

ORDINANCE 2021-004

AN ORDINANCE TO ADD TITLE XVI, 160.1 THROUGH 160.19 REGARDING MEDICAL MARIJUANA DISPENSARIES

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 Whitewood 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 WHITEWOOD, SOUTH DAKOTA AS
FOLLOWS:**

CHAPTER 160:

160.01: Intent:

The City Council of the City of Whitewood hereby enacts the following licensing ordinances in order to ensure that cannabis establishments within the municipal boundaries 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.

160.02: Definitions:

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

APPLICANT: a person or entity seeking or renewing a cannabis establishment license. If the application is an entity and not a natural person, applicant shall include all persons who are members, managers, officers, directors, and shareholders of such entity.

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 ESTABLISHMENT: in addition to the definition in SDCL § 34-20G-1 *et. seq.*, this term is defined to include a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

CANNABIS CULTIVATION LICENSE: in addition to the definition in SDCL § 34-20G-1 *et. seq.*, this term is further defined as a license allowing one to acquire, possess, cultivate, deliver, transfer, transport, supply, or sells cannabis and related supplies to a medical cannabis establishment

CANNABIS DISPENSARY LICENSE: in addition to the definition in SDCL § 34-20G-1 *et. seq.*, this term is further defined as a license allowing one to acquire, possess, store, deliver, transfer, transport, sell, supply, or dispense cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders.

CANNABIS ESTABLISHMENT LICENSE: in addition to the definition in SDCL § 34-20G-1 *et. seq.*, this term contains any license issued pursuant to this chapter for the purposes of cannabis cultivation, testing, manufacturing, or dispensing.

CANNABIS MANUFACTURING LICENSE: in addition to the definition in SDCL § 34-20G-1 *et. seq.*, a license allowing one to acquire, possesses, manufacture, deliver, transfer, transport, supply, or sell cannabis products to a medical cannabis dispensary

CANNABIS TESTING LICENSE: in addition to the definition in SDCL § 34-20G-1 *et. seq.*, this term is further defined as a license allowing one to analyze the safety and potency of cannabis.

CARD HOLDER: shall mean any person who has been issued and possesses a valid registry identification card pursuant to SDCL Chapter 34-20G.

CITY COUNCIL: The City Council of the City of Whitewood, South Dakota.

CITY: The City of Whitewood, South Dakota. The term includes any City personnel, employees, or agents.

DEPARTMENT: the South Dakota Department of Health.

DISQUALIFYING FELONY OFFENSES: Shall mean a crime that was classified as a felony in the jurisdiction where the person was convicted.

FINANCE OFFICER: The currently serving finance officer of the City of Whitewood, South Dakota.

INITIAL APPLICATION : Shall mean the first application filed for a dispensary.

KNOWINGLY: Knowledge, knowingly, and all derivatives thereof, means a knowledge that the facts exist which bring the act or omission within the provisions of any Ordinance, statute, or regulation. An actor has knowledge if that actor is aware that the facts exist which bring the act or omission within the provisions of any Ordinance. Knowledge of the unlawfulness of such act or omission under statute, regulation, or Ordinance is not required to meet the “knowingly” standard.

LICENSEE: Shall mean any person or business entity that has been issued and holds a valid, current cannabis establishment license, of any type, in the City. If the licensee is an entity and not a natural person licenses shall include all the persons who are members, managers, officers, directors and shareholder of such entity.

LICENSED PREMISES: Shall mean the building within which the licensee operates.

MAYOR: The mayor of the City of Whitewood, South Dakota.

RETAIL AREA : The area of a cannabis establishment where a customer can view and/or purchase cannabis or cannabis products.

SECURED AREA: All parts of a cannabis dispensary except an unsecured waiting room where people may gather before entering the verification lobby or after leaving the secured exit.

SECURED EXIT: The controlled location of a cannabis dispensary located between the retail area of a cannabis dispensary and the non-secured area or exterior with a secured door at both its entrance and exit which allows eligible persons to exit the retail area.

STATE: The state of South Dakota.

VERIFICATION LOBBY: The controlled location of a cannabis dispensary located between the non-secured area or exterior of a cannabis dispensary and the retail floor with a secured door at both its entrance and exit which allows eligible persons to enter the retail area.

160.03: Classes of Licenses and Cannabis Establishment License(s) Required

Classes of Licenses: Each cannabis establishments shall have the class of license corresponding with the definition set forth above. The four license classes are:

1. A Cannabis Cultivation License (as defined above).
2. A Cannabis Testing License (as defined above).
3. A Cannabis Dispensary License (as defined above).

4. A Cannabis Product Manufacturing License (as defined above).

License Required: It shall be unlawful for any person or entity to create or operate any kind of business associated with cannabis in the City without first having obtained the appropriate cannabis establishment license(s) from the City and a registration certificate from the State for each cannabis establishment to be operated in connection with such business. Such license(s) and certification shall be always kept current, and the failure to maintain a current license and certification shall constitute a violation of this section.

- A. **Multiple Licenses:** A person or entity who intends to conduct activities which would meet the definition of multiple license types in a cannabis establishment must, prior to operating such cannabis establishments, obtain a license for each class of cannabis establishment and pay a separate application fee for each. A person or entity may hold more than one class of license except when otherwise prohibited by this chapter.
- B. **License Location:** Each license shall authorize a single cannabis establishment to operate at a single location. Licenses of different classes may overlap except when otherwise prohibited by this chapter.
- C. **License Duration:** Each license issued is effective from January 1 through December 31, regardless of the time of year such license is approved. Each license expires at 11:59:59 P.M. on December 31 unless, prior to the expiration, the City Council has approved, or conditionally approved, the renewal of such license for the following calendar year.

160.04: Number of Licenses Restricted:

- A. The number of cannabis establishment licenses shall be restricted by license class. For each class of license set forth herein, there is a maximum of two licenses. **The City may hold one of each type of license and operate the license in any manner provided by state law.** For all types of cannabis establishment licenses, the number of licenses is limited to two. The numerical limits for each class of cannabis establishment may be altered at any time by resolution or amended ordinance of the City Council.

160.05: Application Processes:

- A. Application for License: An applicant must submit a signed application, using the City's online portal, to the City Council using the form established by the City. Such application must include:
 - 1. The legal name of the applicant.
 - 2. The physical address of the applicant.
 - 3. The name and date of birth of each principal officer and board member of the applicant entity.
 - 4. Previous experience operating a legal cannabis establishment, if any.

5. Summary of operating procedures, including procedures to ensure accurate record keeping, adequate security measures, sufficient fire and building code considerations, and compliance with all other requirements of this chapter.
6. Confirmation that none of the principal officers or board members has served as a principal officer or board member for a medical cannabis establishment that has had governmental license or certification revoked in any jurisdiction.
7. Confirmation that none of the principal officers or board members is under twenty-one years of age.
8. Confirmation that the applicant has conducted, and paid for, a background check through the Whitewood Police Department into the criminal history of each principal officer, board member, agent, volunteer, or employee involved in the operation at the time of application. No persons with a felony conviction shall obtain a license.
9. Proof that at least one principal officer is a resident of this state.
10. Payment of the applicable cannabis establishment license fee in the form of a certified check.
11. A copy of the applicant's sales tax license.
12. Proof that all applicable property taxes, fees, business improvement district taxes, and pending assessments relating to the cannabis establishment location have been paid.
13. Proof of financial responsibility in the amounts and manner established in this chapter below.
14. A sworn statement that the application contains no false statements made or omissions of any material matter in any application for a license.
15. The applicant's notarized signature.
16. An acknowledgement that an application submitted by the City is entitled to a greater preference.
17. A statement describing the applicant's community involvement, if any.

B. Action by City Council:

1. The City Council will consider a completed application at the next available City Council meeting following submittal, provided that such application must be submitted at least 15 days in advance of a City Council meeting. Applications are generally processed on a first come, first served basis except as further provided by this chapter.

2. The City Council may approve or deny an application in full or on condition. Such action of the City Council must take place within thirty (30) days after the application's first presentment to the City Council.
3. If approved, the mayor and finance officer will endorse the application and notify the applicant of approval within three (3) days of the City Council'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.
4. If denied, the City Council 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 any applicable City ordinance, the proposed activity would violate state law or regulations, no license type available due to maximum number already issued, proposed location not properly located, proposed location does not comply with these ordinances, concerns over potential building, fire, nuisance code issues, or a lack of community involvement.

C. Special Procedures for Capped Licenses:

1. For license classes where the City Council or City has established a numerical cap, applications shall be accepted by the special procedures provided in this section.
2. These special procedures shall apply whenever a license becomes available in a capped license class.
3. When such availability occurs, the City may publish an invitation for applications on the City's website or a newspaper stating a deadline by which to apply, and the location where 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.
4. 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.
5. Once the deadline has passed, the finance officer shall open the applications and review each application for completeness. Complete applications will be forwarded to the City Council. Applications which are only substantially complete may be forwarded to the City council and the City Council may determine whether such applications contain sufficient information for further consideration.

6. The finance officer shall determine by lottery the order in which the City Council considers the applications, **however an application submitted by the City must be considered before any other application.**
7. The merits of the applications will then be considered by City council. The City council will approve or deny applications in the established order but may review all applications before deciding on any individual application. The City Council 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.
8. 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 Council 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 than the time specified above and applications received before such time are deemed rejected.
9. 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.

D. Renewal Process:

1. A person or entity operating pursuant to a license must apply for renewal of such license at least 45 days but not more than 90 days prior to the expiration of such license using the form provided by the finance office. Such application must include payment of the renewal application fee.
2. The City Council will consider renewal applications using the same factors and timelines applicable to new applications. In addition, the City Council may consider in approving, denying, or conditionally approving a renewal application, any changed information from prior applications, concerns over actual operations or violations, nonpayment of obligations, or any other information reasonably related to the continued operation of the cannabis establishment.
3. Preference may be granted to existing license holders based on a dispensary's community involvement, facility upkeep and investment, days and hours of operation, history of interactions with law enforcement.
4. The renewal application must specify if any information has changed from its prior application.

5. 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.
6. The renewal application must re-confirm or prove all the requirements applicable to new applications remain met.
7. An applicant is not entitled to renewal of their license and the license will only be renewed by City Council 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.**

160.06: Transfer or Modification of License:

- A. No license shall be transferred or modified except with the approval of the City Council.
- B. 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 Council 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 timelines applicable to a new or renewed license.
- C. Prior to any modification of ownership or management of a licensed cannabis establishment or cannabis establishment license, the licensee must provide 30 days' notice to the finance officer in writing of the proposed changes.
- D. Prior to any modification of location or layout of a licensed cannabis establishment, the licensee must provide 30 days' notice to the finance officer in writing of the proposed changes.
- E. In relation to a change in ownership, management, location, or layout, the mayor may approve minor changes administratively and charge an administrative modification fee. However, if the mayor determines the proposed changes are not minor and substantially alter the operation of the cannabis establishment as previously approved, the mayor shall direct the matter to be placed on the agenda of the next available City Council meeting. The City Council shall then approve, deny, or conditionally approve the proposed changes using the same factors and timetables as apply to renewal applications. For changes referred to the City Council, applicant shall also pay a full modification fee.
- F. Transfers or modifications of a license shall not extend the term of any license so modified or transferred.
- G. Transfers, modifications, and renewals occurring simultaneously for the same license require separate applications and payment of separate fees. However, the City Council may waive one or more, but not all, of the fees and consider the matters as a joint application.

160.07: License to Remain Active:

- A. Every license issued pursuant to this chapter must remain in continuous, active use. A license that is not being actively used for a period of more than 14 consecutive days or for 28 cumulative days per year may be deemed inactive by the City finance officer. Active where the licensee is open and available to conduct business, but such business cannot occur due to factors outside of the control of the licensee.

160.08: Fees Established:

Fees relating to cannabis establishment licenses are established as provided by this section. The fees apply to each class of cannabis establishment license unless expressly stated otherwise. An applicant for each type of license must pay a separate fee. All amounts set for fees in this section may be modified at any time by resolution of the Whitewood City Council. Refunds will not be provided for any unsuccessful applicants. The types and amounts of fees are as follows:

New cannabis establishment license application fee- \$7500.00

Renewal cannabis establishment license application fee- \$7500.00

Transfer cannabis establishment license application fee- \$7500.00

Administrative modification of cannabis establishment license fee- \$50.00

Full modification of cannabis establishment license fee- \$500.00.

160.09: General Obligations of Licensee:

- A. The following obligations shall apply to each licensee and cannabis establishment:
 - 1. Each licensee must keep any information stated in an approved application current and up to date.
 - 2. Each licensee must maintain any eligibility criteria or certifications required by this chapter for an application.
 - 3. All cannabis establishments must conduct all business activities within an enclosed structure except such loading and unloading which is incidental to such indoor activities.
 - 4. No cannabis or related paraphernalia may be displayed or kept in a business to be visible from outside the cannabis establishment.
 - 5. No cannabis establishment may emit any gas, vapors, odors, smoke, dust, heat, or glare that is noticeable at or beyond the property line of the cannabis establishment. Sufficient measures and means of preventing the escape of such substances from a cannabis establishment must be always provided. If any gas, vapors, odors, smoke, dust, heat, or

glare or other substances exit a cannabis establishment, the owner of the premises and the licensee are jointly and severally liable for such conditions and are responsible for immediate, full clean-up and correction of such condition. The licensee must properly dispose of all such materials, items, and other substances in a safe, sanitary, and secure manner and in accordance with all applicable federal, state, and local laws and regulations.

6. Each licensee must retain all books and records necessary to show fully the business transactions of the licensee for a period of the current tax year and the three immediately prior tax years. Such records shall be maintained in a manner which, if released to the City, would not contain information protected by state law. Such records must be provided to the City upon request.
7. No cannabis establishment may employ any person who is not at least 21 years of age.
8. Each licensee must provide adequate security to prevent criminal activity on cannabis establishment premises, including parking areas. Any employees or agents providing security must meet the requirements of all applicable City ordinances.
9. A licensee must pay all delinquent court judgments arising out of their dispensary and dispensary operations.
10. A licensee must not permit the general public to access any part of a cannabis establishment except where such access is permitted by law. A licensee must put in place reasonable security measures to prevent such access.
11. A licensee must operate as provided in the application, comply with any conditions attached to their license, and comply with all state and local laws.
12. A person or entity may not take any actions for which a license is required without holding both a license issued under this chapter and a corresponding state license.
13. The licensed premises shall be located at least a thousand (1,000) feet from the nearest property line of any public or private school. A medical cannabis dispensary shall be located at least five hundred (500) feet from the property line of any residence, community centers, church, park and licensed childcare facility.

B. Additional Requirements for Cannabis Dispensaries

1. No cannabis dispensary may share any physical location with any other type of business or land use type. A cannabis dispensary may only sell cannabis, cannabis products, and paraphernalia aiding in the consumption of these items and may not sell any other item or service.

2. Entry to a cannabis dispensary must be restricted. Each cannabis dispensary must have a verification lobby and secured exit. The verification lobby and the secured exit must be separate from each other.
3. When granting access to non-employees, the licensee shall unlock the entry door to the verification lobby, allow the person or people to enter the verification lobby, and then verify that each person in the verification lobby is legally permitted to access and purchase cannabis or cannabis products. If any person is found to be ineligible, that person must leave the verification lobby before the verification lobby exit door is opened into the retail area. Once all individuals in the verification lobby have been confirmed to be eligible to enter the retail area, the entry door to the verification area must be closed and locked. Then the door of the verification lobby into the retail area may be unlocked and the individuals may enter the retail area. The exit door of the verification lobby must lock after all individuals leave and before allowing other individuals into the verification lobby. At all times the exit door of the verification lobby is unlocked the entry door to the verification area must be closed and locked.
4. Individuals must leave the retail area through a secured exit. The entry door to the secured exit must remain locked until needed for use. The licensee shall then unlock the entry door to the secured area to allow individuals to enter the secured exit from the retail area, ensure that the entry door is closed and locked, and then unlock the exit door of the secured exit. Once all individuals have left the secured exit, the exit door to the secured exit must be closed and locked.
5. A licensee must not permit a non-employee to access any secured area of a cannabis dispensary other than the verification lobby, retail area, and secured exit.
6. A cannabis dispensary may be open to the public only between the hours of 9:00 a.m. and 5:00 p.m. daily.
7. A cannabis dispensary must not maintain any quantity of cannabis in excess of the amount permitted by State law.
8. All sales of cannabis must be made in person, directly to the purchaser, within the retail area of the cannabis dispensary. No sales may be made via telephone, internet, or other means of remote purchase. Deliveries must occur in person to the purchaser at the time of purchase within the retail area of the medical cannabis dispensary. No drive-up windows or other similar delivery process may be allowed.
9. All cannabis dispensaries licensed under this ordinance must maintain their medical cannabis dispensary and premises within the following minimum requirements:
 - a. Every dispensary licensee must inspect their premises from lot line to lot line, all adjacent streets, sidewalks, and alleys adjoining their premise, and sidewalks and alleys within one hundred (100) feet of such premise lot lines and shall remove any

litter and debris found there on a daily basis to prevent the accumulation of litter and debris and the accidental or uncontrolled release of cannabis or cannabis products.

- b. All solid waste and recyclable materials must be stored in refuse containers made of metal or approved plastic and shall be equipped with secure lids or covers, and such covers must remain closed to prevent the intrusion of storm water or vermin.
- c. Refuse storage containers must be enclosed on all four sides by screening compatible with the principal structure and not less than two feet higher than the refuse container or must be otherwise effectively screened from the street and adjacent properties.

C. Crossover of Other Cannabis Establishments:

- 1. A cannabis testing facility may share a physical location with testing facilities that are authorized to handle other types of controlled substances.
- 2. A cannabis testing facility, cannabis cultivation facility, and a cannabis product manufacturing facility may share a physical location and the licensed area for each may overlap each other. However, a cannabis testing facility may not share a physical location with other types of cannabis establishments if the cannabis testing facility conducts activities other than cannabis testing.

160.10: Fire and Building Regulations:

- A. Licensees must comply with all applicable provisions of the City's fire and building codes.
- B. The building code official is authorized to require and apply standards applicable to any use and occupancy classifications to a cannabis establishment regardless of the cannabis establishment's classification when application of such other standard is substantially related to mitigating a unique hazard presented by a cannabis establishment.
- C. The fire code official is authorized to require and apply standards applicable to any use and occupancy classifications to a cannabis establishment regardless of the cannabis establishment's classification when application of such other standard is substantially related to mitigating a unique hazard presented by a cannabis establishment.
- D. All cannabis cultivation facilities, cannabis product manufacturing facilities, and cannabis dispensaries must be equipped with a fire sprinkler system throughout the entire licensed area.

160.11: Financial Responsibility:

- A. An applicant or licensee must file with the City finance officer certificates or policies of insurance issued by a responsible insurer in the amounts and for the purposes established below. The applicant must list the City as an additional insured on each policy.

- B. The applicant or licensee must maintain a commercial general liability policy, or equivalent, with a limit of not less than two million dollars (\$2,000,000.00) for each occurrence. If such insurance contains a general aggregate limit, it must be no less than double the occurrence limit.
- C. Upon request, the City may demand, and the applicant or licensee must provide proof of any other type of insurance required by law.

160.12: Unauthorized Conduct relating to Cannabis:

- A. No person may engage in any of the following conduct:
 - 1. Undertake any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice.
 - 2. Smoke cannabis on any form of public transportation, in any public place or any place that is open to the public, or on the property of any cannabis establishment.
 - 3. Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of cannabis.

160.13: Signage and Advertising:

- A. Cannabis establishments must apply for a sign permit with the City Council, or as otherwise provided by City Ordinance. All such meet the standards established in the City code.
- B. A cannabis establishment may not advertise in a manner that is misleading, deceptive, false, or is designed to appeal to minors.
- C. The owner or operator of a cannabis dispensary, must post in a conspicuous location a legible sign containing the following warnings:
 - 1. A warning that the use of cannabis may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or operate machinery when under the influence of or impaired by cannabis; and
 - 2. A warning that possession and distribution of cannabis is a violation of federal law; and
 - 3. A warning that consumption of cannabis on the property of a cannabis establishment is prohibited by law; and
 - 4. A warning that the smoking cannabis in public or on any form of public transportation is prohibited by law.
- D. Except as otherwise provided in this section it shall be unlawful to advertise any cannabis establishment or any cannabis product anywhere within the City where the advertisement is

in plain view of, or in, a place open to the general public, including advertising utilizing any of the following media: any billboard or other outdoor general advertising device as defined by the zoning code; any sign mounted on a vehicle; any hand-held or other portable sign; or any handbill, leaflet, or flier directly handed to any person in a public place, left upon a motor vehicle, or posted upon any public or private property. The prohibition in this section does shall not apply to:

1. Any sign located on the licensed premises of a cannabis establishment which exists solely for the purpose of identifying the location of the premises and which otherwise complies with this code and any other applicable City laws and regulations; or
 2. Any advertisement contained within a newspaper, magazine, or other periodical of general circulation within the City or on the internet.
- E. A cannabis establishment must not distribute or allow the distribution of any cannabis without charge within a cannabis establishment or at any other place for purposes of promotion, advertising, or any other purpose.

160.14: Suspension and Revocation:

- A. A license may be revoked or suspended for, among reasons, the following:
1. Violation of any provision of this ordinance.
 2. The license has been deemed inactive.
 3. Nonpayment of any obligation, including utilities.
 4. Failure to maintain proof of financial responsibility.
 5. Inadequate or faulty security measures, failure of security employees or agents to observe the requirements imposed by City ordinance, or surveillance cameras.
 6. Public safety concerns have been identified which may or may not rise to the level of a violation.
- B. Upon determination by the mayor that grounds exist for the suspension or revocation of a license, a notice of suspension or revocation shall be physically delivered and posted at the licensed location. Such notice shall state the grounds for the suspension or revocation, the time and date of a hearing with the City Council if the licensee wishes to contest the suspension or revocation, and whether the license is temporarily suspended pending the outcome of such hearing. Upon issuance of the notice, the mayor shall direct that a hearing be scheduled for the next available City Council meeting to consider the suspension or revocation of the license.

- C. In deciding whether a license will be suspended or revoked, the City Council shall consider all facts and circumstances relating to the grounds alleged in the notice to warrant suspension or revocation of the license. At the close of the hearing, the City Council may uphold the suspension or revocation or reverse the suspension or revocation. If the suspension or revocation is reversed, the City Council may impose any additional conditions on the license which are reasonably calculated to ensure that the aggrieved conduct does not reoccur.
- D. In the event a licensee's state certification is suspended or 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.

160.15: Liability and Indemnification:

- A. By accepting a license issued pursuant to this chapter, the licensee, the licensee's employees and all principal officers and board members thereof, waive and release the City, its officers, elected officials, employees, attorneys, and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of business owners, 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, each licensee agrees to indemnify, defend, and hold harmless the City, its officers, elected officials, employees, attorneys, agents, and insurers 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 cannabis establishment that is the subject of the license.

160.16: Compliance with other applicable laws.

- A. Except as may be otherwise provided in this ordinance, any law or regulation adopted by the state governing the cultivation, production, possession, or distribution of cannabis use shall also apply to cannabis establishments licensed by the City.
- B. If the state prohibits the sale or other distribution of medical cannabis through cannabis establishments, any license issued hereunder is revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.
- C. The issuance of any license pursuant to this chapter does not create an exception, defense, or immunity for any person or entity regarding any potential criminal liability the person or entity may have under federal law for the cultivation, possession, sale, distribution, or use of cannabis.

160.17: Enforcement, Penalty, and Nuisance:

- A. Any person or entity violating a provision of this chapter shall be subject to the general penalty provisions of the Whitewood City Code.
- B. No person, while acting as an agent of a licensee, shall take any action, or fail to take any action, that would cause a licensee to violate the provisions of this chapter. Such person causing a violation shall be subject to the general penalty provisions of the Whitewood City Code.
- C. In addition to any other remedy, the Mayor, City Council, or City Attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this chapter. Continued violations of this chapter are deemed to be a public nuisance. Such application for relief may include seeking a temporary restraining order, temporary injunction, and permanent injunction.
- D. In the event of a violation, suspension, or revocation where the licensee may no longer legally possess cannabis, cannabis products, or other restricted items, the licensee shall be responsible to pay the costs incurred by the City for securing, storing, safeguarding, transferring, or disposing of any cannabis, cannabis products, or other restricted items.

160.18: Severability and Prior Resolutions.

The provisions of this Title are severable. If any provision of these Ordinances or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of these Ordinances which can be given effect without the invalid provision or application. Any resolutions passed by the City of Whitewood prior to enactment of these Ordinances which address medical marijuana are revoked.

160.19. 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 article may appeal to the City Council by submitting a written appeal and request for a hearing 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, Whitewood, South Dakota, 57793. The appeal will be considered by the City Council at the next regularly scheduled monthly meeting or a specially scheduled hearing. Failure to request a hearing or submit a written appeal results in a waiver of the same.

Section 4.

The City Finance Officer shall cause notice of adoption of this ordinance to be published in the official newspaper and twenty (20) days after the completed publication, unless the referendum is invoked, this ordinance shall become effective.

(SEAL)

City of Whitewood

Mitchell U. Harmon, Mayor

ATTEST:

Cory Heckenlaible, Finance Officer

1st Reading 11/01/2021

2nd Reading 11/15/2021

Published 11/20/2021

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