

1st Reading: June 1, 2021  
2nd Reading: June 8, 2021  
Date Adopted: \_\_\_\_\_  
Date Published: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE REGARDING THE ISSUANCE OF  
LOCAL MEDICAL CANNABIS ESTABLISHMENT LICENSES.**

WHEREAS, South Dakota medical cannabis laws under SDCL Chapter 34-20G are effective July 1, 2021;

WHEREAS, medical cannabis dispensaries, or medical cannabis establishments, the terms being used in differing, but related, purposes for regulation, licensing, and permitting, will be, after July 1, 2021, a legal, regulated business pursuit in South Dakota;

WHEREAS, under SDCL 34-20G-58 a local government may enact an Ordinance not in conflict with SDCL Chapter 34-20G, governing the number and time, place, manner, and number of medical cannabis establishments in the locality and may establish civil penalties for violation of an Ordinance governing the time, place, and manner of a medical cannabis establishment that may operate in the locality;

WHEREAS, Davison County, South Dakota (“County”), finds that the County’s current ordinances, regulations, and controls do not adequately address the unique needs and impacts of medical cannabis establishments as defined in SDCL 34-20G-1;

WHEREAS, the South Dakota Department of Health has been directed to promulgate rules pursuant to SDCL Chapter 1-26 not later than October 29, 2021, as defined by SDCL 34-20G-72;

WHEREAS, during the time between July 1, 2021, and potentially as late as October 29, 2021, the County will not know State of South Dakota standards for medical cannabis establishments;

WHEREAS, the County acknowledges that in the absence of any license or permit process being established by the County the South Dakota Department of Health may issue a license to a medical cannabis establishment under the authority of SDCL 34-20G-55(1)(e);

WHEREAS, potential proprietors of medical cannabis establishments need some predictability in permitting processes, both on a State and a local level, and need to avoid the possibility of stranded or otherwise unproductive investments;

WHEREAS, the County hereby exercises its authority under SDCL 7-18A-2, SDCL 34-20G-58, and SDCL 34-20G-60 to establish an ordinance regarding the issuance of licenses for medical cannabis establishments within the County;

NOW, THEREFORE, BE IT ORDAINED BY DAVISON COUNTY, SOUTH DAKOTA:

### **Section 1. Definitions.**

Unless otherwise defined herein, the terms herein have the same meaning as set forth in SDCL 34-20G-1. The following words and phrases, when used in herein have the meanings respectively assigned to them:

- A. “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;
- B. “Cannabis product manufacturing facility” an entity registered with the South Dakota Department of Health pursuant to SDCL Chapter 34-20G that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a medical cannabis dispensary;
- C. “Cannabis testing facility” or “testing facility” an independent entity registered with the South Dakota Department of Health pursuant to SDCL Chapter 34-20G to analyze the safety and potency of cannabis;
- D. “Cultivation facility,” an entity registered with the South Dakota Department of Health pursuant to SDCL Chapter 34-20G that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment;
- E. “Medical cannabis” or “cannabis,” cannabis as defined in SDCL 34-20G-1 (3), (12), and (14);
- F. “Medical cannabis dispensary” or “dispensary,” an entity registered with the South Dakota Department of Health pursuant to SDCL Chapter 34-20G that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders;
- G. “Medical cannabis establishment,” a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a medical cannabis dispensary.

## Section 2. General Requirements.

- A. State Laws. All applicants, licensees or other persons subject to this Ordinance and any separate rules or regulations promulgated hereunder, will comply at all times with all provisions of SDCL Chapter 34-20G and all regulations promulgated thereunder. Any violation under such laws or regulations constitutes a violation under this Ordinance and will be grounds to deny an application or for an enforcement action. To the extent the State of South Dakota has adopted or adopts in the future any laws or rules stricter than or inconsistent with the provisions of this Ordinance, those laws or regulations will control. Any waiver of requirements of the South Dakota Code or regulations issued by the State of South Dakota will not constitute a waiver of compliance requirements for County licensing under this Ordinance.
- B. Rules by the Davison County Commission. The Davison County Commission is authorized to make rules and publish forms consistent with the intent and spirit of this Ordinance concerning applications, the application process, the information required of applicants, the application procedures and the administration and procedures to be used and followed in the application and application hearing process.
- C. Conditional Orders. Where reasonably necessary and otherwise consistent with the provisions of this Ordinance, the Davison County Commission may conditionally approve any application made under this Ordinance and may also issue a conditional license or place conditions on an existing license.
- D. Effect of Investigation. Except for a license renewal application, the Davison County Commission will not accept any application from a person the Davison County Commission knows to be under investigation or facing disciplinary action by Davison County or the South Dakota Department of Revenue & Regulation or the South Dakota Department of Health for a violation of this Ordinance or State laws or regulations relating to medical cannabis.
- E. Applications in General.  
Unless specific provisions of this Ordinance direct otherwise, the following rules will apply to all applications made under this Ordinance:
1. Applications will be filed along with payment or proof of payment and held for a pre-acceptance review period not to exceed thirty (30) days. Filed applications must be complete.
  2. If, after review, an application is found to be complete the Davison County Commission will formally accept the application and note the date of formal acceptance.
  3. If, after review, an application is found to be incomplete the Davison County Commission will reject and return the application to the licensee or applicant. Such licensee or applicant will be entitled to a refund of the application fee, but may permit the Davison County Commission to hold the deposited fee pending resubmission, if resubmission is permitted.
  4. If after formal acceptance under paragraph 2 above the Davison County Commission later discovers that the application is incomplete or otherwise deficient, the Davison County Commission will permit the applicant or

licensee to amend the application within thirty (30) days without altering the accepted status of the application. If, however, the deficiency has not been cured within that time the Davison County Commission will reject and return the application.

### **Section 3. Licensing Jurisdiction, Number, Types, and Term of Licenses Authorized to be Issued.**

- A. Notwithstanding the County's grant of zoning authority within the extraterritorial zoning jurisdiction of the City of Mitchell, Davison County, South Dakota, as set forth in Section 2:02 of the *Davison County Zoning Ordinance* and as ceded to the City of Mitchell by action of the Davison County Commission under date of October 4, 1998, the provisions of this Ordinance apply to all areas of Davison County which are outside of the corporate limits of the City of Mitchell, the City of Mount Vernon, and the Town of Ethan, Davison County, South Dakota.
- B. Medical cannabis dispensary licenses will be issued.
- C. The number of medical cannabis dispensary licenses authorized to be issued within Davison County and outside of the corporate limits of the City of Mitchell, the City of Mount Vernon, and the Town of Ethan, Davison County, South Dakota, is **one (1)**.
- D. Cannabis product manufacturing facility, cannabis cultivation facility, and cannabis testing facility licenses will not be issued for any location within Davison County and outside of the corporate limits of the City of Mitchell, the City of Mount Vernon, and the Town of Ethan, Davison County, South Dakota.
- E. A license provided and issued pursuant to this Ordinance will specify the date of issuance, the date of approval, and the period of licensure, which period of licensure will be one (1) year from the date of approval. The licensee will conspicuously place the license at all times on the licensed premises.

### **Section 4. Licensed Premises and Possession.**

- A. Possession Generally.
  - 1. No application for a new license, for a change of location, or for a transfer of ownership will be accepted unless the Davison County Commission receives sufficient proof that the business is in possession of the premises or will be entitled to possession of the premises for the entire period of the license.
  - 2. Unless a condition of approval provides otherwise, an approved applicant must at all times after approval maintain possession of the premises to be licensed.
  - 3. A licensee must maintain possession of its licensed premises at all times after licensure. Possession is a prerequisite of licensure and any loss of possession while licensed invalidates the license.
  - 4. Loss of possession by licensees or approved applicants will be addressed as provided below.
- B. Zoning. No application for a new license or for change of location will be accepted until the premises to be licensed have been approved as a conditional use in the Davison

County Rural Commercial District by the Davison County Planning Commission and the Davison County Board of Adjustment. Any waiver of requirements pursuant to State laws or regulations issued by the State will not constitute a waiver of compliance requirements for local licensing purposes.

- C. Continuing Land Use Compliance. In addition to any specific licensing requirements imposed by this Ordinance or by SDCL Chapter 34-20G all applicants, approved applicants, and licensees must remain in compliance with the requirements of the *Davison County Zoning Ordinance*, including but not limited to the provisions of Section 9, thereof, relating to the Rural Commercial District, and the terms of any conditional use permit issued thereunder. Any waiver of local zoning requirements pursuant to State laws or regulations issued by the State will not constitute a waiver of compliance with this Ordinance and all County requirements for local licensing purposes, including compliance with the *Davison County Zoning Ordinance*.
- D. License Issuance. In the event that the Davison County Commission approves an application for a new license or for a change of location, the license will not issue until the building in which the business is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with the applicable provisions of State law and regulations promulgated pursuant thereto and then only after the Davison County Planning & Zoning Department has inspected the premises to determine that the applicant has complied with the plans and specifications submitted by the applicant and as approved by the Davison County Planning Commission and Davison County Board of Adjustment.
- E. Inspection. The licensed premises, including but not limited to any places where cannabis is stored or dispensed, will be subject to inspection by officials authorized by the Davison County Commission (hereafter “County Inspection Officials”) to conduct inspections of medical cannabis establishments including, such County Inspection Officials to include, but not limited to, the Davison County Planning & Zoning Department, the Davison County Sheriff’s Department, or any State or local law enforcement personnel, during all business hours, and other times of apparent activity. County Inspection Officials may conduct unannounced or covert compliance inspections. For examination of any inventory or books and records required to be kept by the licensees, access will be required during business hours. Where any part of the licensed premises consists of a locked area, upon demand to the licensee such area will be made available for inspection without delay and, upon request by County Inspection Officials, the licensee will open the area for inspection.

## **Section 5. General Requirements of License.**

- A. A licensee under this Ordinance must report each transfer or change of financial interest in the license to the Davison County Commission prior to any transfer or change.
- B. A licensee under this Ordinance must report to the Davison County Commission, within one (1) day of discovering the same, any act, omission, or change in circumstance that

could reasonably appear to result in the violation of any provision of this Ordinance or of any State or local law.

- C. A licensee under this Ordinance must notify the Davison County Commission in writing within ten (10) days after an owner or officer ceases to manage, own or otherwise be associated with the licensed operation. A licensee must also notify the Davison County Commission in writing of the name, address, and date of birth of any new owner or officer within ten (10) days of the new owner or officer beginning to manage, own or be associated with the licensed operation.
- D. A licensee under this Ordinance will, at all times, meet and comply with the following operating conditions and standards:
  - 1. An applicant or licensed medical cannabis dispensary will not take any actions for which a license is required without holding both a valid license issued under this Ordinance and a valid corresponding state license.
  - 2. No license otherwise approved pursuant to this Ordinance will be issued until the license, application fees, and any licensing or operating fees due to the State of South Dakota and/or the County of Davison have been fully paid and received.
  - 3. Each licensee will 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 (3) immediately prior tax years. The same will be available on demand to County Inspection Officials.
- E. All licensees under this Ordinance may be required to demonstrate, upon demand by County Inspection Officials or by law enforcement officers, that the source and quantity of any cannabis found upon the licensed premises is in full compliance with any applicable State law or regulation.

#### **Section 6. New Application - Standards of Approval.**

- A. The standards set forth in this section apply to new applications, but some or all may also apply to other application types or to establish a violation in an enforcement action. In such cases, the applicability of this section will be identified by reference in subsequent sections of this Ordinance. For a new application, the applicant bears the burden in demonstrating compliance with these standards for approval.
- B. To approve a new application the Davison County Commission must find as follows:
  - 1. The applicant is neither prohibited from holding a license under nor is in clear violation of any provision of this Ordinance or of SDCL Chapter 34-20G and associated regulations;
  - 2. The applicant is qualified to operate a medical cannabis dispensary in compliance with the provisions of this Ordinance and SDCL Chapter 34-20G and associated regulations;
  - 3. The operation of the proposed medical cannabis dispensary is generally consistent with the nature of the neighborhood and will not adversely affect the public health, safety, or welfare of the immediate neighborhood and the zoning district as a whole; and

4. The applicant has made no material misrepresentations on its application or other documents submitted or provided to the Davison County Commission in advance of the hearing or through evidence presented at the hearing itself.
- C. For any applicant that is required by the Davison County Commission to have a background check performed as a part of their local license application, the Davison County Commission must find that the applicant is of good moral character. A finding that an applicant is not of good moral character must be based on the conviction of one or more felonies or crimes of moral turpitude. If the Davison County Commission determines an applicant is not of good moral character, it will permit the applicant to present evidence to the contrary, at a subsequent date if necessary.

### **Section 7. New Application - Restrictions - Procedures.**

- A. General. Each application and any supporting documentation or submittals will be verified by the oath or affirmation of the persons submitting the application and any other person as may be prescribed by the State of South Dakota or the Davison County Commission. An applicant will file at the time of application for a license pursuant to this Ordinance plans and specifications for the interior of the building if the building to be occupied is in existence at the time of the application. If the building is not in existence or alteration to the building is required at the time of the application, the applicant will file a plot plan with the premises outlined in red and a detailed sketch for the interior and the applicant will further submit an architect's drawing of the building to be constructed. In addition, an applicant will file the following at the time of application for a license under this Ordinance:
1. An operating plan for the proposed licensed premises including the following information:
    - a. A description of the products and services to be provided by the facility.
    - b. A floor plan showing all interior dimensions of the licensed premises and the layout of the medical cannabis establishment, including all limited access areas, areas of ingress and egress, and all security cameras. Such floor plan will also show the principal uses of the floor area depicted therein.
    - c. A description of the design of the medical cannabis establishment evidencing that the design conforms to applicable Davison County zoning and building regulations.
    - d. A security plan indicating how the applicant intends to comply with the requirements of the SDCL Chapter 34-20G and any regulations promulgated thereunder.
  2. A statement of whether or not any person holding any ownership interest in the medical cannabis establishment has:
    - a. Been denied an application for a medical cannabis dispensary license, or any other type of cannabis license, by the state in this or any other jurisdiction or had such a license suspended or revoked; and

- b. Been convicted of a felony or has completed any portion of a sentence due to a felony charge within the preceding five (5) years.
  3. Proof that the applicant has, or will, satisfy all Davison County Planning & Zoning compliance requirements.
  4. All licensing, operating, and other fees due and payable to operate a medical cannabis establishment as determined by the Davison County Commission have been paid.
  5. Any additional document(s) or information reasonably requested by the Davison County Commission.
- B. State Application. The State application will be incorporated into the County application and, if the same has not been provided by the South Dakota Department of Health, the applicant must submit a copy of its State application along with its County application. Any representations made in the State application will be considered as representations made to the Davison County Commission.
- C. Completeness. After receiving an application for a new license, the Davison County Commission will review the application for completeness. The Davison County Commission will inform the applicant in writing of its determination on the question of whether or not the application is complete within thirty (30) days of its receipt of the application. An applicant who has been denied a determination of completeness will resubmit the application to correct any deficiencies in completeness no later than thirty (30) days after being informed of the denial. The Davison County Commission may deny the application of an applicant who fails to correct identified deficiencies within thirty (30) days after being informed of such deficiencies. Any applicant whose application has been rejected and who still intends to apply for a license under this Ordinance is required to submit a new application, if permitted, with a new application date.
- D. Amendments. The Davison County Commission may permit amendments to a submitted application that are consistent with local restrictions on medical cannabis establishments, except that no amendment to change the applicant listed in a submitted application will be permitted.
- E. Scheduling Hearing. Unless an application is approved directly by the Davison County Commission as provided in this Ordinance, a public hearing will be scheduled for every application for a new medical cannabis establishment license and for change of location.
1. Timing. The Davison County Commission will schedule a public hearing upon the application to be held not less than thirty (30) days after the date of the determination of completeness. Unless an applicant is able to demonstrate extraordinary circumstances, no hearing on an application for a new medical cannabis establishment will be held until the applicant has received its State license for the same.
  2. Public Notice. The Davison County Commission will cause to be posted and published public notice of such hearing not less than ten (10) days prior to the hearing. Public notice will be given by the posting of a sign in a conspicuous place on the premises for which application has been made and, further, by publication in a newspaper of general circulation in Davison County. Notice



given by posting will include a sign, not less than 22” wide and 26” high, composed of letters not less than 1” in height and stating the type of license applied for, the date that the application has been determined to be complete, the date of the hearing, the name and address of the applicant and such other information as may be required to apprise the public of the nature of the application. The sign will also contain the names and addresses of the applicants, owners, officers, members, shareholders, and managers of the facility to be licensed. The notice given by publication will contain the same information. If the building in which the medical cannabis establishment is to be located is in existence at the time of the application, a sign will be posted in such place so as to be conspicuous and plainly visible to the general public. If the building is not yet constructed at the time of application, the Davison County Planning & Zoning Director will post a sign at the premises upon which the building is to be constructed in such a manner that the notice will be conspicuous and plainly visible to the general public.

3. Initial Findings. No less than five (5) days prior to the date of a scheduled public hearing on a license application, the Davison County Planning & Zoning Director, or his or her designee, will issue a memorandum, based upon his or her investigation and review of the application to date, containing initial findings and recommendations concerning the requirements of and standards of approval for an application. The memorandum will be directed to the applicant and copies of the same will be made available to members of the public who request it. The memorandum will not bind the Davison County Commission, but, if the findings and recommendations are not rebutted, the Davison County Commission may accept the memorandum as sufficient evidence to make a decision consistent with the Planning & Zoning Director’s recommendation.

F. Hearings.

1. At a public hearing for an application submitted under this Ordinance, the Davison County Commission may consider the following evidence:
  - a. The application;
  - b. Information submitted by the applicant in connection with the application;
  - c. Findings, reports, and other information submitted by staff; and
  - d. Evidence presented at the hearing by staff, the applicant, persons associated with the applicant, persons in favor of the application and persons opposed to the application.
2. Subject to the restrictions of this subsection F., an application for a new medical cannabis establishment license or for change of location may be approved by vote of the Davison County Commission without opening or holding a hearing. Any such approval may take place only at the meeting for which the hearing on the application is scheduled. The Chair of the Davison County Commission will announce each such application, and if any member of the public intending to oppose the application, any board member, or member of staff requests that a hearing be held, the hearing on the application will be opened and held.

- G. Written Decision. Within forty (40) days after the meeting, the Davison County Commission will issue its decision approving or denying an application for a medical cannabis establishment. The decision will be in writing and will state the reasons for the decision. The Davison County Commission will send a copy of the decision by certified mail to the State and to the applicant at the applicant's address shown on the application. Any decision approving a license application may include certain conditions imposed by the Davison County Commission in addition to compliance with all of the terms and conditions of this Ordinance and compliance with SDCL Chapter 34-20G and all regulations promulgated thereunder.

## **Section 8. Conditionally Approved Applications.**

- A. Privileges of licensure not vested. An order of the Davison County Commission conditionally approving an application is not a license but only the right to a license once certain conditions have been met. A conditionally approved applicant is not a licensee and may in no case exercise the privileges of licensure, including operating a licensed medical cannabis establishment or taking any other preliminary steps for which a license is required.
- B. Jurisdiction of the Davison County Commission. A conditionally approved applicant is subject to the jurisdiction of the Davison County Commission, to inspection by County Inspection Officials, and to investigation by County Inspection Officials, disciplinary actions by the Davison County Commission, and any other requirements or procedures imposed by law or by order of the Davison County Commission. All rights conveyed through the Davison County Commission's approval or conditional approval may be suspended or revoked through the same procedure, and with the same effect, as a license.
- C. Violations and Administrative Revocation. It will be a violation of this section for a conditionally approved applicant to commit an act or omission, which, if committed by a licensee, would be a violation of any other provision of this Ordinance or of SDCL Chapter 34-20G or any regulations promulgated thereunder. Additionally, the Davison County Commission may also, without finding a violation, administratively rescind an approval order and revoke all rights conferred thereby if it finds that a circumstance necessary to its approval has materially changed or ceased to exist. At any point prior to the issuance of the license, the Davison County Commission may stay the issuance of a license if it reasonably appears that a conditionally approved applicant has violated, or is being investigated for violating, any provision of this Ordinance or of SDCL Chapter 34-20G or any regulations promulgated thereunder, or if it reasonably appears that there are grounds to rescind the conditional approval order.
- D. Conditional Approval Extensions. When any conditionally approved applicant requires an extension to complete an act required by its approval order, the Davison County Commission may, unless this Ordinance or SDCL Chapter 34-20G or any regulations promulgated thereunder require otherwise, extend the term of the order if the applicant requesting the extension demonstrates (1) the request was filed promptly after discovering the need for an extension, (2) the delay at issue was reasonably justified, and

(3), the order has not expired and the applicant is in compliance with the terms and conditions of the order. Unless otherwise restricted by this Ordinance, the Davison County Commission may administratively extend the term of an order by no more than thirty (30) days to allow a request for a further extension to be heard by the Davison County Commission at a future meeting.

### **Section 9. Transfer of Ownership - Change of Owners - Change in Ownership Structure.**

- A. Licenses or approvals issued pursuant to this Ordinance are not transferable except as provided in this Ordinance. Furthermore, no change of owners or change in ownership structure for a licensed or approved business will be permitted except as provided in this Ordinance.
- B. For a transfer of ownership, change of owners, or change in ownership structure, a license holder must apply to the State and to the Davison County Commission. In determining whether to permit a transfer of ownership, the Davison County Commission must make the findings required in Section 6., subsections B.1., B.2, and B.4., above. If an application made under this section proposes to change the name of the licensee or to transfer the license to a different person or entity, the Davison County Commission must also find that the renamed licensee or transferee is or will be entitled to possession of the licensed premises.
- C. When a license holder applies to transfer ownership, change owners, or change ownership structure, a true copy of all, fully executed, ownership transfer, change, or ownership structure changing documents, including a statement of the full consideration being exchanged for any ownership transfer, must be submitted with such application.
- D. The Davison County Commission may hold a hearing on an application submitted under this section. No less than five (5) days prior to the date of a hearing on an application submitted under this section, the Davison County Planning & Zoning Director or his or her designee will make known, based upon his or her investigation and review of the application to date, findings concerning the application.

### **Section 10. License Renewals.**

- A. A licensee must apply for the renewal of an existing license to the Davison County Commission not less than forty five (45) days prior to the date of the expiration of the license. If a license expires after a renewal application has been accepted but before the application has been heard, the licensee may, unless the Davison County Commission determines otherwise, continue to operate until the Davison County Commission makes a decision. The Davison County Commission will not accept an application for renewal of a license after the date of expiration. The term of any renewed license will commence upon the expiration of the previous license and remain in effect for one (1) year from that date.
- B. The Davison County Commission may schedule a hearing on the application for renewal if it appears that one or more circumstances exist that may justify an adverse decision.

- C. The Davison County Commission may refuse to renew a license if it finds one or more of the following:
  - 1. The licensee or applicant has violated, does not meet, no longer meets, or has failed to comply with any of the terms, conditions or provisions of this Ordinance or SDCL Chapter 34-20G or any regulations promulgated thereunder;
  - 2. The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license pursuant to an order of the South Dakota Department of Health or of the Davison County Commission; or
  - 3. The licensed premises have been operated in a manner that adversely affects the public health, safety or welfare or the safety of the immediate neighborhood or the zoning district in which the establishment is located.
- D. If the Davison County Commission finds after a hearing held pursuant to this section that there are grounds to refuse to renew, it may consider, except as otherwise required, the severity, frequency, and number of prior violations in deciding whether to refuse to renew the license.
- E. In the event that a hearing is scheduled, notice of such hearing will be posted on the licensed premises for a period of ten (10) days prior to the hearing and the applicant will be notified of such hearing at least ten (10) days prior to the hearing. The hearing and the more specific requirements of notice will comport with the other provisions of this Ordinance concerning public hearings. No renewal application will be denied without a hearing.
- F. Subject to the continuation provision set forth in Section 10., A., above, relating to expiration after a renewal application is submitted but before the renewal is heard by the Davison County Commission, a licensee whose license has expired must not, under any circumstances, dispense any cannabis until a new required license has been obtained.

### **Section 11. Unlawful Acts: License Violations.**

- A. It is unlawful and a violation of the terms and conditions of every license issued under this Ordinance to cultivate, manufacture, distribute, store, test, or sell cannabis except in compliance with the terms, conditions, limitations and restrictions of SDCL Chapter 34-20G, any regulations promulgated thereunder, the provisions of this Ordinance, and any conditions imposed on a license pursuant to this Ordinance, and the provisions of the *Davison County Zoning Ordinance*.
- B. It is unlawful for any person to consume or to permit the consumption of cannabis in or upon the premises of any medical cannabis establishment.
- C. It is unlawful and a violation of this Ordinance for a medical cannabis establishment to operate until it has been licensed under this Ordinance by the Davison County Commission and also licensed by the State of South Dakota pursuant to SDCL Chapter 34-20G.
- D. It is unlawful and a violation of this Ordinance and, further, a violation of each license issued pursuant to this Ordinance, for a person or licensee to commit any act or omission which is unlawful pursuant to SDCL Chapter 34-20G. In addition to the criminal

penalties specified therein, any licensee who commits any acts that are unlawful pursuant to this Ordinance and/or pursuant to SDCL Chapter 34-20G will be subject to a summary suspension and/or a revocation of its license.

- E. In addition to any other civil or criminal sanction prescribed by South Dakota law or rules promulgated pursuant thereto, the Davison County Commission has the power, on its own motion or on complaint, after investigation and opportunity for a public hearing at which the licensee will be afforded an opportunity to be heard, to impose a civil penalty for violation of the terms of this Ordinance, and, in addition thereto or as an alternative thereto, restrict, suspend, revoke or rescind a license or order issued by the Davison County Commission for a violation by the licensee, or by any of the agents or employees of the licensee, of the provisions of this Ordinance, SDCL Chapter 34-20G and any regulations promulgated thereunder, or of any of the other terms, conditions or provisions of the license issued by the Davison County Commission.
- F. No medical cannabis establishment approved pursuant to this Ordinance may sell cannabis at any time except between the hours of 8:00 a.m. to 7:00 p.m., unless a more restrictive time is set by the regulations promulgated by the South Dakota Department of Health pursuant to SDCL Chapter 34-20G.

## **Section 12. Enforcement.**

- A. The Davison County Sheriff is the enforcement agency relative to compliance with the provisions of this Ordinance.
- B. In addition to other County Inspection Officials as defined herein, the Davison County Sheriff is authorized to inspect licensed premises, or premises to be licensed, and to investigate any alleged violations arising under this Ordinance or State law. Licensed medical cannabis establishments must cooperate fully with any investigation. Failure to do so constitutes an independent violation of this Ordinance.
- C. Violation proceedings may be initiated upon a finding of reasonable suspicion of one or more violations by County Inspection Officials or the Davison County Sheriff. A notice of hearing will be set and a hearing before the Davison County Commission will be set. Prior to the violation hearing the Davison County Commission may summarily suspend the license if it finds that the alleged violations could affect public safety.
- D. If a hearing is set under subsection C above, the licensee or approved applicant will be notified by certified mail of the hearing and of the allegations no less than ten (10) days in advance of the hearing.
- E. In deciding whether a licensee should be subjected to a civil penalty, a license suspended, or a license revoked in accordance with this section, and in deciding what conditions to impose in the event of a suspension, if any, the Davison County Commission will consider:
  - 1. The nature and seriousness of the violation;
  - 2. Corrective action, if any, taken by the licensee;
  - 3. Prior violation(s), if any, at the licensed premises by the licensee and the effectiveness of prior corrective action, if any;

4. The likelihood of recurrence;
  5. All circumstances surrounding the violation;
  6. Whether the violation was willful;
  7. The length of time the license has been held by the licensee;
  8. The number of violations by the licensee within the applicable twelve (12) month period;
  9. Previous sanctions, if any, imposed against the licensee;
  10. Whether the licensee has a responsible vendor designation;
  11. Whether the licensee supports other local businesses including without limitation the display of local art or use of local ancillary businesses;
  12. Whether the licensee has contributed to or been involved in a charitable giving program; and
  13. Any other factor making the situation with respect to the licensee or the licensed premises unique.
  14. Civil penalties imposed in addition to, or as the sole penalty for, a violation, or in combination with suspension or revocation, will be in the sole discretion of the Davison County Commission but will not exceed the sum of \$500 for each, discrete and separate violation.
- F. Notice of the imposition of a civil penalty, suspension, or revocation will be given by mailing the same in writing to the licensee at the licensee's last address of record.

### **Section 13. Fees.**

- A. Operating fees and all other fees necessary for the administration, regulation, and implementation of this Ordinance are as follows:
1. Application Fee
    - a. Medical Cannabis Dispensary: \$5000
  2. Administrative Operating Fees
    - a. Change of location applications and transfer of ownership applications will be treated as initial applications and the applicable initial operating fees will apply.
    - b. Change of Trade Name Fee: \$50
    - c. Change of Ownership Fee: \$250
  3. Annual Renewal Fees
    - a. Medical Cannabis Dispensary: \$5000
- B. This section will be reviewed by the Davison County Auditor and, if necessary, adjusted to reflect the direct and indirect costs incurred by the County in connection with the administration and enforcement of this Ordinance. The Davison County Commission by rule or regulation will set the due dates for any fee due pursuant to this section.

### **Section 14. Savings Clause & Severability.**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity will not affect other provisions or applications of the Ordinance that

can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.