Ordinance No. 1052

An Ordinance establishing licensing regulations for Medical Cannabis Dispensary businesses. Be it ordained that:

A new Division numbered Division 7 of Chapter 13, Article III, of the City of Yankton Code of Ordinances shall be titled as follows:

Division 7. Medical Cannabis Dispensaries

The following Sections of Division 7 of Chapter 13, Article III shall be enacted to read as follows:

Sec. 13-132. *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 cultivation facility, a cannabis testing facility, a cannabis 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.

Sec. 13-133. *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 Yankton 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.

Sec. 13-134. *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.

Sec. 13-135. *Authority*

The City Manager or the City Manager's designee shall have authority pursuant to the SDCL Chapter 34-20G and this Division to grant or deny licenses and to inspect the premises and business of a dispensary to confirm compliance with all licensure requirements.

Sec. 13-136. *Medical Cannabis Dispensary 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.

Sec. 13-137. *Limitation on the Number of Medical Cannabis Establishments*

Under the authority granted by SDCL 34-20G-56, there shall be no more than two (2) active medical cannabis dispensaries that may be registered by the State of

South Dakota to operate within the jurisdictional limits of the City of Yankton at any given time. The City of Yankton 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 Yankton pursuant to this Division. No other medical cannabis establishment shall be permitted to operate within the jurisdictional limits of the City of Yankton.

Sec. 13-138. *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.

Sec. 13-139. *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. A license issued under this Division is not a property right.

Sec. 13-140. *Dispensary Requirements*

A medical cannabis dispensary 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 a 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) The licensed premises shall be located only within a B-2 Highway Business District, B-3 Central Business District, or Industrial District;
(i) 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, unless the dispensary is located in a B-3 Central Business District or the area east of Broadway Avenue and south of 4th Street. No separation is required for a dispensary located in a B-3 Central Business District or the area east of Broadway Avenue and south of 4th Street;
(j) The licensed premises shall not be located within any building containing a dwelling unit, a pediatrician's office, hotel, motel, boarding house, or lodging facility except that a dispensary that is located in a B-3 Central Business District may be located in a building containing a dwelling unit or dwelling units;
(k) The licensed premises shall be located no less than four hundred (400) feet from the nearest property line of another dispensary;
(l) The licensed premises shall not be located within a single development project that contains another marijuana establishment of any kind. With regard to this subsection and to subsection (k) above, in the event that applications for licensure of more than one medical cannabis dispensary or other marijuana business are pending at the same time and one proposed location is within 400 feet of another proposed location, the City Manager or his or her designee shall consider and act first upon the application determined by the City Manager or his or her designee to have first been a complete application without regard to the proposed location that is set forth in any application determined to have been complete later in time;
(m) The licensed premises shall not be located within the City's Extraterritorial Zoning Jurisdiction; and
(n) 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 Yankton at the time of licensure).

For purposes of this section, a "*single development project*" shall mean and include any area in which the property proposed for use as a medical cannabis dispensary shares a common interest in common property, such as parking areas or sidewalk areas, or is a member of a property owners' association with another marijuana business. 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.

Sec. 13-141. *Application for Medical Cannabis Dispensary License*

To obtain a medical cannabis dispensary license, or to renew a license previously issued under this Division, 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 comply with Yankton Ordinance Sec. 13-17 and 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.

Sec. 13-142. *Application Fee*

At the time an applicant files an application according to Sec. 13-141, applicant shall pay a non-refundable fee to the City in an amount established by resolution of the Board of City Commissioners 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.

Sec. 13-143. *Annual License Fee*

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 in an amount established by resolution of the Board of City Commissioners. The annual license fee is in addition to the initial application fee required pursuant to Sec. 13-142. 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.

Sec. 13-144. *Additional permits and licenses*

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, without limitation, 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 Yankton Code of Municipal Ordinances or South Dakota law.

Sec. 13-145. *Background Checks, Inspections and Facility Standards*

During review of the application and at all reasonable times after a license is issued, the City Manager or the City Manager's designee 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 supplementing the information required under section Sec. 13-141(a) for each prospective new principal officer, board member, or employee. In addition, the City Manager or his or her designee, 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 a breezeway area securely locked and partitioned from the dispensary sales floor wherein each customer must remain until the customer's identity, legal 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) The facility shall conform to the prevailing building, plumbing, electrical, mechanical, fuel gas and fire codes adopted by the City of Yankton at the time of licensure. This includes, but is not limited to, codes regarding accessibility, egress and life safety.

(d) 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.

Sec. 13-146. ***Approval Process***

(a) Upon receipt of a complete application, the City Manager or the City Manager's designee 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 approved until after the City Manager or the City Manager's designee 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 Manager or the City Manager's designee shall deny any application that does not meet the requirements or limitations of this Ordinance. The City Manager or the City Manager's designee shall deny any application that contains any false, misleading, or incomplete information.

(b) If the City Manager or the City Manager's designee has determined that all requirements for a dispensary license are met and upon payment of the application fee in advance by the applicant, the City Manager or City Manager's designee may, in his or her discretion, approve the issuance of a license if the City Manager or City Manager's designee believes the issuance to be in the public's best interest. When the City Manager or the City Manager's designee considers a dispensary application, he or she may consider all contents and proposals within the application, the observations and results of any inspection undertaken pursuant to section 13-145, 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 of Yankton, history of compliance with city ordinances and state law.

(c) Within thirty (30) days after the completion of the investigation of the application, the City Manager or City Manager's designee shall issue a written decision approving or denying the application for licensure, which decision shall state the reason(s) for the decision and be sent via first class mail and via certified mail to the applicant at the address shown in the application.

(d) If approved, the City Manager or City Manager's designee 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, 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 City Manager or City Manager's designee 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).

Sec. 13-147. ***Issuance or Denial of Application***

If a license is denied by the City Manager or his or her designee, an applicant shall have thirty (30) days to request in writing that the denied application be submitted to the Board of City Commissioners for reconsideration at a regularly scheduled meeting using the same criteria governing the issuance of a license by the City Manager. The Board of City Commissioners shall consider the application on its merits and take action on the appeal at properly noticed public meeting no later than sixty (60) days following the City's receipt of a timely written request for appeal. Notwithstanding anything to the contrary no medical cannabis dispensary license shall be issued until the applicant has demonstrated compliance with this Ordinance and the City zoning ordinance.

Sec. 13-148. ***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 two (2) other holders of an active and unrevoked medical cannabis license 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 Sec. 13-143; or

(d) The licensee fails to obtain a certificate of occupancy from the City of Yankton in accordance with Sec. 13-149 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.

Sec. 13-149. ***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 Manager or the City Manager's designee 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 Sec. 13-143, and all registration application fees due to the state in connection with the South Dakota Department of Health's review of the application.

Sec. 13-150. ***Annual license fee refundable***

If a provisional license is automatically terminated by operation of Sec. 13-148, the annual license fee paid pursuant to Sec. 13-143 shall be refunded to applicant. The initial application fee paid pursuant Sec. 13-142 shall not be refunded. If a license is revoked pursuant to Sec. 13-152 and/or Sec. 13-24, the annual license fee shall not be refunded.

Sec. 13-151. ***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 9:00 am to 9:00 pm Monday through Sunday.

(c) Each dispensary shall be owned, operated, kept, and maintained in accordance with the dispensary requirements set forth in Sec. 13-140 and facility standards set forth in Sec. 13-145; and

(d) Each dispensary shall operate in accordance with all applicable local and state laws concerning medical cannabis.

Sec. 13-152. ***License Revocation and Penalties***

(a) Any medical cannabis dispensary license may be cancelled or suspended in accordance with section 13-24.

(b) Any person operating a dispensary without a license is subject to a civil fine of up to two hundred dollars ($200.00). 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 15 of the Yankton 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 fifteen thousand dollars ($15,000.00) for the second offense. Upon conviction for the third such offense, the license shall automatically terminate and may not be reinstated or renewed.

Sec. 13-153. No City Liability; Indemnification; No Defense

(a) By accepting a license issued pursuant to this Division, 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.

(b) By accepting a license issued pursuant to this Division, 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.

(c) 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.

Secs. 13-154 thru 13-200. - Reserved.

Adopted:
1st Reading:
2nd Reading:
Publication Date:
Effective Date:

_____
Stephanie Moser, Mayor

Attest:

_____
Al Viereck, Finance Officer