuance or Denial of Application.

If a license is denied by the City Council, an applicant must wait at least 1 year to submit a new application. Any application submitted pursuant to this section must be accompanied with a new application fee payment.

5.44.190 Preliminary Approval and Issuance of License.

If approved, the City's issuance of a license following an initial application shall be provisional and subject to automatic termination if:

- (a) The licensee does not receive or fails to qualify for the state registration certificate required under SDCL Chapter 34-20G within 120 days of issuance of the license; or
- (b) At least (4) other holders of an active and unrevoked medical cannabis dispensary facility license or least two (2) other holders of another medical cannabis license type have previously received a state registration certificate required under SDCL Chapter 34-20G; or
- (c) The licensee fails to pay the annual license fee to the City within thirty (30) days of the issuance of the state registration certificate in accordance with 5.44.150; or
- (d) The licensee fails to obtain a certificate of occupancy from the City in accordance with

5.44.200 within one hundred eighty (180) days of issuance of the state registration certificate issued under SDCL Chapter 34-20G.

No licensee may engage in the sale of cannabis products under a provisional license.

5.44.200 Certificate of Occupancy.

Licensee shall not begin operation or open its doors to the public until it receives from the City a certificate of occupancy. The City shall not issue a certificate of occupancy until the City Administrator, Chief of Police and/or City Building Inspector has fully inspected the licensed premises and determined that the establishment satisfies all requirements of licensure as set forth in this ordinance, all applicable zoning requirements, and all other applicable federal, state, and local laws and building codes, and that the licensed establishment is ready for occupancy with such equipment and security measures in place as may be necessary to comply with the applicable provisions of this Ordinance and state law. The City shall not issue a certificate of occupancy until the licensee provides written evidence that the licensee has paid the Annual License Fee under 5.44.150, and all registration application fees due to the state in connection with the South Dakota Department of Health's review of the application.

5.44.210 Annual License Fee Refundable.

If a provisional license is automatically terminated by operation of 5.44.190, the annual license fee paid pursuant to 5.44.150 shall be refunded to applicant. The initial application fee paid pursuant 5.44.140 shall not be refunded. If a license is revoked pursuant to 5.44.230, the annual license fee shall not be refunded.

5.44.220 Medical Cannabis Dispensary License Rules of Operation.

Each dispensary shall be operated only in accordance with the following rules:

- (a) Each licensee shall display the license issued by the City in a prominent location within the licensed premises;
- (b) The hours of operation of each dispensary shall be confined between the hours of 7:00 am to 7:00 pm Monday through Saturday.
- (c) Each establishment shall be owned, operated, kept, and maintained in accordance with the establishment requirements set forth in 5.44.120 and facility standards set forth in 5.44.160; and
- (d) Each dispensary shall operate in accordance with all applicable local and state laws concerning medical cannabis.

5.44.230 License Revocation and Penalties.

- (a) Any medical cannabis establishment license may be cancelled or suspended for any failure to comply with the rules set out in this chapter.
- (b) Any person operating a dispensary without a license is subject to a civil fine of up to five hundred dollars (\$500.00). Each day a dispensary is operated without a license shall be a separate offence.

- (c) Operating a dispensary without a license shall be deemed a public nuisance and subject to the provisions of Chapter 8 of the North Sioux City Code of Municipal Ordinances. Such nuisance may be abated in any manner permitted by Ordinance or other applicable law, including, but not limited to, an action for injunctive relief.
- (d) Automatic suspension if a licensee or any of its employees or agents has been convicted of selling a cannabis product to any person under the age of twenty-one (21). In order to reinstate a license to active status, the applicant must tender a reinstatement fee of ten thousand dollars (\$10,000.00) for the first suspension under this Section, or twenty thousand dollars (\$20,000.00) for the second offense. Upon conviction for the third such offense, the license shall automatically terminate and may not be reinstated or renewed.

5.44.240 No City Liability; Indemnification; No Defense.

By accepting a license issued pursuant to this Section, the licensee waives any claim concerning, and releases the City, its officers, elected officials, employees, attorneys and agents from, any liability for injuries or damages of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers of the licensee for a violation of state or federal laws, rules or regulations.

By accepting a license issued pursuant to this Section, all licensees, jointly and severally if more than one, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool 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 medical cannabis dispensary that is the subject of the license.

The issuance of a license pursuant to this section shall not be deemed to create an exception, defense or immunity for any person in regard to any potential criminal liability the person may have under state or federal law for the cultivation, possession, sale, distribution, or use of marijuana.