

ORDINANCE NO. 684

AMENDMENT TO ORDINANCE 677 - AN ORDINANCE TO
CREATE LICENSING PROVISIONS FOR CANNABIS
ESTABLISHMENTS

BE IT ORDAINED by the Common Council of the City of Box Elder that Chapter 8 of the City of Box Elder Code of Ordinances hereby amended by adding new Article V as follows:

Article V. MEDICAL CANNABIS ESTABLISHMENTS

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Section 1. Medical Cannabis Establishment Licenses

(a) Definitions and general provisions.

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.

Cannabis (or Marijuana): definition as provided in SDCL 22-42-1

Medical Cannabis Cultivation Facility: in addition to the definition in SDCL 34-20G-1, this term is further defined as a License Holder that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

Medical Cannabis Dispensary or Dispensary: in addition to the definition in SDCL 34-20G-1, this term is further defined as a License Holder that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

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

Cannabis Product Manufacturing Facility: in addition to the definition in SDCL 34-20G-1, this term is further defined as a License Holder that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

Cannabis Products: any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures

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

License holder: a cannabis establishment that possesses a license under this article to operate the cannabis establishment for which the license was issued.

Public or private school. Any preschool, elementary school, middle school, secondary school, or high school. The term also includes any daycare or childcare center.

Unlicensed Cannabis Establishment: an entity that would otherwise meet the definition of a cannabis establishment, but which is not legally licensed by the City of Box Elder and does not have a current and valid registration certificate issued by the South Dakota Department of Health.

(b) License required.

- (a) 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 article. A violation of this provision is subject to the general penalty provision in Section 2-363 of this Code. Each day of the violation constitutes a separate offense.
- (b) No cannabis establishment may be located or operate in the City without the appropriate valid and current cannabis establishment registration certificate issued by the South Dakota Department of Health pursuant to rules promulgated under SDCL 34-20G. A violation of this provision is subject to the general penalty provision in Section 2-363 of this Code. Each day of the violation constitutes a separate offense.

(c) License application.

- (a) An application for a cannabis establishment license must be made on a form provided by the City. No other application form will be considered.
- (b) The applicant must submit the following:
 - (1) Application fee of \$5,000.
 - (2) An application that will include, but is not limited to, the following:
 - i. The legal name of the prospective cannabis establishment;
 - ii. The physical address of the prospective cannabis establishment that meets the zoning requirements in Chapter 44 - Zoning, of this Code.
 - iii. The name and birth date of each principal officer, owner, and board member of the proposed cannabis establishment.
 - iv. Operating procedures consistent with rules for oversight of the proposed medical cannabis establishment, including procedures to ensure accurate record keeping and adequate security measures.
 - v. Any additional information requested by the City.
- (c) Each principal officer, owner, and board member of the cannabis establishment must meet the qualifications of a license holder.
- (d) The City may be a license holder. The City's application for a cannabis establishment license will be given preference over any other application.
- (e) No applications will be considered by the City before 1 December, 2021.

(d) Issuance of license.

- (a) Once filed, the application will be referred to the appropriate City departments for an investigation into the applicant's eligibility for a license. If a license is available, the City will issue a license unless:
 - (1) The applicant has made a false statement on the application or submits false records

- or documentation; or
 - (2) The applicant is under the age of twenty-one (21) years; or
 - (3) The applicant has been convicted of a disqualifying felony offense as defined by South Dakota law; or
 - (4) The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
 - (5) The applicant has had a cannabis establishment license revoked by the City or a registration certificate revoked by the state in the 24 months preceding the application; or
 - (6) An applicant 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
 - (7) The applicant will not be operating the business for which the license would be issued.
- (b) If more applications are received prior to 1 December, 2021, than the number of licenses authorized by this Article for any type of medical cannabis establishment, and if the applicants are not disqualified from receiving a license pursuant to subsection (a) of this section, then the City Council shall hold a public hearing on each such application. At such hearing, all applicants for a medical cannabis establishment license will have the opportunity to demonstrate to the Council whether the application is beneficial to the community, pursuant to ARSD 44:90:03:11. In making such consideration, the City Council will consider, among other factors, the suitability of the proposed location for the cannabis establishment, the suitability of the applicant's character, and the applicant's history in operation of medical cannabis establishments. Following the hearing on each application, the City Council will determine whether to endorse the application as beneficial to the community pursuant to ARSD 44:90:03:11(1). Following the hearings, the City shall provide licenses to all applicants not disqualified pursuant to subsection (a) of this section; the endorsement by the City Council of those establishments determined to be beneficial to the Community shall so state on the license.
- (c) All City licenses for medical cannabis establishments shall be contingent upon licensure by all relevant agencies of the State of South Dakota.
- (d) 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.
- (e) There shall be a fee for newly issued licenses under this chapter for any medical cannabis establishment as provided in the City's master fee schedule. This fee shall be payable to the City Finance Officer following licensure by the City and all relevant agencies of the State of South Dakota, and before any operations are conducted at the licensed facility.

(e) Number of cannabis establishment licenses.

- (a) The number of cannabis cultivation facility licenses may not exceed two (2) for the first twenty thousand (20,000) of population or fraction thereof and may not exceed one for each additional ten thousand (10,000) of population or fraction thereof.
- (b) The number of cannabis testing facility licenses may not exceed two (2) for the first twenty thousand (20,000) of population or fraction thereof and may not exceed one for each additional ten thousand (10,000) of population or fraction thereof.
- (c) The number of cannabis manufacturing facility licenses may not exceed two (2) for the first twenty thousand (20,000) of population or fraction thereof and may not exceed one for each

additional ten thousand (10,000) of population or fraction thereof.

- (d) The number of cannabis dispensary licenses may not exceed two (2) for the first twenty thousand (20,000) of population or fraction thereof and may not exceed one for each additional ten thousand (10,000) of population or fraction thereof.
- (e) For the purposes of this section, population is equal to ninety percent of the City of Box Elder's population estimates published by the United States Census Bureau for each even-numbered year, except for the decennial year. For a decennial year, population is equal to the amount determined by the decennial federal census.
- (f) A license for any type of medical cannabis establishment authorizes the license holder to conduct only those activities that are authorized for the type of license by SDCL Chapter 34-20G.
- (g) Expiration of license and renewal.
 - (1) Each license expires one year from the date of issuance and may be renewed only by making application as provided herein. 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.
 - (2) The renewal fee is \$5,000.
 - (3) 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.
 - (4) 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.

(h) Suspension.

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

(i) Revocation.

- (a) A license may be revoked if the license is suspended under Section (h) and the cause for the suspension is not remedied.
- (b) A license may be revoked if the license is subject to suspension under Section (h) because of a violation outlined in that section and the license has been previously suspended in the preceding 12 months.
- (c) A license is subject to revocation if a license holder or employee of a license holder:
 - (1) Gave false or misleading information in the material submitted during the application process;

- (2) Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises;
- (3) Operated the cannabis establishment or the business of the cannabis establishment for which a license is required under this article while the license was suspended;
- (4) Repeated violations of Section (h)(3);
- (5) Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility conducting cannabis testing functions without a cannabis testing establishment license);
- (6) A license holder is delinquent in payment to the City, county, or state for any taxes or fees related to the cannabis establishment;
- (7) A license holder has been convicted of or continues to employ an employee who has been convicted of a disqualifying felony offense as defined by SDCL 34-20G; or
- (8) The license holder has its registration certificate issued by the South Dakota Department of Health suspended, revoked, or not renewed or the registration certificate is expired.
- (9) The license holder allows a public nuisance to continue after notice from the City.

(j) Suspension and revocation process.

- (a) The license holder will receive a notice of intent to suspend or notice of intent to revoke informing the license holder of the violation and the City's intention to suspend or revoke the license. The notice will be hand delivered to the license holder or an employee or agent of the license holder or sent by certified mail, return receipt requested to the physical address of the cannabis establishment.
- (b) If the license holder disputes the suspension or revocation, the license holder has ten (10) days from the postmark date on the notice or the date the notice was hand delivered to request a hearing before a hearing panel, which will consist of the Chief of Police, Planning Director and Public Works Director. The determination of the hearing panel shall be delivered in writing to the license holder within 7 days of the determination.
- (c) If the license holder disputes the determination made by the hearing panel, the license holder may request a review by the City Administrator. The City Administrator will review any documents and information relevant to the suspension or revocation but will not hold a hearing. The City Administrator will either affirm or reverse the hearing panel's decision and provide written notice of the decision to the license holder within 7 days of the decision.
- (d) 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 right to process and appeal, in which case the suspension takes effect upon the final determination of suspension.
- (e) 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.
- (f) 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.

(k) 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 Common Council by submitting a written appeal within ten (10) days of the postmark on the final notice of denial, nonrenewal, suspension, or revocation. The written appeal must be submitted to City administration at 420 Villa Drive, Box Elder, SD 57719. The appeal will be considered by the Common Council at a regularly scheduled meeting within one month of the receipt of the appeal.

(l) Licenses not transferable.

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

(m) Hours of operation for dispensaries.

No cannabis dispensary may operate between the hours of 8:00 p.m. and 7:00 a.m. any day of the week.

(n) 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.

(o) 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. A violation of a required or prohibited action under this chapter is a Class 2 misdemeanor. Such violations are punishable by up to thirty days in jail and a maximum fine of five hundred dollars (\$500.00). Each day a cannabis establishment so operates is a separate offense or violation.

(p) No City Liability; Indemnification.

- (a) 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 results 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.
- (b) 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.

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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.

Effective Date. This Ordinance will become effective 20 days following publication, which will occur after the ordinance receives second and final reading by the City Council and is signed by the Mayor.

Dated this 2nd day of November, 2021.

CITY OF Box Elder

By: _____
Its Mayor

(Seal)

Attest:

Nicole Schneider, Finance Officer

First Reading: 10/19/2021

Second Reading: 11/02/2021

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