

ORDINANCE #289

AN ORDINANCE CREATING LICENSING REGULATIONS FOR MEDICAL CANNABIS ESTABLISHMENTS.

WHEREAS, Initiated Measure 26 (IM 26), regarding Medical Cannabis, was passed by South Dakota voters in November 2020; and

WHEREAS, the provisions of IM 26 have been codified under South Dakota Codified Laws (SDCL) Chapter 34-20G and become effective July 1, 2021; and

WHEREAS, such state statutes explicitly provide local governments with certain regulatory authority over aspects of cannabis establishments, including time, place, manner, and quantity regulations; and

WHEREAS, the City of Tea has the lawful authority to regulate other aspects relating to cannabis establishments by and through its use of existing municipal powers.

BE IT ORDAINED BY THE CITY OF TEA, SOUTH DAKOTA AS FOLLOWS:

Section 1.

That a NEW SECTION be ADDED to the Tea City Municipal Code under Chapter 5 – Licenses – to read as follows:

Section 5.04 – Medical Cannabis

a. 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.

b. *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 Tea 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.

c. *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.

d. *Authority*

The City Administrator or the City 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.

e. *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.

f. *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 Tea at any given time. The City of Tea 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 Tea pursuant to this Division. No other medical cannabis establishment shall be permitted to operate within the jurisdictional limits of the City of Tea. The numerical limits for Medical Cannabis Establishments may be altered at any time by Resolution of the City Council.

In the event the numerical cap is lowered to an amount less than the number of existing licenses, no existing Licensee shall be prevented from continuing operation during the license term, requesting modifications to the application information, or from renewing such license for consecutive, subsequent years, on the basis that the numerical limit would otherwise prohibit the issuance of a license to a new Applicant. However, this exception shall not prevent a license from being suspended or revoked, nor shall it prevent a license from not being renewed, based upon grounds other than the numerical limit being exceeded.

g. *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. Tea Municipal Ordinance 5.01(c)

h. *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.

i. *Dispensary Requirements*

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

1. 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;
2. No owner, LLC member or manager, shareholder, principal officer, or board member may be under twenty-one years of age;
3. A licensee shall be prohibited from employing any employee convicted of a disqualifying felony offense;
4. A licensee shall be prohibited from employing any employee under twenty-one (21) years of age;
5. A medical cannabis dispensary shall not share office space with or refer a patient to

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 City Council. The annual license fee is in addition to the initial application fee required pursuant to Sec. 5.04(k). 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.

m. *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 Tea Code of Municipal Ordinances or South Dakota law.

1. Cannabis dispensaries shall require a conditional use permit. In granting a conditional use permit for a cannabis dispensary, the City may impose such additional reasonable requirements as it deems appropriate to mitigate or prevent harmful secondary effects of the establishment. The cannabis dispensary must positively comply with all the current zoning, health and building regulations that apply to the site and building at the time of application for a Conditional Use Permit.
2. The zoning official is authorized to issue building permits for a cannabis dispensary subject to the site plan submittal containing the following information:
 - a. Any information required for applicable building permits (see site plan checklist);
 - b. Ingress and egress plan;
 - c. Parking plan;
 - d. Lighting plan (including security lighting);
 - e. Refuse plan;
 - f. Hours of operation; and
 - g. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance.

n. *Background Checks, Inspections and Facility Standards*

During review of the application and at all reasonable times after a license is issued, the City Administrator or the City 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. 5.04(j)(1) for each prospective new principal officer, board member, or employee. In addition, the City Administrator 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:

1. 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, legal age, and registry identification card can be verified before each customer is admitted entry into the dispensary sales area. The facility must utilize a separate one-directional exit for customers, which exit does not permit entry from the outside without a key.

2. 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.
3. The facility shall conform to the prevailing building, plumbing, electrical, and mechanical, adopted by the City of Tea and State of South Dakota at the time of licensure. This includes, but is not limited to, codes regarding accessibility, egress and life safety.
4. All exterior entrances and exits, all parking areas, and all sidewalks adjacent to the dispensary facility shall be lighted at all times after dark.
5. 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.
6. 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.

o.

Approval Process

1. Upon receipt of a complete application, the City Administrator or the City 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 Administrator or the City 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 Administrator or the City designee shall deny any application that does not meet the requirements or limitations of this Ordinance. The City Administrator or the City designee shall deny any application that contains any false, misleading, or incomplete information.
2. If the City Administrator or the City 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 Administrator or City designee may, in his or her discretion, approve the issuance of a license if the City Administrator or City designee believes the issuance to be in the public's best interest. When the City Administrator or the City 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 5.04(n), 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 Tea, history of compliance with city ordinances and state law.
3. Within thirty (30) days after the completion of the investigation of the application, the City Administrator or City 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.
4. If approved, the City Administrator or City 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 Administrator or City 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).

p. *Issuance or Denial of Application*

If a license is denied by the City Administrator or his or her designee, an applicant shall have thirty (30) days to request in writing that the denied application be submitted to the City Council for reconsideration at a regularly scheduled meeting using the same criteria governing the issuance of a license by the City Administrator. The City Council 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.

q . *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:

1. 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
2. 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
3. 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. 5.04(l); or
4. The licensee fails to obtain a certificate of occupancy from the City of Tea in accordance with Sec. 5.04(r) 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.

r. *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 Building Inspector or the City 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. 5.04(l), and all registration application fees due to the state in connection with the South Dakota Department of Health's review of the application.

s. *Annual license fee refundable*

If a provisional license is automatically terminated by operation of Sec. 5.04(q), the annual license fee paid pursuant to Sec. 5.04(l) shall be refunded to applicant. The initial application fee paid pursuant Sec. 5.04(k) shall not be refunded. If a license is revoked pursuant to Sec. 5.04(u) and/or Sec. 5.04(d), the annual license fee shall not be refunded.

t. *Medical Cannabis Dispensary License Rules of Operation*

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

1. Each licensee shall display the license issued by the City in a prominent location within the licensed premises;
2. The hours of operation of each dispensary shall be confined between the hours of 9:00 am to 9:00 pm Monday through Sunday.
3. Each dispensary shall be owned, operated, kept, and maintained in accordance with the dispensary requirements set forth in Sec. 5.04(i) and facility standards set forth in Sec. 5.04(n); and
4. Each dispensary shall operate in accordance with all applicable local and state laws concerning medical cannabis.

ii. *License Revocation and Penalties*

1. Any medical cannabis dispensary license may be cancelled or suspended in accordance with section 5.04(d).
2. Operating a dispensary without a license shall be deemed an ordinance violation and subject to the provisions of Chapter 17 of the Tea Code of Municipal Ordinances. Such violation shall be punishable by a fine not exceeding One Hundred Dollars (\$100.00) or by imprisonment for a period not exceeding thirty (30) days or by both such fine and imprisonment. SDCL 9-19-3
3. 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.

v. *No City Liability; Indemnification; No Defense*

1. 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.
2. 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.
3. 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.

Adopted by majority vote of the City of Tea, SD City Council in regular session

this 6th day of December, 2021.

John Lawler – Mayor

Attest:

(seal)

Dawn Murphy – City Finance Officer

First Reading: November 15, 2021

Second Reading: December 6, 2021

Adoption: December 6, 2021

Published: December 10, 2021