

ORDINANCE # 21-ZN-07
AN ORDINANCE REGULATING MEDICAL CANNABIS
ESTABLISHMENTS IN YANKTON COUNTY.

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; then and therefore,

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 adult 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 YANKTON COUNTY COMMISSION AS FOLLOWS:

Section 1. Intent

The Board of Commissioners of Yankton County hereby enacts the following licensing ordinances to ensure that cannabis establishments within the jurisdiction of Yankton 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 minimizes the risk of unauthorized use or access of cannabis by the general public.

Section 2. Definitions

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.

1. **“Allowable amount of cannabis”** means:
 - a. Three ounces of cannabis or less;
 - b. A quantity of cannabis products with an equivalent cannabis weight as established by rules promulgated by the department under § 34-20G-72;
 - c. If the cardholder has a registry identification card allowing cultivation, three cannabis plants minimum or as prescribed by physician; and

- d. If the cardholder has a registry identification card allowing cultivation, the amount of cannabis and cannabis products that were produced from the cardholder's allowable plants, if the cannabis and cannabis products are possessed at the same property where the plants were cultivated;
2. **“Bona fide practitioner-patient relationship”** means:
 - a. A practitioner and patient have a treatment or consulting relationship, during course of which the practitioner has completed an assessment of the patient’s medical history and current medical condition, including an appropriate in-person physical examination;
 - b. The practitioner has consulted with the patient with respect to the patient’s debilitating medical condition; and
 - c. The practitioner is available to or offers to provide follow-up care and treatment to the patient, including patient examinations;
 3. **“Cannabis products”** means 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;
 4. **“Cannabis product manufacturing facility”** means an entity registered with the department pursuant to this chapter that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a medical cannabis dispensary;
 5. **“Cannabis testing facility”** or **“testing facility”** means an independent entity registered with the department pursuant to this chapter to analyze the safety and potency of cannabis;
 6. **“Cardholder”** means a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card;
 7. **“Commissioners”** means the Yankton County Board of County Commissioners;
 8. **“Cultivation facility”** means an entity registered with the department pursuant to this chapter that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment;
 9. **“Debilitating medical condition”** means:
 - a. A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating pain; severe nausea; seizures; or sever and persistent muscle spasms, including those characteristic of multiple sclerosis; or
 - b. Any other medical condition or its treatment added by the department, as provided for in SDCL 34-20G-26;
 10. **“Department”** means the Department of Health;
 11. **“Designated caregiver”** means a person who:
 - a. Is at least twenty-one (21) years of age;
 - b. Has agreed to assist with a qualifying patient’s medical use of cannabis;
 - c. Has not been convicted of a disqualifying felony offense; and
 - d. Assists no more than five (5) qualifying patients with the medical use of cannabis, unless the designated caregivers’ qualifying patients each reside in or are admitted to a health care facility or residential care facility where the designated caregiver is employed;
 12. **“Disqualifying felony offense”** means a violent crime that was classified as a felony in the jurisdiction where the person was convicted;
 13. **“Edible cannabis products”** means any product that:
 - a. Contains or is infused with cannabis or an extract thereof;
 - b. Is intended for human consumption by oral ingestion; and
 - c. Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures, or other similar products;

14. **“Enclosed, locked facility”** means any closet, room, greenhouse, building, or other enclosed area that is equipped with locks or other security devices that permit access only by a cardholder or a person allowed to cultivate the plants. Two or more cardholders who reside in the same dwelling may share one enclosed, locked facility for cultivation;
15. **“Medical cannabis”** or **“cannabis”** means marijuana as defined in SDCL 22-42-1;
16. **“Medical cannabis dispensary”** or **“dispensary”** means an entity registered with the department pursuant to this chapter that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders;
17. **“Medical cannabis establishment”** means a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary;
18. **“Medical cannabis establishment agent”** means an owner, officer, board member, employee, or volunteer at a medical cannabis establishment;
19. **“Medical use”** includes the acquisition, administration, cultivation, manufacture, delivery, harvest, possession, preparation, transfer, transportation, or use of cannabis or paraphernalia relating to the administration of cannabis to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptom associated with the patient’s debilitating medical condition. The term does not include:
 - a. The cultivation of cannabis by a nonresident cardholder;
 - b. The cultivation of cannabis by a cardholder who is not designated as being allowed to cultivate on the card holder’s registry identification card; or
 - c. The extraction of resin from cannabis by solvent extraction unless the extraction is done by a cannabis product manufacturing facility;
20. **“Nonresident cardholder”** means a person who:
 - a. Has been diagnosed with a debilitating medical condition, or is the parent, guardian, conservator, or other person with authority to consent to the medical treatment of a person who has been diagnosed with a debilitating medical condition;
 - b. Is not a resident of this state or who has been a resident of this state for fewer than forty-five (45) days;
 - c. Was issued a currently valid registry identification card or its equivalent by another state, district, territory, commonwealth, insular possession of the United States, or country recognized by the United States that allows the person to use cannabis for medical purposes in the jurisdiction of issuance; and
 - d. Has submitted any documentation required by the department and has received confirmation of registration;
21. **“Place of worship”** means a structure where persons regularly assemble for worship, ceremonies, rituals, and education relating to a particular form of religious belief and which a reasonable person would conclude is a place of worship by reason of design, signs, or architectural or other features;
22. **“Practitioner”** means a physician who is licensed with authority to prescribe drugs to humans. In relation to a nonresident cardholder, the term means a person who is licensed with authority to prescribe drugs to humans in the state of the patient’s residence;
23. **“Qualifying patient”** means a person who has been diagnosed by a practitioner as having a debilitating medical condition;
24. **“Registry identification card”** means a document issued by the department that identifies a person as a registered qualifying patient or registered designated caregiver, or documentation that is deemed a registry identification card pursuant to SDCL 34-20G-29 to SDCL 34-20G-42 inclusive; and

25. **“Written certification”** means a document dated and signed by a practitioner, stating that in the practitioner’s professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient’s debilitating medical condition or symptom associated with the debilitating medical condition. This document shall affirm that it is made in the course of a bona fide practitioner-patient relationship and shall specify the qualifying patient’s debilitating medical condition.

Section 3. Cannabis Establishment License Required

- A. **Classes of License:** Each type of the four 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 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 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 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 January 1 through December 31 of the year applied for, regardless of the time of year such license is approved, excluding any license applied for in 2021. Each license expires at 11:59:59 P.M. on December 31 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

A. There shall be available as local licenses for medical cannabis establishments a total of 40 licenses.

B. The total local licenses established in Section 4A. shall be allocated as follows, with a maximum number of local licenses limited within type of medical cannabis establishment as follows:

- 1. Cultivation Facility: 10 license(s)
- 2. Cannabis Testing Facility: 10 license(s)
- 3. Cannabis Product Manufacturing Facility: 10 license(s)
- 4. Dispensary: 10 license(s)

C. The Commissioners shall consider all qualified applications in the order they were received, subject to any resolution establishing a different procedure. No local licenses may be issued after the available new local licenses have been awarded by the Commissioners.

D. Should any additional local licenses become available through revocation or otherwise, such license

shall be made available to the first qualified applicant, subject to any resolution establishing a different procedure.

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- E. In the event the number of available licenses is reduced by future amendment of this Ordinance, no then existing licensee shall be prevented from continuing operation during the license term, from applying for renewal of such license for subsequent consecutive years, or from transferring such license, solely on the basis of such reduction. However, this exception shall not prevent a license from being suspended or revoked, nor shall it prevent a denial of an application for renewal or transfer, based upon grounds other than a change in the number of available licenses.

Section 5: License Fees

- A. There shall be a non-refundable application fee in the amount of \$5,000.
- B. There shall be an **annual** non-refundable renewal fee for any license issued under this Ordinance in the amount of \$5,000.

Section 6. Application Process

- A. It shall be unlawful for any person, business, or other organization to engage in the business of operating a medical cannabis establishment within the jurisdiction of Yankton County without having a local license issued by the County.
- B. It shall be necessary for any person, business, or other organization to obtain a local license under this Ordinance prior to submitting an application to the South Dakota Department of Health for a state registration certificate. SDCL34-20G-55
- C. The application shall be on forms provided by the Yankton County Auditor. All information requested on the form shall be provided before the completed application is submitted to the Commissioners. Applications will be available after the effective date of this Ordinance.
- D. 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 cannabis establishment.
 3. The legal business name of the proposed cannabis establishment.
 4. Previous experience operating a legal 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 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.
 9. Proof of financial responsibility in the amounts and manner established in this chapter below.
 10. A sworn statement that the application contains no false statements made or omissions of any material matter in any application for a license.
 11. The applicant's notarized signature.

12. 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 cannabis establishments.
13. All cannabis establishments are required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.

E. Action by County Commission:

1. Upon receipt of a completed application, application fee and license fee, the Auditor shall present the application to the Commissioners at the next regularly scheduled meeting of the Commissioners. The Commissioners shall set the time and place for hearing on all applications that come before the Commissioners. The hearing shall be conducted within 45 days of presentation of the application to the Commissioners.
2. The Auditor shall publish notice once in the official newspapers of the county, at least one week before the scheduled hearing. The notice shall be headed "Notice of Hearing Upon Applications for Medical Cannabis Establishment," shall state the time and place when and where such applications will be considered by the Commissioners, and shall state that any person interest in the approval or rejection of any such application may appear and be heard.
3. At the time and place so set, the Commissioners shall consider each application and any objection to the application before making its final decision on the application. The Commissioners may approve or disapprove the application depending on whether the Commissioners deem the applicant a suitable person to hold the license and whether the Commissioners consider the proposed location suitable.
4. A person or entity may obtain more than a single class of license and/or more than a single license within any class of license, unless otherwise prohibited by law. The fact that multiple licenses are held may be considered in the application process as a factor in determining whether the applicant is a suitable person to hold the license.
5. If the Commissioners do not approve the application, the commissioners shall endorse on the application the reasons for the denial. No further application may be received from the applicant until after the expiration of one year from the date of a denied application. However, if the application was denied based on the suitability of the location for the license, no further application may be received from the applicant until after the expiration of three months from the date of the denied application if the application is for a different location.
6. If the Commissioners approve the application, the Commissioners shall endorse the approval on the application and shall issue a county license to the medical cannabis establishment.
7. Any license issued shall be effective and valid through December 31 of the year issued.
However, any license approved in 2021 shall be effective and valid through December 31, 2022.
8. The County may receive no application for a license of any kind under this chapter until such time as the state of South Dakota promulgates their initial regulations under SDCL Section 34-20G-72. Any application submitted prior to such time shall be deemed rejected.

F. Renewal Process:

1. A license issued pursuant to this Ordinance may be renewed on an annual basis. An applicant for renewal is not automatically entitled to renewal. The issuance of a local license does not create a property right in that license.
2. An Application for Renewal shall be on the same forms and with the same requirements as the initial application or any additions thereto.

3. The applicant need not pay an application fee, but must pay the renewal fee as set forth herein. Such renewal fee shall be paid at the time the renewal application is filed with the Auditor.
 4. A completed Application for Renewal shall be presented to the Auditor no later than November 1.
 5. The Approval Process for a Renewal shall be the same as for an initial application.
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6. However, the license of a medical cannabis establishment applying for renewal may be approved for renewal by the Commissioners without a hearing unless in the past year the licensee, one of its principal officers or board members, or an employee of the dispensary have been subjected to a criminal penalty for violation of the Medical Cannabis laws or this Ordinance, or the license has been suspended.

Section 7. Suspension or Revocation

- A. A local license issued hereunder may be suspended or revoked by the Commissioners for violation of this ordinance.
- B. Notification of the intent of the Commissioners to consider suspension or revocation of a local license shall be made at the address given on the license. Such notification shall be at least thirty days in advance of the date set for public hearing on the suspension or revocation action.
- C. Notice of public hearing shall be published in the official newspapers of the county at least one week prior to such hearing and in such form as deemed appropriate by the Commissioners.
- D. At the public hearing, the Commissioners shall hear evidence or testimony from the licensee and any interested person. The Commissioners may revoke the license if they determine, following the public hearing, that a violation of this ordinance occurred.
- E. If the Commissioners are satisfied that the nature and the circumstances of the violation were such that a suspension of the license would be adequate, the Commissioners may, instead of revoking the license, suspend it for a period not exceeding sixty days.
- F. If the Commissioners suspend or revoke a local license, they shall notify the Secretary of the Department of Health of that fact.
- G. 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.
- H. A revocation will be for one (1) year and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder appeals the revocation, in which case the revocation takes effect upon the final determination of revocation.
- I. The license holder who has had the license revoked may not be issued a cannabis establishment license for one year from the date the revocation became effective.

Section 8. Operating Requirements and Restrictions

- A. The South Dakota legislature has expressly granted authority to the Commissioners to govern the time, place and manner of operation of medical cannabis establishments. SDCL 34-20G-58. The Commissioners may not prohibit a dispensary, either expressly or through the enactment or application of an ordinance that makes the operation of a dispensary impractical.
- B. No medical cannabis establishment may operate in Yankton County without possessing both a current license from Yankton County and a current registration certificate issued by the South Dakota Department of Health.

- C. A medical cannabis dispensary may not operate between the hours of eight (8) p.m. and eight (8) a.m.
- D. No medical cannabis establishment may share office space with a medical, psychiatric, counseling, chiropractic, or physical therapy practice.
- E. No medical cannabis establishment may be established, operated, or maintained within one thousand (1,000) feet of a public or private school.
- F. No medical cannabis dispensary may be established, operated, or maintained within four hundred (400) feet of a child welfare agency, a place of worship, an in-patient alcohol or drug treatment facility or a public playground.

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- G. No medical cannabis dispensary may be established, operated, or maintained within four hundred (400) feet of another medical cannabis dispensary, a bar or a liquor store.
- H. No medical cannabis facility shall be located on-premises for which a license to sell alcoholic liquor has been issued.
- I. No person under twenty-one (21) years of age shall be allowed on the licensed premises of a medical cannabis establishment.
- J. At all times during the hours of operation of a medical cannabis establishment, there shall be present a manager or other employee of the licensee who shall be not less than twenty-one (21) years of age.
- K. No cannabis or related paraphernalia shall be displayed or kept in a business so as to be visible from outside the cannabis establishment.
- L. No licensee of a medical cannabis dispensary may dispense any medical marijuana to any person who is obviously under the influence of cannabis to such a degree as to cause impairment.
- M. Before cannabis may be dispensed by a medical cannabis dispensary, a medical cannabis establishment agent:
 - 1. Shall make a diligent effort to verify that the registry identification is valid; and
 - 2. Shall make a diligent effort to verify that the person presenting the documentation is the person identified on the document presented to the dispensary agent.
- O. All retail sales of cannabis shall be in person, directly to the purchaser, and within the retail area of a cannabis dispensary. No drive-up windows or similar delivery process shall be allowed.
- P. A medical cannabis establishment agent shall not dispense an amount of cannabis to a person that would cause the person to possess more than the allowable amount of cannabis.
- Q. A medical cannabis establishment may not employ any person who has been convicted of a disqualifying felony offense.
- R. No alcohol or cannabis may be consumed on the premises of a medical cannabis dispensary.

Section 9: Signage and Advertising

- A. All exterior signage associated with a medical cannabis establishment shall comply with the Yankton County Zoning Ordinance.
- B. Any advertising shall be governed by the South Dakota Department of Health regulations and rules.
- C. No cannabis establishment may distribute or allow the distribution of any cannabis or cannabis

product without charge within a cannabis establishment or elsewhere for purposes of promotion, advertising or any other purpose.

Section 10: Transfer of Licenses

A. Certificate location transfer – Application.

An application for the transfer of a registration certificate to a different physical location must include:

1. A completed change of location form;
2. Documentation that establishment is operating in substantial compliance with its department-approved operating procedures or that circumstances beyond its control prevented such operation;
3. Diagrams of all locations in which cannabis will be cultivated, harvested, dried, stored, manufactured, or destroyed;
4. A detailed description of any changes to operating procedures, or a certification that no such changes exist;
5. Certification of compliance with all applicable local zoning requirements; and
6. Copies of all required registration, licenses, or permits reflecting the establishment's new address.

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7. A hearing shall be held pursuant to the procedures outlined in Section 6E of this ordinance prior to the transfer.

- B. No Cannabis Establishment license holder may transfer the license to any other person or entity either with or without consideration. Any medical cannabis establishment license issued in Yankton County is not transferable to a new owner, business, or other entity. An owner of a business which possesses a medical cannabis establishment license may designate a successor which will be given priority in their application for a new license.**

Section 11: Enforcement and Penalties

- A. Yankton County and law enforcement may inspect a medical cannabis facility during business hours to ensure compliance with this ordinance.
- B. Violation of the terms of this Ordinance may result in revocation or suspension of the local license as set forth in this Ordinance.
- C. Violation of the terms of this Ordinance may be enforced through a civil action in magistrate court or circuit court, at the discretion of the Commissioners.
- D. Civil penalties may not exceed \$500 for each violation.
- E. Each day the licensee is in violation of the Ordinance may be considered a separate violation.
- F. ~~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 12. Severability


Should any section, subsection, clause, phrase or part of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional, invalid or otherwise affected by law, such determination shall not affect the validity or constitutionality of the Ordinance as a whole or any part thereof other than the part so determined.

Section 13. Effective Date

This Ordinance shall be effective twenty (20) days following completed publication. Upon becoming effective, all prior Ordinances are revoked.

Passed and adopted this 5th day of October, 2021.


Cheri Loest, Chairperson

Attest: 
Karen Faerber
Deputy County Auditor