

ORDINANCE NO. 2021-005

AN ORDINANCE OF THE CITY OF IRENE, SD, AMENDING THE REVISED MUNICIPAL ORDINANCES OF THE CITY OF IRENE BY ADDING TITLE 4: LICENSES, CHAPTER 4.04: MEDICAL CANNABIS.

BE IT ORDAINED BY THE CITY OF IRENE, SD:

Section 1. That Chapter 4.04 of the Revised Municipal Ordinances of Irene, SD, is hereby added and reads as follows:

CHAPTER 4.04 – MEDICAL CANNABIS

- 4.0401 Intent. The following regulations are enacted in order to ensure that medical 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.
- 4.0402 Definitions. Unless the context clearly indicates a different meaning, all terms used in this Chapter shall be defined by SDCL 34-20G-1.
- 4.0403 Medical Cannabis Establishment License Required.
- A. License Required: It shall be unlawful for any person or entity to operate a medical cannabis establishment in the City without first having obtained a license from the City and a registration certificate from the South Dakota Department of Health for each medical cannabis establishment to be operated. Such license and registration certification shall be kept current at all times, and the failure to maintain a current license and registration certification shall constitute a violation of this Chapter.
- B. Classes of License: Each type of the four (4) types of medical cannabis establishments shall have its own class of license relating to the activities unique to that particular type of medical cannabis establishment. The four (4) license classes are Cannabis Cultivation Facility License, Cannabis Testing Facility License, Cannabis Product Manufacturing Facility License, and Cannabis Dispensary License.
- C. Multiple Licenses: A person or entity who intends to conduct an operation which includes multiple types of medical cannabis establishments shall, prior to operating the medical cannabis establishments, obtain a license for each medical cannabis establishment involved in the operation. A person or entity may hold more than one (1) class of license except when otherwise prohibited by this Chapter.

- D. License Location: Each license issued pursuant to this Chapter shall authorize a single medical cannabis establishment to operate at a single location.
- E. License Duration: Each license issued is effective from January 1 through December 31 of the year applied for, 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 expiration, the City Council has approved the renewal of such license for the following calendar year. See Chapter 4.0406.

4.0404 Number of Licenses Restricted.

- A. The number of licenses for each type of medical cannabis establishment available to be offered by the City shall be as follows:
 - 1. Cannabis Cultivation Facility License: 0
 - 2. Cannabis Testing Facility License: 0
 - 3. Cannabis Product Manufacturing Facility License: 0
 - 4. Cannabis Dispensary License: 1
- B. In the event the numerical cap is lowered to an amount less than the number of existing licenses for that type, no existing license shall be prevented from continuing operation during the license term, requesting modifications to applicant information, from renewing the license for consecutive or subsequent years, or from transferring the license, solely 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.

4.0405 Application Process.

- A. Availability. When a license becomes available, the City shall post an invitation for applications in a publicly visible location at the City Office, as well as publish the invitation in the City's official newspaper(s). The invitation shall state the class of license available and the deadline to apply. No application shall be accepted prior to posting/publication of the invitation nor after the deadline established in the invitation unless otherwise allowed pursuant to Chapter 4.0405(C).
- B. Contents of Application. An applicant shall submit a signed application, in writing, to the Finance Officer on a form provided by the City. The application shall include the following information:
 - 1. The legal name of the applicant(s).
 - 2. The address, telephone number, and date of birth of each applicant.
 - 3. The legal name of the prospective medical cannabis dispensary.
 - 4. The address or legal description of the property on which the medical cannabis establishment is proposed to be located.

5. The current zoning district classification of the property on which the medical cannabis establishment is proposed to be located.
6. If the applicant is an entity, the name, address, and date of birth of each principal officer, board member, and other persons that will own or operate the medical cannabis establishment.
7. A detailed description and explanation of security measures that the medical cannabis establishment will utilize to ensure that it complies with all applicable state law and regulations, as well as to ensure that the operation will not constitute a nuisance or a substantial threat to public health, safety, and general welfare.

Applications submitted pursuant to an invitation shall be submitted in writing and sealed. An applicant may not supplement or alter their application after the submission deadline has passed.

- C. Review/Determination. Within thirty (30) days after the application deadline has passed, the Finance Officer shall open all sealed applications received during the invitation submittal window and review each application for completeness. Applications which are objectively incomplete shall be rejected and ineligible for further consideration. All other applications, whether objectively complete or those requiring subjective interpretation to gauge their completeness, shall be held by the Finance Officer and placed into a lottery in order to establish the order in which applications will be considered by the City Council.

The Finance Officer shall post notice of the date, time, and location of the lottery in a publicly visible location at the City Office, as well as publish notice of the date, time, and location of the lottery in the City's official newspaper(s). The notice must be posted/published at least twenty-four (24) hours in advance of the lottery being conducted and such lottery shall be open to the public. The lottery shall be conducted in a manner that ensures that each application has reasonably the same odds as the others of being chosen. The applications will be placed on the agenda of the next regularly scheduled City Council meeting in the order in which they were chosen in the lottery.

At its next regularly scheduled meeting which meets all necessary notice requirements, the City Council shall approve or deny applications in the order established by the lottery until all applications have been acted on or the numerical cap has been reached. If an application is denied, the City Council shall specify their reasoning for such action both verbally and on the application. Reasons for denying an application may include, but are not limited to: (1) incorrect application information; (2) the application is incomplete; (3) insufficient detail in application; (4) no license available due to maximum number already issued; (5) proposed operation would violate local law; (6) proposed operation would violate state law or regulations; (7) proposed location not zoned properly; (8) the proposed operation does not comply with Chapter 4.0410; or (9) legitimate concerns that the specific operation as presented constitutes a substantial threat to public health, safety, and general welfare. No application may

be denied solely as a means to directly or effectively prohibit a medical cannabis dispensary within the City in violation of SDCL 34-20G-59.

If no applications are received following an invitation for applications or if the numerical cap is not reached pursuant to the invitation for applications, the above procedures shall no longer apply for the remainder of the annual license period or until a new posting/publication of an invitation for applications next occurs, whichever is first. In such case, applications may be received, processed, and considered by the City Council at its next noticed regularly scheduled meeting in the order in which they were received. Applications submitted prior to the posting/publication of the invitation for applications, but not approved or denied by the City Council before the submission deadline has passed shall be given consideration priority over applications submitted pursuant to the invitation when reviewed by the City Council. If an application is denied, the City Council shall specify their reasoning for such action both verbally and on the application. Reasons for denying an application may include, but are not limited to: (1) incorrect application information; (2) the application is incomplete; (3) insufficient detail in application; (4) no license available due to maximum number already issued; (5) proposed operation would violate local law; (6) proposed operation would violate state law or regulations; (7) proposed location not zoned properly; (8) the proposed operation does not comply with Chapter 4.0410; or (9) legitimate concerns that the specific operation as presented constitutes a substantial threat to public health, safety, and general welfare. No application may be denied solely as a means to directly or effectively prohibit a medical cannabis dispensary within the City in violation of SDCL 34-20G-59.

4.0406 License Renewal Process. A person or entity operating pursuant to an annual license may submit an application for renewal of such license at least forty-five (45) days but not more than ninety (90) days prior to the expiration of such license using the application form provided by the City.

The application renewal process shall be identical to the review of applications where a license has become available; however, applications for renewal submitted within the applicable window shall be given consideration priority over new applications in a capped license class. Renewal applications submitted after the window has expired shall be given no priority and shall submit a new application.

An applicant is not automatically entitled to renewal of their license and the license will only be renewed by the City Council after full consideration of the unique facts and circumstances pertaining to each individual license.

4.0407 Transfer or Modification of License. No license shall be transferred or modified except with the written approval of the City Council.

No license transfer or modification shall become effective until after an administrative modification fee has been collected by the City.

4.0408 License to Remain Active. Every license issued pursuant to this Chapter shall remain in continuous, active use. A license that is not being actively used for a period of more than fourteen (14) consecutive days or for sixty (60) cumulative days per calendar year may be deemed inactive by the Finance Officer. For purposes of this Chapter, the term active use includes times where the licensee is open and available to conduct business, including those times when business cannot occur due to factors entirely outside of the control of the licensee.

4.0409 Suspension/Revocation of License.

A. A license is subject to suspension and/or revocation under certain circumstances including, but not limited to:

1. Violation of any provision of this Chapter.
2. The license has been deemed inactive.

B. Upon determination by the Finance Officer that substantial evidence suggests that any of the circumstances identified above exist for the suspension and/or revocation of a license, a notice of suspension and/or revocation shall be either hand delivered or sent by certified mail, return receipt requested, to the licensee(s) at their address(es) listed on the approved application. The notice shall state the grounds for the suspension and/or revocation, the time and date of a hearing with the City Council if the licensee(s) wishes to contest the suspension and/or revocation, and whether the license is temporarily suspended pending the outcome of the hearing. Upon issuance of the notice, the Finance Officer shall schedule the review hearing for the next regularly scheduled meeting of the City Council occurring at least ten (10) business days after the notice was hand delivered or notice was mailed. Failure by any person to actually receive any document sent to him or her by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail.

In deciding whether a license will be suspended or revoked, the City Council will consider all facts and circumstances relating to the grounds alleged in the notice to warrant suspension or revocation of the license.

4.0410 Fees Established. The fees established herein apply to each type of medical cannabis establishment license unless expressly stated otherwise. The types and amounts of fees are as follows:

- A. Medical Cannabis Establishment Application Fee: \$100.00.
- B. New Medical Cannabis Establishment Annual License Fee: \$5,000.00.
- C. Renewal Medical Cannabis Establishment Annual License Fee: \$5,000.00.
- D. Transfer Medical Cannabis Establishment Annual License Fee: \$5,000.00.
- E. Administrative Modification Fee: \$50.00.

4.0411 General Requirements of Licensee. The following requirements shall apply to each licensee and medical cannabis establishment:

- A. Each licensee shall keep any information stated in an approved application current and up to date.
- B. Each licensee shall have a continuing duty to comply with all applicable state and local laws and regulations.
- C. Each licensee shall have a continuing duty to comply with any conditions placed on its licensed by the City Council.
- D. No medical cannabis establishment may share office space with a medical, psychiatric, counseling, chiropractic, or physical therapy practice. SDCL 34-20G-67.
- E. No medical cannabis establishment may be established, operated, or maintained within four hundred (400) feet of a public or private school.
- F. No medical cannabis dispensary may be established, operated, or maintained within four hundred (400) feet of a child welfare agency, a place of worship, an in-patient alcohol or drug treatment facility, or a public playground.
- G. No medical cannabis facility shall be located on-premises for which a license to sell alcoholic liquor has been issued.
- H. A medical cannabis dispensary shall only sell cannabis, cannabis products, and paraphernalia aiding in the consumption of these items and is prohibited from selling any other item or providing any other service.
- I. A medical cannabis dispensary may be open to the public only between the hours of 8:00 a.m. and 8:00 p.m. daily; however, they may not operate on Sundays and federally recognized holidays.

4.0412 Liability and Indemnification. By accepting a license issued pursuant to this Chapter, the licensee, and all principal officers, board members, or other persons that own or operate the medical cannabis establishment, hereby 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.

4.0413 Compliance with Other Applicable Laws. All laws and regulations adopted by the State governing the cultivation, production, possession, or distribution of medical cannabis shall also apply to medical cannabis established licensed within the City.

If the State prohibits the sale or other distribution of cannabis in such a manner as to make operation of a medical cannabis establishment pursuant to this Chapter conflict with such state prohibition, any licensed issued pursuant to this Chapter which would conflict with the state law or regulation shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

The issuance of any license pursuant to this Chapter shall not be deemed to create an exception, defense, or immunity for any person or entity in regard to any potential criminal liability the person or entity may have under federal law for the cultivation, possession, sale, distribution, or use of cannabis.

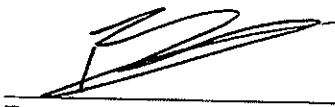
4.0414 Enforcement, Penalty, and Nuisance. Any person, entity, or agent of a person or entity violating a provision of this Chapter shall be subject to the general penalty provisions of Chapter 10.01. Such liability shall be in addition to any other penalty or remedy which may be applicable under the terms of this Chapter or by law.

In addition to any other remedy, the 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, permanent injunction, or any other remedy available at law or in equity.

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, and/or disposing of any cannabis, cannabis products, or other restricted items.


4.0415 Severability. If any section, sentence, clause, phrase, or portion of this Chapter is for any reason held to be invalid, unenforceable, or unconstitutional by a decision of any relevant authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions and the remainder shall remain in full force and effect.

Adopted this 8th day of November, 2021.



Bryce Johnke, Mayor

ATTEST:



Casey Van Beek, Finance Officer

Seal

First Reading: October 12, 2021
Second Reading & Adoption: November 8, 2021.
Published: November 18, 2021.
Effective Date: December 8, 2021.

ORDINANCE NO. 2021-006

AN ORDINANCE OF THE CITY OF IRENE, SD, AMENDING THE 2013 REVISED ZONING ORDINANCE OF THE CITY OF IRENE, SD, BY AMENDING CHAPTER 6, CB: CENTRAL BUSINESS DISTRICT, PERMITTED USES; AND CHAPTER 18.02, DEFINITIONS.

BE IT ORDAINED BY THE CITY OF IRENE, SD:

Section 1. That Chapter 6 of the 2013 Revised Zoning Ordinance of the City of Irene, SD, is hereby amended to include the following Conditional Use under Section 6.02:

Medical Cannabis Dispensary	<p>All relevant standards and requirements found within Chapter 4.04 of the Revised Municipal Ordinances of the City of Irene shall apply.</p> <p>No medical cannabis dispensary may commence operations until after it has received both an annual license issued by the City and a registration certificate issued by the State of South Dakota.</p> <p>No medical cannabis establishment may share office space with a medical, psychiatric, counseling, chiropractic, or physical therapy practice. SDCL 34-20G-67.</p> <p>No medical cannabis establishment may be established, operated, or maintained within four hundred (400) feet of a public or private school.</p> <p>No medical cannabis dispensary may be established, operated, or maintained within four hundred (400) feet of a child welfare agency, a place of worship, an in-patient alcohol or drug treatment facility, or a public playground.</p> <p>No medical cannabis facility may be located on-premises for which a license to sell alcoholic liquor has been issued.</p>
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Section 2. That Chapter 18.02 of the 2013 Revised Zoning Ordinance of the City of Irene, SD, is hereby amended to include the following Definitions:

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 (3/10) of one percent (1%) on a dry weight basis.

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. See SDCL 34-20G-1.

MEDICAL CANNABIS CULTIVATION FACILITY – An entity registered with the State of South Dakota pursuant to SDCL 34-20G that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment. See SDCL 34-20G-1.

MEDICAL CANNABIS DISPENSARY – An entity registered with the State of South Dakota pursuant to SDCL 34-20G that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to persons issued a registry identification card by the State. See SDCL 34-20G-1.

MEDICAL CANNABIS PRODUCT MANUFACTURING FACILITY – An entity registered with the State of South Dakota pursuant to SDCL 34-20G that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a medical cannabis dispensary. See SDCL 34-20G-1.

MEDICAL CANNABIS TESTING FACILITY – An independent entity registered with the State of South Dakota pursuant to SDCL 34-20G to analyze the safety and potency of cannabis. See SDCL 34-20G-1.

MEDICAL CANNABIS ESTABLISHMENT – A medical cannabis cultivation facility, a medical cannabis testing facility, a medical cannabis product manufacturing facility, or a medical cannabis dispensary. See SDCL 34-20G-1.

GENERAL MANUFACTURING – Those manufacturing processes including light manufacturing which have the potential to be a nuisance due to dust, odor, noise, vibration, pollution, smoke, heat, glare, or the operation of the processes outside the building. This definition does not include cannabis establishments.

LIGHT MANUFACTURING – Those manufacturing processes which are not obnoxious due to dust, odor, noise, vibration, pollution, smoke, heat, or glare. These commercial and industrial uses are characterized by generally having all aspects of the process carried on within the building itself. This definition does not include cannabis establishments.

RETAIL SERVICES AND TRADE – Establishments engaged in selling products, goods, or merchandise to the general public for personal or household consumption; and establishments engaged in providing services or entertainment to the general public including eating

establishments; hotels; motels; repair shops; indoor amusement; copying services; health spas; professional, educational, and social services; and other miscellaneous services but does not include on-sale alcoholic beverage establishments or cannabis establishments.

Adopted this 8th day of November, 2021.



Bryce Johnke, Mayor

ATTEST:



Casey VanBeek, Finance Officer

Seal

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