

MEDICAL CANNABIS ESTABLISHMENTS
UNION COUNTY ORDINANCE UCC#2021-007
AN ORDINANCE REGULATING MEDICAL CANNABIS ESTABLISHMENTS

AN ORDINANCE REGULATING MEDICAL CANNABIS ESTABLISHMENTS.
THE GOVERNING BODY OF UNION COUNTY DOES ORDAIN AS FOLLOWS

ARTICLE 1. GENERAL PROVISIONS

1.1 AUTHORITY

This Ordinance is enacted under the authority of SDCL 34-20G-58. Upon effective date, all prior versions of this Ordinance are hereby revoked.

1.2 PURPOSE

It is the purpose of this Ordinance to promote the general welfare of the citizens of Union County in enacting the provisions of SDCL 34-20G and to carry into effect the powers granted to the Commissioners by virtue thereof and provide for the enforcement of the provisions set forth herein.

1.3 JURISDICTION

These provisions shall, to the extent not in contradiction of any state law or regulation, govern the operations of medical cannabis establishments in Union County, South Dakota, outside the incorporated areas of any municipality.

ARTICLE 2. DEFINITIONS

2.1 Application and Interpretation

The definitions listed hereafter shall apply to this Ordinance. The definitions set forth are to be understood in their ordinary sense. The definitions set forth correspond to the definitions of SDCL 34-20G-1. Any interpretation of terms under that statute shall apply to the same term in this Ordinance.

2.2 DEFINITIONS

ALLOWABLE AMOUNT OF CANNABIS means:

- Three ounces of cannabis or less;
- A quantity of cannabis products with an equivalent cannabis weight as established by rules promulgated by the department under SDCL 34-20G-72;
- If a cardholder has a registry identification card allowing cultivation, three cannabis plants minimum or as prescribed by physician;
- If a cardholder has a registry identification card allowing cultivation, the amount of cannabis and cannabis products that were produced from the cardholder's allowable plants, if the cannabis and cannabis products are possessed at the same property where the plants were cultivated.

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 PRODUCT MANUFACTURING FACILITY: An entity registered with the department pursuant to this chapter that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a medical cannabis dispensary.

CANNABIS TESTING FACILITY OR TESTING FACILITY: An independent entity registered with the department pursuant to this chapter to analyze the safety and potency of cannabis.

CARDHOLDER: A qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card.

CHILD WELFARE AGENCY: Any agency or institution maintained by a municipality or county, or any agency or institution maintained by a person, firm, limited liability company, corporation, association, or organization to receive children for care and maintenance or for placement in a family home, or that provides care for mothers and their children, excepting family day care facilities as defined in SDCL 26-6-14.1

COMMISSIONERS: The Union County Board of County Commissioners.

CULTIVATION FACILITY: An entity registered with the department pursuant to this chapter that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment.

DEPARTMENT: The Department of Health

DISQUALIFYING FELONY OFFENSE: A violent crime that was classified as a felony in the jurisdiction where the person was convicted.

EDIBLE CANNABIS PRODUCTS any product that:

- Contains or is infused with cannabis or an extract thereof;
- Is intended for human consumption by oral ingestion; and
- Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures, or other similar products.

MEDICAL CANNABIS OR CANNABIS: Marijuana as defined in SDCL 22-42-1

MEDICAL CANNABIS DISPENSARY OR DISPENSARY: An entity registered with the Department pursuant to this chapter that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders.

MEDICAL CANNABIS ESTABLISHMENT: A cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary.

MEDICAL CANNABIS ESTABLISHMENT AGENT: An owner, officer, board member, employee, or volunteer at a medical cannabis establishment.

PLACE OF WORSHIP: A structure where persons regularly assemble for worship, ceremonies, rituals, and education relating to a particular form of religious belief and which a reasonable person would conclude is a place of worship by reason of design, signs, or architectural or other features;

ARTICLE 3. APPLICATION AND LICENSE APPROVAL 3.1 APPLICATION

3.1.1 It shall be unlawful for any person, business, or other organization to engage in the business of operating a medical cannabis establishment within the jurisdiction of Union County without having a local license issued by the County.

3.1.2 It shall be necessary for any person, business, or other organization to obtain a local license under this Ordinance prior to submitting an application to the South Dakota Department of Health for a state registration certificate. SDCL 34-20G-55.

3.1.3 The application shall be on forms provided by the Union County Auditor. All information requested on the form shall be provided before the completed application is submitted to the Commissioners.

3.1.4 The application shall require verification, under punishment of perjury, that:

3.1.4.1 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 its registration certificate revoked, whether in this state or elsewhere;

3.1.4.2 None of the principal officers or board members are under twenty-one years of age;

3.1.4.3 At least one principal officer is a resident of Union County;

3.1.4.4 The applicant is the owner or actual lessee of the premises where the business is conducted and the sole owner of the business operated under the license.

3.1.5 If the applicant is other than an individual, the verification shall be by a principal officer of the entity applying for the license.

3.1.6 The non-refundable application fee as set forth herein shall be paid at the time the application is submitted.

3.1.7 The license fee as set forth herein shall be paid at the time the application is submitted. Should the application be denied, the license fee shall be returned to the applicant.

3.2 LICENSE APPROVAL PROCESS

3.2.1 Upon receipt of a completed application, application fee and license fee, the Auditor shall present the application to the Commissioners at the next regularly scheduled meeting of the Commissioners. The Commissioners shall set the time and place for hearing on all applications that come before the Commissioners. The hearing shall be conducted within 45 days of presentation of the application to the Commissioners.

3.2.2 The Auditor shall publish notice once in the official newspapers of the county, at least one week before the scheduled hearing. The notice shall be headed "Notice of Hearing Upon Applications for Medical Cannabis Establishment," shall state the time and place when and where such applications will be considered by the Commissioners, and shall state that any person interested in the approval or rejection of any such application may appear and be heard.

3.2.3 At the time and place so set, the Commissioners shall consider each application and any objection to the application before making its final decision on the application. The Commissioners may approve or disapprove the application depending on whether the Commissioners deem the applicant a suitable person to hold the license, and whether the Commissioners consider the proposed location suitable.

3.2.4 No license granted under this title may be reissued until all property taxes which are the liability of the licensee levied on the licensed premises are paid or are not delinquent.

3.2.5 A person or entity may obtain more than a single class of license and/or more than a single license within any class of license, unless otherwise prohibited by law. The fact that multiple licenses are held may be considered in the application process as a factor in determining whether the applicant is a suitable person to hold the license.

3.2.6 If the Commissioners do not approve the application, the commissioners shall endorse on the application the reasons for the denial and return the application and license fee to the applicant. No further application may be received from the applicant until after the expiration of one year from the date of a denied application. However, if the application was denied based on the suitability of the location for the license, no further application may be received from the applicant until after the expiration of three months from the date of the denied application if the application is for a different location.

3.2.7 If the Commissioners approve the application, the Commissioners shall endorse the approval on the application and shall issue a county license to the medical cannabis establishment.

3.2.8 Any license issued shall be effective and valid through December 31 of the year issued. However, any license approved in 2021 shall be effective and valid through December 31, 2022.

3.3 RENEWAL

3.3.1 A license issued pursuant to this Ordinance may be renewed on an annual basis. An applicant for renewal is not automatically entitled to renewal. The issuance of a local license does not create a property right in that license.

3.3.2 An Application for Renewal shall be on the same forms and with the same requirements as the initial application set forth in Sections 3.1 and 3.2 above.

3.3.3 The applicant need not pay an application fee, but must pay the renewal fee as set forth herein. Such renewal fee shall be paid at the time the renewal application is filed with the Auditor.

3.3.4 A completed Application for Renewal shall be presented to the Auditor no later than November 1.

3.3.5 No Application for Renewal of a dispensary shall be approved if the licensed premise was not open to the public during regular business hours for the sale of medical marijuana for at least one hundred twenty (120) days in the previous year.

3.3.6 The Approval Process for a Renewal shall be the same as for an initial application. However, the license of a medical cannabis establishment applying for renewal may be approved for renewal by the Commissioners without a hearing unless in the past year the licensee, one of its principal officers or board members, or an employee of the dispensary have been subjected to a criminal penalty for violation of the Medical Cannabis laws or this Ordinance, or the license has been suspended.

3.4 TRANSFER OF LICENSE

3.4.1 Any local license issued hereunder may be transferred to a new location or to another person.

3.4.2 If the transfer is to another person, the licensee shall show in writing, under oath, that the licensee has made a bulk sale of the business operated under the license. The bulk sale may be conditioned upon the granting of a transfer of the local license.

3.4.3 The transferee shall make an application exactly as an original applicant.

3.4.4 If the transfer is to a new location, the licensee shall make an application exactly as an original applicant, showing all relevant facts for the new location.

3.4.5 The licensee shall submit with the Application for Transfer, whether as to person or location, a transfer fee of One Hundred Fifty Dollars (\$150.00) to continue the unexpired portion of the license.

3.4.6 An Application for Transfer shall be on the same forms and with the same requirements as the initial application set forth in Article 3, Sections 3.1 and 3.2, above.

3.5 SUMMARY SUSPENSION

3.5.1 When the Union County Sheriff or any deputy thereof has reasonable grounds to believe and finds that a medical cannabis establishment refuses to allow inspection as required by Article 6, Section 6.1 of this Ordinance, or that the public health, safety or welfare imperatively requires emergency action, they shall serve upon the establishment a Summary Suspension Order that temporarily and summarily suspends the license.

3.5.2 The Summary Suspension Order shall identify the basis for the summary suspension. The Summary Suspension Order shall also provide an advisement that further suspension or revocation may occur following hearing by the Commissioners.

3.5.3 The Summary Suspension Order shall be presented to the Union County Auditor for placement upon the next agenda of the Commissioners. At that time, the Commissioners shall hear testimony from the license holder and any other interested person as to whether to continue the Summary Suspension Order pending the Suspension or Revocation proceedings set forth in Article 3, Section 3.6 of this Ordinance. The reasons for the decision of the Commissioners need not be in writing and the oral pronouncement of the Commissioners shall act as notification of the intent of the Commissioners to consider suspension or revocation of the local license without further notification of any kind being required.

3.5.4 At the hearing required in Article 3, Section 3.5.3, the Commissioners may also determine that no further suspension or revocation proceedings are warranted and, in such case, shall immediately reinstate the local license.

3.6 SUSPENSION OR REVOCATION

3.6.1 A local license issued hereunder may be suspended or revoked by the Commissioners for violation of this ordinance.

3.6.2 Written notification of the intent of the Commissioners to consider suspension or revocation of a local license shall be made at the address given on the license. Such notification shall be at least thirty days in advance of the date set for public hearing on the suspension or revocation action.

3.6.3 Notice of public hearing shall be published in the official newspapers of the county at least one week prior to such hearing and in such form as deemed appropriate by the Commissioners.

3.6.4 At the public hearing, the Commissioners shall hear evidence or testimony from the licensee and any interested person. The Commissioners may revoke the license if they determine, following the public hearing, that a violation of this ordinance occurred.

3.6.5 If the Commissioners are satisfied that the nature and the circumstances of the violation were such that a suspension of the license would be adequate, the Commissioners may, instead of revoking the license, suspend it for a period not exceeding sixty days.

3.6.6 If the Commissioners suspend or revoke a local license, they shall notify the Secretary of the Department of Health of that fact.

ARTICLE 4. OPERATING REQUIREMENTS AND RESTRICTIONS

4.1 AUTHORITY

4.1.1 The South Dakota legislature has expressly granted authority to the Commissioners to govern the time, place and manner of operation of medical cannabis establishments. SDCL 34-20G-58. The Commissioners may not prohibit a dispensary, either expressly or through the enactment or application of an ordinance that makes the operation of a dispensary impractical.

4.2 GENERAL PROHIBITION

4.2.1 No medical cannabis establishment may operate in Union County without possessing both a current license from Union County and a current registration certificate issued by the South Dakota Department of Health.

4.2.2 Both such license issued from Union County and registration certificate issued by the South Dakota Department of Health 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.

4.3 TIME RESTRICTIONS

4.3.1 No medical cannabis establishment may operate on any Federal or State holiday. However, a cultivation facility or cannabis product manufacturing facility may operate as may be required to prevent the destruction or degradation of marijuana plants under their control.

4.3.2 A medical cannabis dispensary may not operate between the hours of six (6) p.m. and eight (8) a.m.

4.4 LOCATION RESTRICTIONS

4.4.1 No medical cannabis establishment may share space with a medical, psychiatric, counseling, chiropractic, or physical therapy practice.

4.4.2 No medical cannabis establishment may be established, operated, or maintained within one thousand (1,000) feet of a public or private school.

4.4.3 No medical cannabis establishment 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.

4.4.4 No medical cannabis establishment may be established, operated, or maintained within four hundred (400) feet of another medical cannabis establishment, a bar or a liquor store.

4.4.5 No medical cannabis establishment shall be located on-premises for which a license to sell alcoholic liquor has been issued.

4.4.6 Any distance determination shall be from the lot line of the proposed medical marijuana establishment to the nearest lot line of the protected place, school, child welfare agency, etc. as set forth in Sections 4.4.1 through 4.4.5.

4.4.7 Every medical cannabis establishment shall be established in a location that is zoned commercial.

4.5 MANNER RESTRICTIONS

4.5.1 No person under twenty-one (21) years of age shall be allowed on the licensed premises of a medical cannabis establishment.

4.5.2 At all times during the hours of operation of a medical cannabis establishment, there shall be present a manager or other employee of the licensee who shall be not less than twenty-one (21) years of age.

4.5.3 No cannabis or related paraphernalia shall be displayed or kept in a business so as to be visible from outside the medical cannabis establishment.

4.5.4 No licensee of a medical cannabis dispensary may dispense any medical marijuana to any person who is obviously under the influence of cannabis to such a degree as to cause impairment.

4.5.5 Before cannabis may be dispensed by a medical cannabis dispensary, a medical cannabis establishment agent:

4.5.5.1 Shall make a diligent effort to verify that the registry identification is valid; and

4.5.5.2 Shall make a diligent effort to verify that the person presenting the documentation is the person identified on the document presented to the dispensary agent.

4.5.6 All retail sales of cannabis shall be in person, directly to the purchaser, and within the retail area of a cannabis dispensary. No drive-up windows or similar delivery process shall be allowed.

4.5.7 A medical cannabis establishment agent shall not dispense an amount of cannabis to a person that would cause the person to possess more than the allowable amount of cannabis.

4.5.8 A medical cannabis establishment may not employ any person who has been convicted of a disqualifying felony offense.

4.5.9 No alcohol or cannabis may be consumed on the premises of a medical cannabis dispensary.

4.6 Signage and Advertising

4.6.1 All exterior signage associated with a medical cannabis establishment shall comply with Union County Zoning Ordinances.

4.6.2 In addition, no exterior signage may use the word "marijuana," "cannabis," or any other word, phrase or symbol commonly understood to refer to cannabis. Such words, phrases or symbols may be used if specifically approved by the Commissioners.

4.6.3 No cannabis establishment may distribute or allow the distribution of any cannabis or cannabis product without charge within a cannabis establishment or elsewhere for purposes of promotion, advertising, or any other purpose.

ARTICLE 5. NUMBER AND COSTS OF LICENSES

5.1 AUTHORITY

5.1.1 The South Dakota legislature has expressly granted authority to the Commissioners to determine the number of medical cannabis establishment licenses to issue. SDCL 34-20G-58. The Commissioners may charge a reasonable fee for the local license. SDCL 34-20G-60.

5.2 NUMBER OF LICENSES

5.2.1 There shall be available as local licenses for medical cannabis establishments a total of one (1) license.

5.2.2 The total local licenses established in Article 5 Section 5.2.1 shall be allocated as follows, with a maximum number of local licenses limited within type of medical cannabis establishment as follows:

5.2.2.1 Cultivation Facility:	Zero (0) license(s)
5.2.2.2 Cannabis Testing Facility:	Zero (0) license(s)
5.2.2.3 Cannabis Product Manufacturing Facility:	Zero (0) license(s)
5.2.2.4 Dispensary:	One (1) license(s)

5.2.3 The Commissioners shall consider all qualified applications in the order they were received, subject to any resolution establishing a different procedure. No local licenses may be issued after the available new local licenses have been awarded by the Commissioners.

5.2.4 Should any additional local licenses become available through revocation or otherwise, such license shall be made available to the first qualified applicant, subject to any resolution establishing a different procedure.

5.2.5 In the event the number of available licenses is reduced by future amendment of this Ordinance, then no existing licensee shall be prevented from continuing operation during the license term, from applying for renewal of such license for subsequent consecutive years, or from transferring such license, solely on the basis of such reduction. However, this exception shall not prevent a license from being suspended or revoked, nor shall it prevent a denial of an application for renewal or transfer, based upon grounds other than a change in the number of available licenses.

5.3 LICENSE FEES

5.3.1 There shall be a non-refundable application fee in the amount of \$1000.00.

5.3.2 There shall be a fee for newly issued licenses under this Ordinance for each type of medical cannabis establishment as follows:

5.3.2.1	Cultivation Facility:	\$ 100,000.00
5.3.2.2	Cannabis Testing Facility:	\$ 100,000.00
5.3.2.3	Cannabis Product Manufacturing Facility:	\$ 100,000.00
5.3.2.4	Dispensary:	\$ 100,000.00

5.3.3 There shall be an annual renewal fee for any license issued under this Ordinance in the amount of \$ 25,000.00.

ARTICLE 6. ENFORCEMENT AND PENALTIES

6.1 INSPECTION.

6.1.1 Union County Officials, Planning and Zoning, Building Inspectors, and/or law enforcement may inspect a medical cannabis facility during business hours to ensure compliance with this ordinance.

6.2 LICENSE CONSEQUENCE

6.2.1 Violation of the terms of this Ordinance may result in revocation or suspension of the local license as set forth in this Ordinance.

6.3 CIVIL PENALTY

6.3.1 Violation of the terms of this Ordinance may also be addressed in the form of a civil ordinance action in either magistrate court or circuit court, in addition to the license suspension or revocation, at the discretion of the Commissioners.

6.3.2 Civil penalties may not exceed \$500 for each violation.

6.3.3 Each day the licensee is in violation of the Ordinance may be considered a separate violation.

ARTICLE 7. SEVERABILITY AND SEPERABILITY

7.1 Should any Article, Section, subsection or part of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional, invalid or otherwise affected by law, such determination shall not affect the validity or constitutionality of the Ordinance as a whole or any part thereof other than the part so determined.

ARTICLE 8. EFFECTIVE DATE

8.1 This Ordinance shall be effective twenty (20) days following completed publication.

Dated at Elk Point, South Dakota, this 16 day of ~~October~~ November, 2021.

Chairperson: Milton Ustad
Union County Commissioner

Attested: Jackie Seneid
Union County Auditor

Notice of Hearing Oct 21, 2021
1st Reading: Nov 2, 2021
2nd Reading: Nov 16, 2021
Adopted: Nov 16, 2021
Published: Nov 25, 2021
Effective: Dec 15, 2021