

SPECIAL MEETING
DE SMET COMMON COUNCIL
September 22, 2021

The De Smet Common Council met in special session on September 22, 2021 at 5:30 PM with the following present: Council members Cole Munger, Bret Jensen (via speaker phone), Pam Spader, Lowell Hansen, George Cavanaugh, Shon Asleson, Mayor Gary Wolkow, and FO Tracey Larson. Absent: none. Also present was DFO Karen Hansen, Event Center Dir. Kristy Hubbard, Event Center Custodian Patti Garry, Street/Airport Supt. Ryan Petersen, Assist. Street Josh Halverson, Water/Sewer Supt. Richard Stoddard and Bldgs./Park Supt. Jason Springer.

Mayor Wolkow called the meeting to order at 5:30 PM.

PLEDGE OF ALLEGIANCE: The meeting was started with the council and those attending reciting the Pledge of Allegiance.

SECOND READING FOR LICENSING OF MEDICAL CANNABIS ESTABLISHMENTS: Motion was made by Cavanaugh, seconded by Asleson, to approve the second reading of Ordinance V-11, an ordinance creating licensing provisions for cannabis establishments within the City of De Smet, all voting aye, motion carried.

ORDINANCE NO. V-II

AN ORDINANCE ADDING TITLE V TO THE REVISED ORDINANCES OF THE CITY OF DE SMET THEREBY CREATING LICENSING PROVISIONS FOR CANNABIS ESTABLISHMENTS WITHIN THE CITY OF DE SMET, SOUTH DAKOTA

BE IT ORDAINED by the City Council of the City of De Smet, that Title V be added to the revised ordinances of the City of De Smet for the purpose of licensing cannabis establishments within the City of De Smet:

9.01 PURPOSE AND INTENT

The City Council of the City of De Smet enacts the following licensing ordinances in order to ensure that cannabis establishments within the incorporated areas of the City operate in a manner which 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 certain safety and security considerations, and minimizes risk of unauthorized use or access of cannabis by the general public.

9.02 DEFINITIONS

Unless an alternative definition is explicitly stated in this ordinance, this ordinance utilizes the definitions for cannabis-related terms which are defined by SDCL 34-20G-1.

Cannabis (or Marijuana): All parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

Cannabis Cultivation Facility: This term is defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

Cannabis Dispensary: This term is defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

Cannabis Establishment: A cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

Cannabis Product Manufacturing Facility: This term is defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

Cannabis Products: 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

Cannabis Testing Facility: This term is defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

Department: the South Dakota Department of Health

9.03 LICENSE REQUIRED

- (a) No cannabis establishment may be located or operate in the incorporated area of the City without the appropriate valid and current cannabis establishment license issued by the City pursuant to this ordinance. A violation of this provision is subject to the general penalty provision in 9.16. Each day of the violation constitutes a separate offense.
- (b) No cannabis establishment may be located or operate in the incorporated area of the City without the appropriate valid and current cannabis establishment registration certificate issued by the Department pursuant to rules promulgated under SDCL 34-20G. A violation of this provision is subject to the general penalty provision in 9.16. Each day of the violation constitutes a separate offense.

9.04 LICENSE APPLICATION

- (a) An application for a cannabis establishment license must be made on a form provided by the City. No other application form will be considered.
- (b) The applicant must submit the following:
 - 1. Application fee of fifty thousand dollars (\$50,000) The City will reimburse two thousand five hundred dollars (\$2,500) for applicants who fail to obtain a registration certificate from the South Dakota Department of Health.
 - 2. An application that will include, but is not limited to, the following:
 - i. The legal name of the prospective cannabis establishment;
 - ii. The physical address of the prospective cannabis establishment that comports with the City of De Smet Zoning Ordinance, as well as any location requirements pursuant SDCL 34-20G and the administrative rules promulgated thereunder.
 - iii. The name, address, and birth date of each principal officer, owner, and board member of the proposed cannabis establishment.
 - iv. Any additional information requested by the City.

9.05 ISSUANCE OF LICENSE

- (a) The City will issue a license unless:
1. The applicant has made a false statement on the application or submits false records or documentation; or
 2. Any owners, principal officer, or board member of the applicant is under the age of twenty-one (21) years; or
 3. The proposed location does not meet the applicable zoning requirements of City of De Smet
 4. The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder;
 5. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
 6. Any owner, principal officer, or board member of the applicant has had a cannabis establishment license revoked by the City or a registration certificate revoked by the state; or
 7. An applicant, or an owner, principal officer, or board member thereof, is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment; or
 8. The applicant will not be operating the business for which the license would be issued.
- (b) In the case of an application for a cannabis dispensary license, the City will reject the application if the limit on the number of cannabis dispensaries has been reached.
- (c) The license must be posted in a conspicuous place at or near the entrance to the cannabis establishment so that it may be easily read at any time.

9.06 CITY NEUTRALITY AS TO APPLICANTS

- (a) Upon request from the Department as to the City's preference of applicants, the City will neither support nor oppose any registration certificate application under consideration by the Department. Likewise, if inquiry is made by the Department, the City will abstain from endorsing any application as beneficial to the community.

9.07 NUMBER OF CANNABIS DISPENSARIES

- (a) No more than one (1) cannabis dispensary shall be allowed to operate in the incorporated area of the City at any time.

9.08 EXPIRATION OF LICENSE AND RENEWAL

- (a) Each license expires one year from the date of issuance and may be renewed only by making application as provided in 9.04. Application for renewal must be submitted at least thirty (30) days before the expiration date. The license holder must continue to meet the license requirements to be eligible for a renewal.
- (b) The renewal fee is fifty thousand dollars (\$50,000). The City will reimburse two thousand five hundred dollars (\$2,500) for applicants who fail to obtain a renewal of their registration certificate from the Department.
- (c) Failure to renew a license in accordance with this ordinance may result in additional fees. Upon expiration

of the license, the City may order closure of the cannabis establishment.

- (d) If a license holder has not operated an establishment for which it holds a license in the preceding twelve (12) months, the license will not be renewed.

9.09 SUSPENSION

- (a) A license may be suspended if the license holder or an employee or agent of the license holder:
 - 1. Violates or is otherwise not in compliance with this ordinance.
 - 2. Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment.
 - 3. Knowingly dispenses or provides cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.
- (b) A license may be suspended if the license holder has its Department-issued registration certificate suspended, revoked, or not renewed by the Department or if the registration certificate is expired.
- (c) A license may be suspended if the license holder creates or allows to be created a public nuisance at the cannabis establishment.

9.10 REVOCATION

- (a) A license may be revoked if the license is suspended under 9.09 and the cause for the suspension is not remedied.
- (b) A license may be revoked if the license is subject to suspension under 9.09 because of a violation outlined in that 9.09 and the license has been previously suspended in the preceding 24 months.
- (c) A license is subject to revocation if a license holder or employee of a license holder:
 - 1. Gave false or misleading information in the material submitted during the application process;
 - 2. Knowingly allowed possession, use, or sale of non-cannabis-controlled substances on the premises;
 - 3. Operated the cannabis establishment or the business of the cannabis establishment for which a license is required under this ordinance while the license was suspended;
 - 4. Repeated violations of this ordinance;
 - 5. Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility conducting cannabis testing functions without a cannabis testing establishment license);
 - 6. A license holder, or an owner, principal officer, or board member thereof, is delinquent in payment to the city, county, or state for any taxes or fees related to the cannabis establishment;
 - 7. A license holder, or an owner, principal officers, or board member thereof, has been convicted of, or continues to employ an employee who has been convicted of, a disqualifying felony offense as defined by SDCL 34-20G; or
 - 8. The license holder has its Department-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired.

9. The license holder allows a public nuisance to continue after notice from the City.

9.11 SUSPENSION AND REVOCATION PROCESS

- (a) 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 City'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.
- (b) 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 a hearing panel, which will consist of the Mayor, Finance Officer and Sheriff.
- (c) 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.
- (d) 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.
- (e) The license holder who has had the license revoked may not be issued any cannabis establishment license for one year from the date the revocation became effective.

9.12 APPEAL

An applicant or license holder who has been denied a license or renewal of a license or who has had a license suspended or revoked under this ordinance may appeal to the City Council by submitting a written appeal within ten (10) days of the postmark on the notice of denial, nonrenewal, suspension, or revocation. The written appeal must be submitted to City Hall 106 Calumet Avenue SE, De Smet, South Dakota, 57231. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt of the appeal.

9.13 LICENSES NOT TRANSFERRABLE

No cannabis establishment license holder may transfer the license to any other person or entity either with or without consideration, nor may a license holder operate a cannabis establishment at any place other than the address designated in the application.

9.14 HOURS OF OPERATION FOR DISPENSARIES

No cannabis dispensary may operate between the hours of 12:01 a.m. and 6:59 a.m. CDT any day of the week.

9.15 LIABILITY FOR VIOLATIONS

Notwithstanding anything to the contrary, for the purposes of this ordinance, an act by an employee or agent of a cannabis establishment that constitutes grounds for suspension or revocation will be imputed to the cannabis establishment license holder for purposes of finding a violation of this ordinance, or for purposes of license denial, suspension, or revocation, only if an officer, director or general partner or a person who managed, supervised or controlled the operation of the cannabis establishment, knowingly allowed such act to occur on the premises.

9.16 PENALTIES

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 are punishable by a maximum fine of five hundred dollars (\$500.00). Each day a cannabis establishment so operates is a separate offense or violation.

9.17 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 which can be given effect without the invalid provision or application.

Passed First Reading: September 8, 2021

Passed Second Reading: September 22, 2021

Passed and Approved: September 22, 2021

Mayor – Gary Wolkow
City of De Smet

Finance Officer – Tracey Larson
City of De Smet

SECOND READING TO AMEND ZONING ORDINANCE VII-8 FOR CANNABIS DISPENSARY: Motion was made by Cavanaugh, seconded by Jensen, to approve the second reading to approve amending Zoning Ordinance V 11-8, Chapter 2.08, Section 2.08.01 Permitted uses, 16. Cannabis Dispensary (Subject to Chapter 4.23) & Chapter 4.16. Cannabis Dispensaries (requirements), all voting aye, motion carried.

ORDINANCE NO. VII-28

ORDINANCE VII-28, AN ORDINANCE AMENDING V 11-8, AN ORDINANCE ESTABLISHING COMPREHENSIVE ZONING REGULATIONS FOR CITY OF DE SMET, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, PURSUANT TO SDCL 11-4, AND 11-6, 1967, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND/OR ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED by the City Council of the City of De Smet, South Dakota, South Dakota: that Chapter 2.08, Section 2.08.01, "Permitted Uses" [Central Commercial District", adopted by Ordinance 261, as amended, of the Zoning Ordinance of the City of De Smet be amended by adding language in bold and underline font:

16. Cannabis Dispensary (Subject to Chapter 4.23).

BE IT FURTHER ORDAINED by the City Council of the City of De Smet, South Dakota: that that Article IV, "SUPPLEMENTAL REGULATIONS" adopted by Ordinance V 11-8, as amended, of the Zoning Ordinance of the City of De Smet be amended by adding the following Chapter in bold and underline font:

CHAPTER 4.16. CANNABIS DISPENSARIES.

1. Maximum Number of Cannabis Dispensaries.

- a. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.
- b. The City shall allow up to one (1) cannabis dispensaries provided the time, place, and manner of said dispensaries comply with this ordinance.

2. Required Separation Distances

- a. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a public or private school existing before the date of the cannabis dispensary application;
- b. A cannabis dispensary shall be located not less than two hundred fifty (250) feet from a public park and recreation area existing before the date of the cannabis dispensary application;
- c. A cannabis dispensary shall be located not less than two hundred fifty (250) feet from a public library, church and day care facilities.
- d. Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:
 - o The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.
- e. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the certain existing use and the lot line of the property where the dispensary is proposed

3. Other Locational Requirements

- a. Permanent or temporary dispensaries are prohibited in all other zoning districts and not eligible for a home occupation use.
- b. It shall be unlawful to operate a dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.

4. Controlled Access -

- a. No cannabis establishment shall share premises with or permit access directly from another medical cannabis establishment, business that sells alcohol or tobacco, or, if allowed by law, other cannabis establishment.

5. **Hours of operation:**

- a. Cannabis dispensaries are allowed to be open daily between the hours of 7:00 a.m. and 12:00 midnight.

6. **Documentation of State Licensure.**

- a. No cannabis dispensary shall acquire, possess, store, deliver transfer, transport, supply or dispense cannabis, cannabis products, paraphernalia without providing documentation of licensure from the State of South Dakota.

7. **The zoning official is authorized to issue permits (building/use) for cannabis dispensaries subject to following:**

- a. Submission of a site plan containing the following:
 - i. Any information required for applicable building permit,
 - ii. Ingress and egress plan
 - iii. Parking plan
 - iv. Lighting plan (including security lighting)
 - v. Screening/security fencing plan,
 - vi. Refuse plan;
 - vii. Hours of Operation;
 - viii. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance
- b. Documentation of ability to meet setback/separation requirements.
- c. Documentation of State Licensure.

8. **All Cannabis Establishments are required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.**

BE IT FURTHER ORDAINED by the City Council of the City of De Smet, South Dakota: that Article V, "DEFINITIONS" adopted by Ordinance V 11-8, as amended, of the Zoning Ordinance of the City of De Smet be amended by adding the following Definitions in bold and underline font:

Cannabis (or Marijuana): all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant Cannabis sativa L. (hemp) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

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Mayor - Gary Wolkow
City of De Smet

Finance Officer - Tracey Larson
City of De Smet

2022 ANNUAL APPROPRIATIONS: The city council and city departments reviewed and amended the presented 2022 Appropriations Budget. Motion was made by Cavanaugh, seconded by Spader, to approve the second reading of the 2022 Annual Appropriation Ordinance No. IV-222, all voting aye, motion carried.

OTHER: Other non-action items of discussion were 1) amending the lease length from three years to 25 years for an airport lot rental; 2) the hospital lease agreement; 3) purchasing solar speed boards.

ADJOURN: There being no further business the meeting was adjourned on motion by Hansen.

Gary Wolkow, Mayor

Tracey Larson, Finance Officer

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