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## ORDINANCE 2227-5-132

AN ORDINANCE TO ADD CHAPTER 5.80 TO TITLE 5 OF ORDINANCE IN REVISION NO. 850, COMMONLY KNOWN AS THE MUNICIPAL CODE OF THE CITY OF HURON, SOUTH DAKOTA, PERTAINING TO BUSINESS LICENSE AND REGULATIONS – CANNABIS ESTABLISHMENTS LICENSE.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF HURON, SOUTH DAKOTA:

That Chapter 5.80 be added to Title 5 of Ordinance in Revision No. 850 to read as follows:

### **5.80.010 - PURPOSE AND INTENT.**

This ordinance repeals and replaces Ordinance 2224 a temporary ordinance regarding the issuance of local medical cannabis establishment permits and/or licenses. The City Commission of the City of Huron hereby enacts the following licensing ordinances in order to ensure that cannabis establishments within the municipal boundaries of the city and joint jurisdictional area 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.

### **5.80.020 – DEFINITIONS.**

The terms used in this chapter, unless the context otherwise plainly requires, shall mean as follows:

- (1) **Cannabis (or Marijuana):** all parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds. The term does not include fiber produced from the mature stalks of the plant, or oil or cake made from the seeds of the plant, or the resin when extracted from any part of the plant or cannabidiol in a drug product approved by the United State Food and Drug Administration. 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. (SDCL 34-20B-1(12)).
- (2) **Cannabis Cultivation Facility:** in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.
- (3) **Cannabis Dispensary:** in addition to the definition in SDCL 34-20G-1, this term is further 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.
- (4) **Cannabis Establishment:** a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.
- (5) **Cannabis Product Manufacturing Facility:** in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.
- (6) **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

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humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures.

- (7) **Cannabis Testing Facility:** in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

#### **5.80.030 - CLASSIFICATION AND FEES.**

- (1) This license allows the establishment to cultivate, manufacture, test, or dispense cannabis. A separate license is required for each type of establishment. The licensing period runs from January 1 through December 31. Fees shall be set by resolution of the governing body.
- (2) **Classes of License:** Each cannabis establishment shall have its own class of license. The four license classes are Cannabis Cultivation License, Cannabis Dispensary License, Cannabis Product Manufacturing License, and Cannabis Testing License.

#### **5.80.040 - LICENSES REQUIRED.**

- (1) It shall be unlawful for any person or entity to create or operate a cannabis establishment in the City without first having obtained a license from the City and a registration certificate from the State for each cannabis establishment to be operated in connection with such business. Such license and certification shall be always kept current, and the failure to maintain a current license and certification shall constitute a violation of this section.
- (2) **Multiple Licenses:** A person or entity who intends to conduct activities which would meet the definition of multiple cannabis establishments must, prior to operating such cannabis establishments, obtain a license for each class of cannabis establishment. A person or entity may hold more than one class of license except when otherwise prohibited by this chapter.
- (3) **Conditional Use Permit.** No cannabis establishment may be located or operate in the city without the appropriate valid and current conditional use permit issued by the city pursuant to Title 23. A violation of this provision is subject to the general penalty provision in section 5.80.130. Each day of the violation constitutes a separate offense.
- (4) **State of South Dakota Registration Certificate.** No cannabis establishment may be located or operate in the city without the appropriate valid and current cannabis establishment registration certificate issued by the State of South Dakota pursuant to rules promulgated under SDCL 34-20G. A violation of this provision is subject to the general penalty provision in 5.80.130. Each day of the violation constitutes a separate offense.
- (5) **City Issued Establishment License.** No cannabis establishment may be located or operate in the city without the appropriate valid and current cannabis establishment license issued by the city pursuant to this chapter and Title 23. A violation of this provision is subject to the general penalty provision in section 5.80.130. Each day of the violation constitutes a separate offense.

#### **5.80.050 - NUMBER OF LICENSES RESTRICTED.**

- (1) The number of cannabis establishment licenses shall be restricted by license class. For Cannabis Dispensary Licenses, the number of licenses is limited to four (4) in City limits and two (2) within the Joint Jurisdictional Area. **The City may hold any or all Cannabis Dispensary Licenses and operate such dispensaries in any manner provided by state law.** For all other cannabis establishment licenses, the number of licenses is unlimited. The numerical limits for each class of cannabis establishment may be altered at any time by resolution of the City commission.

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- (2) In the event the numerical cap is lowered to an amount less than the number of the existing licenses in that class, no existing licensee shall be prevented from continuing operation during the license term, requesting modifications to application information, from renewing such license for consecutive, subsequent years, or from transferring such license, 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 or a transfer approved, based upon grounds other than the numerical limit being exceeded.
- (3) Special Procedures for Capped Licenses:
  - (a) For license classes where the Council has established a numerical cap, applications shall be accepted by the special procedures provided in this section.
  - (b) These special procedures shall apply whenever a license becomes available in a capped license class.
  - (c) When such availability occurs, the City shall publish an invitation for applications on the City's website stating the deadline to apply, and the location applications may be submitted. No application for a capped license class will be accepted prior to publication of the invitation nor after the deadline established in the invitation.
  - (d) Applications submitted pursuant to an invitation must be submitted in writing and sealed. An applicant may not supplement their application after the deadline has passed.
  - (e) Once the deadline has passed, the finance officer shall open the applications and review each application for completeness. Complete applications shall be forwarded to the City commission. Applications which are only substantially complete shall be forwarded to the City commission to determine whether such applications contain sufficient information for further consideration.
  - (f) The finance officer shall determine by lottery the order in which the City commission considers the applications, **however an application submitted by the City must be considered before the consideration of any other application.**
  - (g) The merits of the applications will then be considered by City commission. The City commission will approve or deny applications in the established order but may review all applications before deciding on any individual application. The City commission will approve or deny the applications in order until all applications have been acted on or the numerical cap has been reached. If the numerical cap has been reached and there are still applications which have not been acted on, such undecided applications shall be deemed rejected.
  - (h) If no applications are received following an invitation for applications, or if the numerical cap is not reached pursuant to an invitation for applications, these special rules shall no longer apply and applications may be received, processed, and considered on a first come, first served basis beginning at open of business the day following the City commission meeting at which the last application was acted upon pursuant to the invitation for applications. Such applications must be delivered in writing to the finance office no earlier

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- than the time specified above and applications received before such time are deemed rejected.
- (i) If the numerical cap is then reached while using the first come, first served system, and a license subsequently lapses making a license available, these special procedures shall apply to issuing the license.

## **5.80.060 APPLICATION PROCESS – INITIAL LICENSE, RENEWALS AND TRANSFERS.**

### **(1) Initial License:**

- (a) Applicants must first obtain a conditional use permit from the city pursuant to Title 23. Said applications are available at the City Planning Office.
  - (b) Upon approval of the Conditional Use Permit, the applicant shall obtain a Registration Certificate from the State of South Dakota pursuant to rules promulgated under SDCL 34-20G. The applicant must provide the city with a copy of the state issued registration certificate.
  - (c) Upon approval by the State of South Dakota, applicant shall apply for a city cannabis establishment license and pay the applicable city license fees. The application will then be submitted to the governing body for consideration.
  - (d) Applications for a cannabis establishment license must be made on a form provided by the city. No other application form will be considered. The application form 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 meets the zoning requirements in Title 23, 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. A sworn statement that no principal officer, owner, or board member has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction.
    - v. Any additional information requested by the city.
  - (e) Action by City commission:
- (2) The City commission will consider a completed application at the next available City commission meeting following submittal, provided that such application must be submitted at least 15 days in advance of a City commission meeting. Applications are generally processed on a first come, first served basis except as further provided by this chapter.
  - (3) The City commission may approve or deny an application in full or on condition. Such action of the City commission must take place within thirty (30) days after the application's first presentment to the City commission.
  - (4) If approved, the mayor and finance officer will endorse the application and notify the applicant of approval within 3 days of the City commission's approval. If the Council imposes any conditions, such conditions shall be listed on the license at the time of issuance. No approved application shall become effective, and no license shall be issued until the applicant provides to the finance officer a copy of the applicant's certificate of registration from the state relating to the cannabis establishment for which the license was approved.
  - (5) If denied, the City commission must state the basis on which the application was denied, which may include, but is not limited to: incorrect application information, missing required application criteria, insufficient detail in application, nonpayment of any obligation, proposed activity would violate City ordinance (including zoning), proposed activity would violate state

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law or regulations, no license available due to maximum number already issued, proposed location not zoned properly, proposed location does not comply with an applicable buffer zone, or concerns over potential building, fire, or nuisance code issues.

**(2) Renewal:**

- (a) Each license may be renewed only by making application as provided in this chapter. Applications will be submitted to the governing body for consideration.
- (b) 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.
- (c) Failure to renew a license in accordance with this section 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.
- (e) The renewal application must specify if any information has changed from its prior application.
- (f) The renewal application must be accompanied by all payments relating to the renewal application as well as a copy of the licensee's state certification.
- (g) The renewal application must re-confirm or prove all the requirements applicable to new applications remain met.
- (h) An applicant is not entitled to renewal of their license and the license will only be renewed by City commission after consideration of the facts and circumstances pertaining to each individual license. **An applicant does not have a protected property interest in a license issued by the City pursuant to this chapter.**

**(3) Transfer or Modification of License:** No license shall be transferred or modified except with the approval of the City commission. Prior to any transfer of a license from a licensee to an unaffiliated person, people, or entity, the licensee and the proposed transferee must complete a transfer application. Such transfer application must include all information required for a new application as to the proposed transferee and pay a transfer application fee. The City commission shall then approve, deny, or conditionally approve the proposed transfer using the same factors and timetables as apply to renewal applications. A transferred license is subject to all provisions and timetables applicable to a new or renewed license.

- (a) Location Transfer: If the owner requests to move the establishment to a different physical location, they shall follow the application process in this chapter and title 23.
- (b) Ownership Interest Transfer: An application to transfer less than 50 percent of the ownership interest in a cannabis establishment must include:
  - i. A completed transfer of ownership interest form;
  - ii. Photocopies of a valid form of identification issued in South Dakota, or its equivalent issued in another U.S. jurisdiction, for any new principal officers and board members;
  - iii. Certification that background checks have been completed for any new cannabis establishment agents; and
  - iv. The applicable fee.

**5.80.070 - ISSUANCE OF LICENSE.**

- (1) The city will issue a license unless:
  - (a) The applicant has made a false statement on the application or submits false records or documentation; or
  - (b) Any owners, principal officer, or board member of the applicant is under the age of twenty-

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- one (21) years; or
  - (c) Any owner, principal officer, or board member of the applicant has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction;
  - (d) The proposed location does not meet the applicable zoning requirements under Title 23;
  - (e) The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder;
  - (f) The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
  - (g) 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
  - (h) 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
  - (i) The applicant will not be operating the business for which the license would be issued.
- (2) 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.
- (3) 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.

#### **5.80.080 - CITY NEUTRALITY AS TO APPLICANTS.**

- (1) If more than one establishment license application is to be considered by the governing body at the same time, the finance director shall draw lots to determine placement on the meeting agenda.
- (2) Upon request from the State of South Dakota as to the city's preference of applicants, the city will neither support nor oppose any registration certificate application under consideration by the State of South Dakota. Likewise, if inquiry is made by the State of South Dakota, the city will abstain from endorsing any application as beneficial to the community.

#### **5.80.090 – SUSPENSION.**

- (1) A license may be suspended if the license holder or an employee or agent of the license holder:
- (a) Violates or is otherwise not in compliance with any section of this article.
  - (b) Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment.
  - (c) Knowingly dispenses or provides cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.
- (2) A license may be suspended if the license holder has its state-issued registration certificate suspended, revoked, or not renewed by the state or if the registration certificate is expired.
- (3) A license may be suspended if the license holder creates or allows to be created a public nuisance at the cannabis establishment.
- (4) In the event a licensee's state certification is suspended, the licensee's City license shall automatically be suspended until such time as the state certification returns to good standing. If such state certification status persists long enough for the City license to be deemed inactive, such inactivity may serve as independent grounds for revocation of the City license.

#### **5.80.100 – REVOCATION.**

- (1) A license may be revoked if the license is suspended under section 5.80.090 and the cause for the suspension is not remedied.

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- (2) A license may be revoked if the license is subject to suspension under section 5.80.090 because of a violation outlined in that section and the license has been previously suspended in the preceding 24 months.
- (3) A license is subject to revocation if a license holder or employee of a license holder:
  - (a) Gave false or misleading information in the material submitted during the application process;
  - (b) Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises;
  - (c) Operated the cannabis establishment or the business of the cannabis establishment for which a license is required under this article while the license was suspended;
  - (d) Repeated violations of this chapter or Title 23;
  - (e) 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);
  - (f) 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;
  - (g) 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
  - (h) The license holder has its state-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired.
  - (i) The license holder allows a public nuisance to continue after notice from the city.
- (4) In the event a licensee's state certification is revoked, the licensee's City license shall automatically be suspended until such time as the state certification returns to good standing. If such state certification status persists long enough for the City license to be deemed inactive, such inactivity may serve as independent grounds for revocation of the City license.

#### **5.80.110 - SUSPENSION AND REVOCATION PROCESS.**

- (1) 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.
- (2) 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 city commission.
- (3) 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.
- (4) 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.
- (5) 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.

#### **5.80.120 - APPEAL.**

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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 article may appeal to the City commission 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 the city finance officer and will be considered by the City commission at a regularly scheduled meeting within one month of the receipt of the appeal.

#### **5.80.130 - REINSTATEMENT OF LICENSE.**

The governing body will consider reinstating a suspended and/or revoked license if the license holder has met the following requirements:

- (1) Suspension or revocation period has ended, and
- (2) An inspection was conducted showing the licensee fulfilled all deficiencies/requirements which caused the suspension and/or revocation, and
- (3) License reinstatement fee has been paid to the City.

#### **5.80.140 - LICENSES NOT TRANSFERRABLE.**

No cannabis establishment license holder may transfer the license to any other person or entity, nor may a license holder operate a cannabis establishment at any place other than the address designated in the application unless they conduct the transfer process in section 5.80.060.

#### **5.80.150 - HOURS OF OPERATION FOR DISPENSARIES.**

Hours of operation shall be set per section 23.11.050 of Title 23.

#### **5.80.160 - LIABILITY FOR VIOLATIONS.**

Notwithstanding anything to the contrary, for the purposes of this article, 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 article, 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.

#### **5.80.170 – PENALTIES.**

Any person who operates or causes to be operated a cannabis establishment without a valid license or in violation of this article 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.

#### **5.80.180 - 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, approved and adopted this 25th day of October, 2021 on a motion by Drew Weinreis, seconded by Bryan Smith. FOR: Bryan Smith, Drew Weinreis, Rich Bragg, and Gary Harrington. OPPOSED: Mark Robish. CARRIED