

**Unapproved Special Minutes of
REDFIELD CITY COUNCIL**

September 13, 2021
5:30 p.m.

The City Council met in special session via teleconference and at City Hall on Monday, September 13, 2021 at 5:30 p.m.

MEMBERS PRESENT: Mayor Randy Maddox, Eileen Kearney via telephone, Jessi Lewis, Frank Schwartz, Matthew Weller via zoom, David Moeller, Todd Schwartz via zoom, and Joe Morrissette via zoom

MEMBERS ABSENT: Mike Siebrecht

STAFF PRESENT: Adam L. Hansen and City Attorney Kristen Kochejian

VISITORS: LeAnn Wasmoen, Andrew Rindelaub, KQKD 99.9 via zoom, Redfield Press via zoom. Lana Greenfield enters via zoom @ 5:45 p.m.

CALL TO ORDER: Mayor Maddox called the meeting to order at 5:30 p.m.

ADOPT AGENDA: Motion by Lewis, seconded by F. Schwartz to adopt the agenda. Motion carried.

VISITORS/PUBLIC TIME:

LeAnn Wasmoen inquired about the number of and how licenses can be revoked. Wasmoen inquired about on-site and off-site signage and advertising in the medical marijuana ordinance. Andrew Rindelaub inquired about 1 entity holding multiple licenses. Lana Greenfield inquired about the number of licenses to be initially issued and changing the medical marijuana ordinance if warranted in the future, specifically to increase the number of licenses available. Greenfield discussed who qualifies for a medical marijuana card under the South Dakota codified laws and regulations. Greenfield inquired about recreational marijuana. KQKD inquired about the timing of the ordinances, timing as to when licenses could be issued and when a dispensary could be operational.

ORDINANCES AND RESOLUTIONS:

City Attorney Kochejian read the title of the Second Reading of Ordinance No. 03-2021 (Medical Marijuana Zoning Ordinance).

ORDINANCE NO. 2021-03

AN ORDINANCE ENTITLED, AN ORDINANCE TO AMEND SECTION 17.40.020, “Permitted Principal Uses and Structures” [HIGHWAY COMMERCIAL DISTRICT (HC)]; SECTION 17.36.020, “Permitted Principal Uses and Structures” [COMMERCIAL DISTRICT (C)]; CHAPTER 17.04 “General Provisions,”; SECTION 17.20 “District Regulations of General Application”; and SECTION 17.08, DEFINITIONS of the Zoning Ordinances of the City of Redfield, in accordance with SDCL 11-4, 1967 and the amendments thereof, and for the repeal of all resolutions and ordinances in conflict therewith.

BE IT ORDAINED by the City Council of the City of Redfield, South Dakota: that Section 17.40.020, "Permitted Principal Uses and Structures" [HC – HIGHWAY COMMERCIAL DISTRICT], adopted by Ordinance 27-85 (part): prior code §3.0102, as amended, of the Zoning Ordinance of the City of Redfield be amended by adding language in bold and underline font:

23. Medial Cannabis Dispensary (subject to Chapter 5.71).

BE IT ORDAINED by the City Council of the City of Redfield, South Dakota: that SECTION 17.36.020, "Permitted Principal Uses and Structures" [COMMERCIAL DISTRICT (C)], adopted by Ordinance 1-76 (part) prior code §14.1002, as amended, of the Zoning Ordinance of the City of Redfield be amended by adding language in bold and underline font:

20. Medical Cannabis Dispensary (subject to Chapter 5.71).

BE IT FURTHER ORDAINED by the City Council of the City of Redfield, South Dakota: that CHAPTER 17.04 "General Provisions," adopted by Ordinance 1-76 (part): prior code §14.2303, as amended, of the Zoning Ordinance of the City of Redfield be amended by adding the following Section in bold and underline font:

Section _17.04.051. Prohibited Uses

All uses and structures not specifically listed as a permitted use, special permitted use, or as a conditional use in a particular zoning district shall be prohibited in said district

BE IT FURTHER ORDAINED by the City Council of the City of Redfield, South Dakota: that Section 17.20 "District Regulations of General Application" adopted by Ordinance 1-76 (part): prior code §14.05051, as amended, of the Zoning Ordinance of the City of Redfield be amended by adding the following Chapter in bold and underline font:

Chapter 17.20.061. MEDICAL CANNABIS DISPENSARIES.

1. Intent.

- a. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.

2. Required Separation Distances

- a. A medical cannabis dispensary shall be located not less than one thousand (1,000) feet from a public or private school existing before the date of the cannabis dispensary application;

- b. Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:
 - i. The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.
- c. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed

3. Other Locational Requirements

- a. Permanent or temporary medical cannabis dispensaries are prohibited in all other zoning districts and not eligible for a home occupation use.
- b. It shall be unlawful to operate a medical cannabis dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.

4. Controlled Access - No medical cannabis establishment shall share premises with or permit access directly from another medical cannabis establishment, business that sells alcohol or tobacco, or, if allowed by law, other cannabis establishment.

5. Documentation of State Licensure.

- a. No medical cannabis dispensary shall acquire, possess, store, deliver transfer, transport, supply or dispense cannabis, cannabis products, paraphernalia without providing documentation of licensure from the State of South Dakota.

6. The zoning official is authorized to issue permits (building/use) for medical cannabis dispensaries subject to following:

a. Submission of a site plan containing the following:

- i. Any information required for applicable building permit,
- ii. Ingress and egress plan
- iii. Parking plan
- iv. Lighting plan (including security lighting)
- v. Screening/security fencing plan,
- vi. Refuse plan;
- vii. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance

b. Documentation of ability to meet setback/separation requirements.

c. Documentation of State Licensure.

7. All Medical Cannabis Establishments are required to be constructed in conformance with the Uniform Building Code, 1994 Edition and Uniform Fire Code, 1988 Edition, publication date May 1, 1988.

BE IT FURTHER ORDAINED by the City Council of the City of Redfield, South Dakota: that Chapter 17.08, "Definitions" adopted by Ordinance 1-76 (part) prior code §14.0401, as amended, of the Zoning Ordinance of the City of Redfield be amended by adding the following Definitions in bold and underline font:

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. (hemp) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

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

Dated this 7th day of September, 2021.

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City of Redfield

Attest:

Randy Maddox, Mayor

Adam Hansen, Finance Officer

First Reading: September 7, 2021
Second Reading: September 13, 2021
Adopted: September 13, 2021
Published: September 22, 2021

Motion by F. Schwartz, seconded by Moeller to adopt Ordinance No. 03-2021. Motion carried on a roll call vote with all members voting "Yes."

City Attorney reviewed proposed amendments to Ordinance No. 04-2021 that were made in accordance with the discussion of the Council at the September 7, 2021, City Council Meeting and upon further review of the Ordinance by counsel.

Motion by T. Schwartz, seconded by Moeller to approve the amendments as presented by the City Attorney. Motion carried on a roll call vote with all members voting "Yes."

City Attorney Kochejian gave the Second Reading of Ordinance No. 04-2021 (Medical Marijuana Licensing Ordinance).

ORDINANCE 2021-04

AN ORDINANCE OF THE CITY OF REDFIELD ESTABLISHING MEDICAL CANNABIS REGULATIONS BY ADDING CHAPTER 5.71 TO THE REVISED ORDINANCES OF THE CITY OF REDFIELD

BE IT ORDAINED by the City Council of the City of Redfield that Title 5 of the Code of Ordinances of the City of Redfield is hereby amended by adding new Chapter 5.71 as follows

Chapter 5.71 Medical Cannabis Dispensaries

5.71.01: PURPOSE AND INTENT

The City Council of the City of Redfield enacts the following licensing ordinances in order to ensure that medical cannabis dispensaries within the municipal boundaries of the City of Redfield 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.

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5.71.02: DEFINITIONS

In addition to the definitions contained in this section, other terms used in this section shall have the meaning ascribed to them in South Dakota Codified Law (SDCL) Article 34, Chapter 20G, Section 1, and SDCL §22-42-1.

Cannabis (or Marijuana): all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

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

Cannabis Establishment: 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 legally licensed entity 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 legally licensed entity legally authorized to analyze the safety and potency of cannabis.

Department: the South Dakota Department of Health

5.71.03: LICENSE REQUIRED

(a) No medical cannabis dispensary may be located or operate in the city without the appropriate valid and current medical cannabis dispensary license issued by the City pursuant to this Chapter. Each day a cannabis dispensary operates in violation of this section is a separate offense or violation.

- (b) No medical cannabis dispensary may be located or operate in the city without the appropriate valid and current medical cannabis dispensary registration certificate issued by the Department pursuant to rules promulgated under SDCL 34-20G. Each day a cannabis dispensary operates in violation of this section is a separate offense or violation.

5.71.04: LICENSE APPLICATION

- (a) An application for a medical cannabis dispensary 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 The City will reimburse \$2,500 for applicants who fail to obtain a registration certificate from the South Dakota Department of Health.
2. An application that will include, but is not limited to, the following:
 - i. The legal name of the prospective medical cannabis dispensary;
 - ii. The physical address of the prospective medical cannabis dispensary that meets the zoning requirements in Title 17, as well as any location requirements pursuant SDCL 34-20G and the administrative rules promulgated thereunder.
 - iii. The name, address, and birth date of each principal officer, owner, and board member of the proposed medical cannabis dispensary.
 - iv. A sworn statement that no principal officer, owner, or board member has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction.
 - v. A copy of the deed reflecting the applicant ownership of, or a lease reflecting the right of the applicant to possess, the proposed licensed premises for the proposed use.

5.71.05: ISSUANCE OF LICENSE

- (a) The City will issue a license unless:

1. The applicant has made a false statement on the application or submits false records or documentation;
2. Any owners, principal officer, or board member of the applicant is under the age of twenty-one (21) years;
3. Any owner, principal officer, or board member of the applicant has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction; or

4. The proposed location does not meet the applicable zoning requirements under Title 17;
 5. The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder;
 6. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation;
 7. The applicant employs any employee under twenty-one years of age;
 8. Any owner, principal officer, or board member of the applicant has had a medical cannabis dispensary license revoked by the city or a registration certificate revoked by the state;
 9. An applicant, or an owner, principal officer, or board member thereof, 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;
 10. The applicant will not be operating the business for which the license would be issued.
- (b) In the case of an application for a medical cannabis dispensary license, the city will reject the application if the limit on the number of medical cannabis dispensaries has been reached.
- (c) The license must be posted in a conspicuous place at or near the entrance to the medical cannabis dispensary so that it may be easily read at any time.

5.71.06: CITY NEUTRALITY AS TO APPLICANTS

- (a) Upon request from the Department as to the City's preference of applicants, the City will neither support nor oppose any registration certificate application under consideration by the Department. Likewise, if inquiry is made by the Department, the City will abstain from endorsing any application as beneficial to the community.

5.71.07: NUMBER OF MEDICAL CANNABIS DISPENSARIES

- (a) No more than three (3) Medical Cannabis Dispensaries shall be allowed to operate in the City at any time. No other cannabis establishment, cannabis cultivation facility, cannabis testing facility, or cannabis product manufacturing facility, shall be permitted to operate within the jurisdictional limits of the City of Redfield.

5.71.08: EXPIRATION OF LICENSE AND RENEWAL

- (a) Each license expires one year from the date of issuance and may be renewed only by making application as provided in Section 5.71.04. 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.
- (b) The renewal fee is \$5,000. The City will reimburse \$2,500 for applicants who fail to obtain a
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renewal of their registration certificate from the Department.

- (c) 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.
- (d) 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.

5.71.09: 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.
 - 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 Department-issued registration certificate suspended, revoked, or not renewed by the Department 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.

5.71.10: REVOCATION

- (a) A license may be revoked if the license is suspended under Section 5.71.09 and the cause for the suspension is not remedied.
- (b) A license may be revoked if the license is subject to suspension under 5.71.09 because of a violation outlined in that section and the license has been previously suspended in the preceding 24 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 medical cannabis dispensary or the business of the medical cannabis

dispensary for which a license is required under this article while the license was suspended;

4. Repeated violations of this Chapter;
5. Operated a function of a medical cannabis dispensary for which the license holder was not licensed;
6. A license holder, or an owner, principal officer, or board member thereof, is delinquent in payment to the city, county, or state for any taxes or fees related to the cannabis establishment;
7. A license holder, or an owner, principal officers, or board member thereof, 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;
8. The license holder has its Department-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired; or
9. The license holder allows a public nuisance to continue after notice from the City.

5.71.11: 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 medical cannabis dispensary.
- (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 Mayor, Finance Officer, and City Council President.
- (c) 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 rights to process and appeal, in which case the suspension takes effect upon the final determination of suspension.
- (d) 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.

(e) The license holder who has had the license revoked may not be issued any medical cannabis dispensary license for one year from the date the revocation became effective.

5.71.12: APPEAL

An applicant or license holder who has been denied a license or renewal of a license or who has had a license suspended or revoked under this article may appeal to the City Council by submitting a written appeal within ten (10) days of the postmark on the notice of denial, nonrenewal, suspension, or revocation. The written appeal must be submitted to City Hall 626 Main Street, Redfield South Dakota, 57469. The appeal will be considered by the City Council at a regularly scheduled meeting within thirty (30) days of the receipt of the appeal.

5.71.13: LICENSES NOT TRANSFERRABLE

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

5.71.14: LIABILITY FOR VIOLATIONS

Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee or agent of a medical cannabis dispensary that constitutes grounds for suspension or revocation will be imputed to the medical cannabis dispensary 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 medical cannabis dispensary, knowingly allowed such act to occur on the premises.

5.71.15: PENALTIES

Any person or entity violating a provision of this Chapter shall be subject to a suit for injunction as well as prosecution for ordinance violations in accordance with the general penalty provision in Section 1.16.010. Each day of the violation constitutes a separate offense. 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.

5.71.16: 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.

5.71.17: Other Laws

If the State of South Dakota or Department adopts any stricter regulation governing a medical cannabis dispensary than that set forth in this Chapter, the stricter regulation shall control the

establishment or operation of any medical cannabis dispensary in the City of Redfield. A licensee shall be required to demonstrate, upon demand by the City of Redfield, or by law enforcement officers, that the source and quantity of any cannabis found upon the licensed premises are in full compliance with applicable state regulation. If the state prohibits the sale or other distribution of medical cannabis, any license issued under this Section shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress by the licensee.

Dated this 7th day of September, 2021.

City of Redfield

Attest:

Randy Maddox, Mayor

Adam Hansen, Finance Officer

First Reading: September 7, 2021

Second Reading: September 13, 2021

Adopted: September 13, 2021

Published: September 22, 2021

Motion by T. Schwartz, seconded by F. Schwartz to adopt Ordinance No. 04-2021 as amended.
Motion carried on a roll call vote with all members voting "Yes."

There being no further business, meeting was adjourned at 6:11 p.m.

Randy Maddox
Mayor

Adam L. Hansen
Finance Officer
Recorder: Adam Hansen