Ordinance No. 6505

AN ORDINANCE TO ADOPT RULES GOVERNING MEDICAL CANNABIS
ESTABLISHMENTS BY AMENDING CHAPTER 5.74
OF THE RAPID CITY MUNICIPAL CODE

WHEREAS, in November 2020, South Dakota voters passed Initiated Measure 26 An
initiated measure on legalizing marijuana for medical use, now codified at South Dakota
Codified Laws Chapter 34-20G; and

WHEREAS, SDCL Chapter 34-20G gives cities the authority to regulate and control the
time, place, manner, and number of medical cannabis establishments and to require local licenses
for medical cannabis establishments; and

WHEREAS, the City of Rapid City believes it to be in the best interests of its citizens and
the public’s health, safety, and welfare to adopt Chapter 5.74 setting parameters for the time,
place, manner, and number of medical cannabis establishments within City limits; and

WHEREAS, the City of Rapid City wishes to require a City license for medical cannabis
establishments operating within the City; and

WHEREAS, the City finds that the following ordinance is necessary to protect and
preserve the public health, safety, welfare, peace and support of the municipal government and
citizens of the City of Rapid City.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that Chapter 5.74 of
the Rapid City Municipal Code be and is hereby amended to read in its entirety as follows:

5.74.010 Definitions.

Terms used in this Chapter, unless the context otherwise plainly requires, shall mean the same
as the definitions in SDCL 34-20G-1, which at the time of adoption of this ordinance are
generally as follows:

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
Department that acquires, possesses, manufactures, delivers, transfers, transports, supplies,
or sells cannabis products to a medical cannabis dispensary.

C. CANNABIS TESTING FACILITY. An independent entity registered with the Department
to analyze the safety and potency of cannabis.
D. **CULTIVATION FACILITY.** An entity registered with the Department that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment.

E. **DEPARTMENT.** The South Dakota Department of Health.

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

G. **MEDICAL CANNABIS OR CANNABIS.** Marijuana as defined in SDCL 22-42-1.

H. **MEDICAL CANNABIS DISPENSARY.** An entity licensed by the Department that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders as defined in SDCL 34-20G-1.

I. **MEDICAL CANNABIS ESTABLISHMENT.** A cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a medical cannabis dispensary.

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

### 5.74.020 License – required.

A. No person shall own, manage, or operate a medical cannabis establishment without a valid and current annual license issued by the City pursuant to this Chapter. No person shall own, manage, or operate a medical cannabis establishment without a valid and current registration certificate issued by the Department pursuant to SDCL Chapter 34-20G. Any person violating this provision is subject to the general penalty provision in Section 1.12.010 and those penalties permitted under state law. Each day of operation without a license shall constitute a separate offense.

B. The City adopts the following licensing procedure for medical cannabis establishments:

1. A prospective medical cannabis establishment shall first apply for and obtain a provisional license from the City, pursuant to this Chapter. If an establishment location requires zoning approval pursuant to Title 17 of this Code, the applicant shall obtain a conditional use permit or other required approval before the City may issue a provisional license.

2. Those applicants who obtain a provisional license from the City are authorized to seek registration as a medical cannabis establishment from the Department, in compliance with SDCL 34-20G, administrative rules adopted pursuant thereto, and this Chapter, including the numerical limits adopted by the City in Section 5.74.070.
3. Individuals who obtain a provisional license from the City and obtain a registration with the Department shall pay the annual license fee pursuant to this Chapter to obtain their annual City license.

5.74.030 Medical cannabis establishment license applications.

A. The application for a medical cannabis establishment license shall be on a form provided by the City and shall contain all pertinent information required by this Chapter and Chapter 5.04 of this Code and the City’s Finance Office.

B. All applications shall contain the following:

1. The type of establishment license sought by the applicant. An applicant shall submit a separate license application for each type of establishment the applicant wishes to license and operate. Licenses may overlap locations if in accordance with Chapter 17 of this Code and with pertinent state laws and regulations.

2. The legal name of the proposed establishment.

3. The physical address and legal description of the proposed establishment. Only one dispensary application may be submitted for any single location.

4. Documentation from the Community Development Department that the proposed establishment at that location complies with all city land use and zoning requirements, as described in Title 17 of this Code. If the applicant is seeking the zoning approval at the time of their submittal of the application, the applicant may provide the documentation that the proposed establishment is in compliance once it is available. The City shall not issue a provisional license unless and until that documentation of zoning approval is provided to the Finance Office.

5. If the property is not owned by the applicant, proof of property owner’s consent to the applicant’s operation of a medical cannabis establishment on the property.

6. The name, date of birth, and home address of each principal officer, owner, member, manager, partner, or board member of the proposed establishment.

7. Photocopies of a valid form of state identification for principal officer, owner, member, manager, partner, or board member.

8. A certification that the applicant has completed background checks for all medical cannabis establishment agents within 90 days of the initial application or renewal application.

9. A certification that none of the establishment’s agents have been convicted of a disqualifying felony offense.
10. All information requested, including fingerprints, so as to enable the City to determine whether the applicant meets the qualifications established in this Chapter.

11. A certification that no principal officer, owner, member, manager, partner, or board member has served as a principal officer, owner, member, manager, partner, or board member for a medical cannabis establishment that has had any certification/license/permit to operate a medical cannabis establishment revoked in South Dakota or any other state.

12. A certification that no natural person who is an agent of the medical cannabis establishment is under 21 years of age.

13. A certification that at least one principal officer of the establishment is a resident of South Dakota.

C. The application shall be sworn to be true and correct by the applicant(s). If a person who wishes to operate a medical cannabis establishment is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a medical cannabis establishment is other than an individual, each individual who is a principal officer, owner, member, manager, partner, or board member in the establishment must sign the application for a license as applicant.

D. The application shall include a nonrefundable application fee of $1,500 or as set by resolution of the Common Council. If an application requires the City to complete more than ten background checks for agents of the establishment, the applicant at the time of application shall pay all additional fees as required in Section 2.20.030 to conduct background checks greater than ten.

E. Any licensee or applicant who has been denied a license, whose license has been revoked, or whose state registration has been revoked may not be issued any medical cannabis establishment license for 24 months from the date of the denial or revocation. Any licensee or applicant wishing to submit an application after 24 months has lapsed must submit a new application in accordance with the provisions of this Chapter.

5.74.040 Issuance of Provisional Licenses.

A. Upon receipt of a complete application, the Finance Office shall route to the appropriate City departments for their review of the information contained in the application. The provisional license shall be issued, or the application denied, within 45 days from the date the completed application is filed. At the applicant’s request, the application may be continued for an additional time for zoning approval to occur.

B. If a license is available, the City will issue a provisional license unless:

1. The application is incomplete or insufficient for the City to determine the applicant’s compliance with this Chapter and with state law. Such insufficiency shall include an
applicant’s failure to timely provide fingerprints to the City for completion of a background check;

2. The applicant has made a false statement on the application or submitted false records or documentation;

3. Any natural person who is an agent of the medical cannabis establishment is under 21 years of age;

4. The applicant or a principal officer, owner, member, manager, partner, or board member of the applicant has been convicted of a disqualifying felony offense;

5. The applicant has been denied a license by the City to operate a medical cannabis establishment within the preceding 24 months, or the applicant has had its license to operate a medical cannabis establishment revoked by the City or its registration certificate revoked by the Department in the 24 months preceding the application;

6. The applicant is overdue in payment to the City of taxes, fees, fines or penalties assessed against or imposed upon him or her in relation to any cannabis establishment;

7. The applicant has operated a medical cannabis establishment in violation of, or contrary to, any applicable regulatory or administrative provisions of state or local law regulating medical cannabis, or rules and regulations adopted by those authorities; or

8. The establishment location does not comply with Title 17 of this Code or with the spacing requirements in SDCL 34-20G-55.

C. Any denial of a license application shall be issued in writing by the Finance Director and shall include the reason(s) for denial. Notice of denial shall be mailed to the applicant at the address provided on the application. Denials may be appealed to the Common Council pursuant to Section 5.74.090.

D. A provisional license shall not entitle the establishment to operate within the City unless and until the establishment obtains a state registration from the Department and an annual license pursuant to Section 5.74.050.

5.74.050 Annual License.

A. Those establishments who obtain a provisional license from the City and a state registration from the Department may obtain an annual license from the City by paying the annual license fee as set by the Common Council no later than 14 business days after the Department’s issuance of the registration certificate. An applicant who fails to pay the annual license fee in this timeframe shall forfeit any rights it may have to obtain an annual license to operate a medical cannabis establishment in the City.
B. Prior to obtaining an annual license, a licensee shall provide the Finance Director with copies of all current operating procedures (including waste management plans and wastewater plans, if applicable), security plans, safety plans, site plans, and management plans that have been provided to the Department. Such documents shall be provided in a form acceptable to the Finance Director. Licensee shall promptly provide notice to the Finance Director of any material changes to these documents during the term of the license.

C. The annual license issued under this Chapter shall take effect when issued and shall terminate on December 31 in the year of issuance.

D. Unless otherwise changed by resolution of the Common Council, the annual license fee shall be $3,500 for the first year of operation. The fee shall not be prorated, and any licensee whose license is for less than 12 months shall pay the total fee amount.

E. Licensees shall notify the City in writing of a change of address of the establishment or the licensee.

5.74.060 License renewal.

A. A license granted pursuant to this Chapter shall be subject to annual renewal. The licensee may renew its license by making application to the Finance Office on a form provided by the City and shall contain all pertinent information required by this Chapter and Chapter 5.04 of this Code and the City’s Finance Office. The application for license renewal shall be accompanied by payment of the license renewal fee in the amount of $5,000 unless otherwise changed by resolution of the Common Council.

B. With its renewal application, licensee shall provide the Finance Director with copies of all current operating procedures (including waste management plans and wastewater plans, if applicable), security plans, safety plans, site plans, and management plans that have been provided to the Department. Such documents shall be provided in a form acceptable to the Finance Director. If material changes are made to any of these documents during the term of the license, licensee shall promptly provide notice of the same to the Finance Director.

C. The City will consider renewal applications in the same manner as new applications. In addition, the City may also consider any changed information from prior applications, concerns about actual operations or violations, calls for service, nonpayment of obligations, a dispensary’s failure to actively use the license pursuant to Section 5.74.110, or any other information reasonably related to the continued operation of the medical cannabis establishment.

D. An application for renewal shall be submitted no more than 120 days but no later than 60 days before the license’s expiration date. Applications for renewal submitted within this window will be given priority over new applications in a license class with numerical limits. Renewal applications submitted less than 60 days before the license’s expiration will be given no priority and may be required to submit an application for a new license.
E. Any denial of a renewal license application shall be issued in writing by the Finance Director and shall include the reason(s) for denial. Denials may be appealed to the Common Council pursuant to Section 5.74.090.

5.74.070 Numerical limits for dispensary licenses.

A. Dispensary numerical limits. Under the authority granted by SDCL 34-20G-56, the number of medical cannabis dispensary licenses shall not exceed one for each five thousand (5,000) of population of the City. The population shall be determined on July 1 of each year by the City’s Community Development Department. No medical cannabis establishment already licensed by the City may be denied a license renewal solely because of the numerical limitation being met.

B. No numerical limits for other establishments. The City does not adopt any numerical limits for cannabis testing facilities, cultivation facilities, or cannabis product manufacturing facilities.

C. Special Procedures for License Issuance upon Availability. Dispensary licenses, when they become available, shall be issued according to the following policy:

1. The Finance Office shall publish on the City’s website an invitation for applications stating that a medical cannabis dispensary license is available and stating the deadline to apply. No applications shall be accepted prior to this publication, nor may any application be accepted or modified after the application deadline.

2. Applications must comply with the provisions in Section 5.74.030 and shall include an application fee of $1,500 or as set by resolution of the Common Council.

3. After the application deadline has passed, the Finance Director shall open the applications and, following the provisions in Section 5.74.040, review the applications and approve or deny each application for a provisional license. Those applications granted provisional licenses may submit an application for a registration certificate to the South Dakota Department of Health. Those applicants receiving a provisional license from the City and a registration certificate from the South Dakota Department of Health may obtain an annual medical cannabis establishment license after paying the annual license fee as provided in 5.74.050.

These special procedures shall not apply to the initial issuance of licenses upon adoption of this ordinance. The special procedures shall be utilized only after dispensary licenses equal to the applicable numerical limit have been issued and a dispensary license becomes available.

5.74.080 License suspension and revocation.

A. The Finance Director may suspend or revoke any license issued pursuant to this Chapter for the following:

1. The violation by the licensee or an agent of the licensee of any applicable provision in City ordinance, SDCL 34-20G, or any rule adopted by the Department.
2. Any false material statement or misrepresentation of material fact by the applicant in the license application.

3. Employment of any person who was convicted of a disqualifying felony offense or who is under 21 years of age.

4. Failure to prevent diversion or theft of medical cannabis.

4. Knowingly dispensing or providing medical cannabis or cannabis products to an individual or business who may not lawfully possess cannabis.

5. The consumption of cannabis by a licensee or licensee’s agent on the establishment premises, or allowing any person to consume cannabis on the establishment premises.

6. Suspension, revocation, non-renewal, or expiration of the licensee’s state registration.

7. The licensee’s failure to actively use the medical cannabis dispensary license pursuant to Section 5.74.110.

B. The Finance Director shall provide written notice of suspension or revocation to the licensed establishment, providing the reasons for the suspension or revocation, the length of any suspension, and information to appeal the action to the Common Council. Such written notice may be mailed the address on the application or hand-delivered to the establishment.

C. The suspension or revocation begins 15 calendar days after the postmark date of the written notice or the date of hand delivery, unless the licensee exercises its right to an appeal, in which case the suspension or revocation takes place upon the final determination of the appeal by the Common Council.

5.74.090 Appeal of license decision.

A. Appeal of provisional license denial. If the Finance Officer denies an application for a provisional license or a renewal license, the applicant may request a personal appearance before the Common Council to offer evidence why the application should be reconsidered. Such request shall be in writing provided to the Finance Office within 15 calendar days after notice of the denial is mailed to the applicant, or within such time as the notice of denial provides. The Common Council shall, within 30 days after a notice of appeal is filed with the Finance Office, consider the appeal, unless the time is extended with the applicant’s consent. If, upon consideration, a majority of the Council votes for authorization of the license, then the license shall be issued pursuant to the provisions of this Chapter.

B. Appeal of suspension or revocation. If a license issued under this Chapter is suspended or revoked by the Finance Director pursuant to Section 5.74.080, the applicant may appeal to the Common Council. Such appeal shall be in writing provided to the Finance Office within 15 calendar days after notice of the suspension or revocation is mailed to the licensee or hand-
delivered, or within such time as the notice of suspension or revocation provides. The Common Council shall, within 30 days after a notice of appeal is filed with the Finance Office, afford a hearing with reasonable notice to the licensee on the suspension or revocation, unless the time is extended with the licensee’s consent. If, upon consideration, a majority of the Council votes to overturn the suspension or revocation, then the license shall be reinstated.

5.74.100 Transfer prohibited.

A. Not transferable to any other person or entity. Establishment licenses are not transferable to any other person or business entity, with or without consideration. If the license is held by an entity, the entity shall comply with all regulations adopted by the Department governing the transfer of ownership interest within the licensed entity. If the Department requires a renewal application because of a transfer in ownership interest, the licensee shall notify the Finance Director, who may require that the licensee submit a renewal license application pursuant to 5.74.060 based upon the changed ownership interest in the licensee.

B. Not transferable to another location. Establishment licenses are not transferable to any other location, and a license holder may not operate the licensed establishment at any place other than the address designated in the application.

5.74.100 Transfer of License.

If licensee wishes to transfer ownership of the license to another entity or individual, the licensee shall notify the Finance Director of the proposed transfer and the transferee shall make an application for an establishment license pursuant to Section 5.74.030. The City shall act upon the application in accordance with this Chapter. The transferee shall not operate an establishment until it has obtained a City license and a state registration certificate.

5.74.110 Active use of dispensary license.

A. Commencement of operations. A medical cannabis dispensary shall begin operation of the licensed establishment for the purposes provided in this Chapter no later than 120 days one year after the City’s issuance of the annual license. However, for licenses issued in 2021 or 2022, the Finance Director may extend a licensee’s timeline to commence operations for an additional 180 days upon good cause shown by the licensee. In the event that a medical cannabis dispensary does not timely commence operations pursuant to this Section, the license shall be deemed forfeited and the business shall not operate.

B. Continuous operation. A medical cannabis dispensary shall continuously and actively conduct business licensed under this Chapter. Any medical cannabis dispensary license not actively used for a period of more than 60 cumulative days per calendar year may be deemed inactive by the City; days where the license is suspended by the City shall not be used for purposes of calculating inactivity. The Finance Director may request, and the licensee shall provide, sufficient proof of the licensee’s continuous operation. If the licensee has not actively used the license, the City may revoke the license or may deny a renewal application on the basis of nonuse.
5.74.120 Operational requirements.

A. Each medical cannabis establishment shall, at all times, comply with all laws, regulations, and other rules prescribed by the State of South Dakota and the City for such establishments, including all applicable provisions in Title 17 of this Code.

B. A medical cannabis dispensary licensee shall display its license at all times in a conspicuous place during business hours.

C. Medical cannabis dispensaries may be open to the public between the hours of 8:00 a.m. and 10:00 p.m.

D. Any licensee under this Chapter shall be the owner or actual lessee of the premises where the business is conducted and the sole owner of the business operated under the license.

E. No cultivation facility or cannabis product manufacturing facility shall permit any run-off or drainage into the stormwater system from the commercial operation that is not in compliance with all city, state, and federal laws and regulations.

F. No cannabis establishment shall allow the emission of any odors that are noticeable at or beyond the property line of the establishment.

G. Each establishment may only be accessed by authorized agents of the medical cannabis establishment, emergency and public safety personnel, and authorized visitors who comply with the requirements set forth by state law and the Department. With the exception of cardholders and caregivers (as defined in SDCL 34-20G-1) legally accessing dispensaries, the establishment shall document all visitor names, times of visit, and purpose of visit in a visitor log. The visitor log shall be maintained for at least two (2) years by the establishment and must be made available upon request to state or local regulatory authorities or law enforcement as part of any official audit, inspection, or investigation.

5.74.130 No vested right.

No person shall be deemed to have any entitlement, vested right, or contractual or property right to a City license under this Section. The license, if issued, conveys the privilege of operating a medical cannabis establishment during the license term only. However, no vested right is conferred upon any license holder, nor is any renewal of the license promised or guaranteed.

5.74.140 Severability.

In the event any portion of this Chapter is determined by a court of competent jurisdiction to be invalid, all valid portions which are severable from the invalid portion remain in effect. If application of any portion of any section or subsection of this Chapter is determined by a court of
competent jurisdiction to be invalid, such portions remain in effect in all valid provisions and applications that are severable from the invalid provisions and applications.

**5.74.150 Enforcement.**

A. Any person violating any portion of this Chapter is subject to the general penalty set out in Section 1.12.010 of this Code. Each day any violation of this Chapter continues shall constitute a separate offense.

B. In addition to any other remedy, the City may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this Chapter.

C. Continued violations of this Chapter are hereby declared to be public nuisances pursuant to SDCL 9-29-13 and Section 8.16.010.C.13. The City may abate or remove the nuisance or otherwise pursue any remedies in accordance with applicable state laws and city ordinances.

D. In the event of suspension or revocation of a license where the licensee may no longer legally possess cannabis, cannabis products, or other restricted items, the licensee shall be responsible to pay all costs incurred by the City for securing, storing, safeguarding, transferring, or disposing of any cannabis, cannabis products, or other restricted items.

BE IT FURTHER ORDAINED, that, pursuant to SDCL 9-19-13, this ordinance is necessary for the immediate preservation of the public peace, health, safety, and welfare of the City and shall become effective immediately upon passage.

**CITY OF RAPID CITY**

______________________________
Mayor

ATTEST:

______________________________
Finance Director

(seal)

First Reading:
Second Reading:
Published:
Effective: