

## PROPOSED ORDINANCE 1433

### AN ORDINANCE AMENDING CITY OF VERMILLION CODE OF ORDINANCES TITLE XI BUSINESS REGULATIONS, BY ADDING CHAPTER 123, WHICH ENACTS LICENSING REGULATIONS FOR MEDICAL CANNABIS ESTABLISHMENTS

**BE IT ORDAINED**, by the Governing Body of the City of Vermillion, South Dakota that the following sections of Chapter 123 be enacted as follows:

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

**Applicant.** Any person or entity who has submitted an application for a license or renewal of a license issued pursuant to this Chapter. 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 cultivation facility.** An entity registered with the South Dakota Department of Health that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment.

**Cannabis product manufacturing facility.** An entity registered with the South Dakota Department of Health that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a medical 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.** An independent entity registered with the South Dakota Department of Health to analyze the safety and potency of cannabis.

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

**City.** The City of Vermillion, South Dakota, its governing body, officers, employees and agents.

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

**Initial application.** The first application filed by a person or entity for a medical cannabis establishment license.

**Licensed premises.** The building within which the dispensary operates.

**Licensee.** Any person or business entity that has been issued and holds a valid, current license pursuant to this Chapter. If the licensee is an entity and not a natural person, licensee shall encompass all persons who are the members, managers, officers, directors, shareholders, partners or associates of such entity.

**Medical cannabis or cannabis.** Marijuana as defined in SDCL § 22-42-1.

**Medical cannabis dispensary or "dispensary".** 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.

**Medical cannabis establishment.** A cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary.

**Registry identification card.** 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 SDCL §§ 34-20G-29 to 34-20G-42, inclusive.

## **§ 123.02 PURPOSE AND INTENT.**

The purpose of this Chapter is to provide for licensing of medical cannabis establishments within the jurisdictional limits of the City of Vermillion in the interest of public health, safety, and general welfare. Nothing in this Chapter is intended to promote or condone the sale, distribution, possession, or use of marijuana in violation of any applicable law. Compliance with the requirements of this Chapter shall not provide a defense to criminal prosecution under any applicable law unless permitted by SDCL Chapter 34-20G.

## **§ 123.03 OTHER LAWS.**

If the South Dakota Department of Health or South Dakota legislature adopts or enacts any stricter regulation or statute governing a medical cannabis dispensary than set forth in this Chapter, 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 South Dakota Department of Health or South Dakota legislature subsequently prohibits the sale or other distribution of medical cannabis, any license issued under this Chapter shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress by the licensee. The issuance of any license pursuant to this Chapter shall not be deemed to create an exception, defense or immunity to any person or entity in regard to any potential criminal liability the person or entity may have

for the cultivation, possession, sale, distribution, or use of marijuana except to the extent permitted by SDCL Chapter 34-20G.

**§ 123.04 AUTHORITY.**

The governing body or designee shall have authority pursuant to the SDCL Chapter 34-20G and this Chapter to grant or deny licenses and to have a designees inspect the licensed premises and business of a dispensary to confirm compliance with all licensure requirements.

Applications for a license to operate a medical cannabis establishment as defined by SDCL 34-20G-1, shall not be accepted until the South Dakota Department of Health has promulgated regulations as required by SDCL 30-20G-72.

**§ 123.05 MEDICAL CANNABIS ESTABLISHMENT LICENSE REQUIRED.**

No person or business entity shall operate a medical cannabis establishment within the jurisdictional limits of the City unless that person or business entity has first obtained a medical cannabis establishment 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 Chapter.

**§ 123.06 TERM OF LICENSE.**

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

**§ 123.07 LICENSE NOT TRANSFERRABLE.**

Licenses issued under this chapter 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 Chapter is not a property right.

**§ 123.08 ESTABLISHMENT REQUIREMENTS.**

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

(A) Any owner, LLC member or manager, corporation shareholder, director, officer, partnership or association member who has served as an owner, LLC member or manager, corporation shareholder, director, officer, partnership or association member for a medical cannabis establishment that has had its state registration certificate or any local, municipal, or county license revoked is disqualified as a licensee.

(B) Any owner, LLC member or manager, corporation shareholder, director, officer, partnership or association member who is under 21 years of age is disqualified as a licensee.

- (C) A licensee is prohibited from employing any employee convicted of a disqualifying felony offense.
- (D) A licensee is prohibited from employing any employee under 21 years of age.
- (E) A medical cannabis establishment shall not share office space with or refer a patient to a practitioner pursuant to SDCL § 34-20G-67.
- (F) A medical cannabis establishment shall not permit any person to consume cannabis upon the property of the licensed premises pursuant to SDCL § 34-20G-68.
- (G) At least one of the owners, LLC members, or shareholders shall be a resident of the state of South Dakota.
- (H) The licensed premises shall be located only within City zones as addressed by Chapter 158 of the Vermillion Code of Ordinances.
- (I) The licensed premises shall be located no less than 1,000 feet from the nearest property line of any public or private school. Distances shall be measured from the closest point of the property lines.
- (J) The licensed premises shall remain in compliance with applicable federal, state, and local laws and building codes.

### **§ 123.09 APPLICATION FOR MEDICAL CANNABIS ESTABLISHMENT LICENSE**

To obtain a medical cannabis establishment license, or to renew a license previously issued under this Chapter, the applicant shall file in the office of the City Finance Officer an application on a form furnished by the City Finance Officer or the City Finance Officer's designee, a written sworn application signed by the applicant containing the following information:

- (A) The name, address, and date of birth of person or entity members, managers, shareholders, directors, officers, partners or associates of the proposed medical cannabis establishment, 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 or lease reflecting the applicant's ownership or right of possession to 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 South Dakota Department of Health regulations pursuant to SDCL Chapter 34-20G.
- (D) Any other additional information as the City Manager or City Manager's designee may deem necessary for an investigator to evaluate the character and business responsibility of the

applicant in compliance with the South Dakota Department of Health regulations pursuant to SDCL Chapter 34-20G.

### **§ 123.10 APPLICATION FEE**

At the time an applicant files an application according to § 123.09, applicant shall pay a non-refundable fee to the City in an amount established by resolution 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.

### **§ 123.11 ANNUAL LICENSE FEE**

Within 30 days of receiving a cannabis establishment registration from the South Dakota Department of Health pursuant to SDCL Chapter 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. The annual license fee is in addition to the initial application fee required pursuant to § 123.11. 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.

### **§ 123.12 ADDITIONAL PERMITS AND LICENSES**

A license issued pursuant to this Chapter 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 establishment including, without limitation, the registration issued by the South Dakota Department of Health pursuant to SDCL Chapter 34-20G, zoning permits, plat approvals, or building or construction permits required by the City of Vermillion Code of Ordinances or South Dakota law.

### **§ 123.13 INSPECTIONS AND FACILITY STANDARDS**

During review of the application and at all reasonable times after a license is issued, the City's governing body or designee may enter and inspect the licensed premises contained in the application or license to determine if the licensed premises meet or continue to meet the requirements of all City ordinances and state statutes, and is being maintained in accordance with the following facility standards:

- (A) Security requirements;
- (B) Structural design requirements;
- (C) Lighting;
- (D) Hours of operation, and

(E) Cameras/layout.

## **§ 123.14 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 sufficient for the City's governing body consideration 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 Chapter and the City of Vermillion Code of Ordinances, and with the plans and descriptions submitted as part of the application. No license shall be approved by the City's governing body until after the City Manager or the City Manager's designee has completed a background check of the owners or entity members, managers, officers, directors, shareholders, partners or associates and proposed employees of the proposed establishment. The City's governing body or designee shall deny any application that does not meet the requirements or limitations of this Chapter, and shall deny any application that contains any false, misleading, or incomplete information.

(B) If the City's governing body or designee has determined that all requirements for an establishment license are met and upon payment of the application fee in advance by the applicant, the City's governing body or designee may, in their discretion, approve the issuance of a license if the City's governing body or designee believes the issuance to be in the public's best interest. When the City's governing body or designee considers an establishment application, they may consider all contents and proposals within the application, the observations and results of any inspection undertaken pursuant to § 123.14, the impact to the public that may result, whether the proposed establishment is located in a zone that permits its operation, the manner in which the applicant previously operated a establishment or other business licensed by the City; and history of compliance with city ordinances and state law.

(C) Within 30 days after the completion of the investigation of the application, the City's governing body or 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 U.S. 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 regulations 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).

## **§ 123.15 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) The licensee fails to pay the annual license fee to the City within 30 days of the issuance of the state registration certificate in accordance with § 123.11, or
- (C) The licensee fails to obtain a certificate of occupancy from the City in accordance with § 123.17 within 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.

### **§ 123.16 CERTIFICATE OF OCCUPANCY**

Licensee shall not begin operation 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 Chapter, all applicable zoning regulations, 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 Chapter 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 § 123.11, and all registration application fees due in connection with the South Dakota Department of Health's review of the application.

### **§ 123.17 ANNUAL LICENSE FEE REFUNDABLE**

If a provisional license is automatically terminated by operation of § 123.15, the annual license fee paid pursuant to § 123.11 shall be refunded to applicant. The initial application fee paid pursuant to § 123.10 shall not be refunded. If a license is revoked pursuant to § 123.19, the annual license fee shall not be refunded.

### **§ 123.18 MEDICAL CANNABIS ESTABLISHMENT LICENSE RULES OF OPERATION**

Each medical cannabis establishment 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) Each establishment shall be owned, operated, kept, and maintained in accordance with the establishment requirements set forth in § 123.08 and facility standards set forth in § 123.13.

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

### **§ 123.19 LICENSE REVOCATION, PENALTIES AND REINSTATEMENT**

(A) Any medical cannabis establishment license may be revoked, cancelled or suspended for noncompliance with this Chapter, South Dakota Department of Health registration revocation, cancellation, suspension, or noncompliance with federal, state or City laws, regulations, or ordinances.

(B) Any person operating a medical cannabis establishment without a license is subject to a civil fine of up to \$500. Each day a establishment is operated without a license shall be a separate offense.

(C) Operation of a establishment without a license shall be deemed a public nuisance and subject to the provisions of Chapter 90 of the City of Vermillion Code of Ordinances. Such nuisance may be abated in any manner permitted by Chapter 90, SDCL Chapter 21-10, or other applicable laws, including, but not limited to, an action for injunctive relief.

(D) Revocation by operation of law will occur whenever a licensee or any of its employees or agents has been convicted of selling a cannabis product to any non-cardholder.

(E) In order to reinstate a license to active status following revocation, suspension or cancellation the applicant must tender a reinstatement fee of \$10,000 for the first revocation, suspension or cancellation under this Chapter, or \$15,000 for the second such revocation, suspension or cancellation. Upon the third such revocation, suspension or cancellation, the license shall automatically terminate and may not be reinstated or renewed.

### **§ 123.20 NO CITY LIABILITY; INDEMNIFICATION; NO DEFENSE**

(A) By accepting a license issued pursuant to this Chapter, 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 licensee, cardholders, licensed premises owners, licensee operators, employees, clients, or customers for a violation of state or federal laws, rules, or regulations.

(B) By accepting a license issued pursuant to this Chapter, 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 establishment 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 unless permitted by SDCL Chapter 34-20G.

Dated at Vermillion, South Dakota this \_\_\_\_ day of \_\_\_\_, 2021.

THE GOVERNING BODY OF THE CITY  
OF VERMILLION, SOUTH DAKOTA

BY \_\_\_\_\_  
Kelsey Collier-Wise, Mayor

ATTEST:

BY \_\_\_\_\_  
Michael D. Carlson, Finance Officer

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