

Review & Recommendation of Planning  
Commission: September 21, 2021  
Public Hearing: September 27, 2021  
First Reading: September 27, 2021  
Second Reading: October 4, 2021  
Final Adoption: October 4, 2021  
Published: October 7, 2021  
Effective Date: October 27, 2021

## **ORDINANCE NO. 21-09-01**

### **AN ORDINANCE AMENDING THE ZONING REGULATIONS OF THE ABERDEEN CITY CODE REGARDING CANNABIS ESTABLISHMENTS**

**WHEREAS**, the City Council of the City of Aberdeen is charged with providing for the health, safety, and property of its citizens, and does so through the comprehensive zoning ordinances adopted at Chapter 60 of the Aberdeen City Code; and

**WHEREAS**, Section 60-286 provides that no amendment, supplement, or change to Chapter 60 shall become effective unless it shall have been proposed by, or shall first have been submitted to, the planning and zoning commission for review and recommendation.

**WHEREAS**, the Planning and Zoning Department recommends amendment of Article I, Chapter 60 - *Zoning* regulating cannabis establishments in the City of Aberdeen; and

**WHEREAS**, pursuant to Aberdeen City Code, Sec. 60-286, the City of Aberdeen planning commission held a public hearing on September 21, 2021, upon notice properly given, to study and report on the proposed amendment to the Zoning ordinance, and thereafter approved and recommended adoption of the amendment by the City Council; and

**WHEREAS**, the City Council has determined that the following amendment will benefit the health, safety, and property of its citizens.

### **BE IT ORDAINED BY THE CITY OF ABERDEEN, SD, THAT THE FOLLOWING CHANGES AND ADDITIONS SHALL BE MADE TO THE ABERDEEN CITY CODE:**

1. A new Article XIII – CANNABIS ESTABLISHMENTS is hereby added to Chapter 60 – ZONING as follows:

#### **ARTICLE XIII. CANNABIS ESTABLISHMENTS**

##### **DIVISION 1. PERMITTED USE**

**Sec. 60-351. - Purpose.**

In the development and execution of these regulations, it is recognized that there are some uses which are recognized as having 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 of cannabis establishments herein is for the purpose of preventing a concentration of these uses in any one area.

**Sec. 60-352. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Cannabis* or *marijuana* means 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* means, in addition to the definition in SDCL 34-20G-1, this term is further defined as a licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

*Cannabis dispensary* means, in addition to the definition in SDCL 34-20G-1, this term is further defined as a 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* means a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

*Cannabis product manufacturing facility* means, in addition to the definition in SDCL 34-20G-1, this term is further defined as a licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

*Cannabis products* means 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* means, in addition to the definition in SDCL 34-20G-1, this term is further defined as a licensed entity legally authorized to analyze the safety and potency of

cannabis.

**Sec. 60-353. - Documentation of state licensure.**

No cannabis establishment shall acquire, possess, store, deliver transfer, transport, supply, or dispense cannabis, cannabis products, or paraphernalia in the corporate limits of the city without a valid license, such as a registration certificate, issued by the state of South Dakota. To obtain an initial permit from the city, the requirement for a valid license may be met by providing verification from the state of South Dakota of the submission to it of a completed application for a cannabis establishment satisfying all conditions for registration except a copy of the permit from the city.

**Sec. 60-354. - Cannabis establishments permitted uses in certain districts.**

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, except as follows:

- (1) *Cannabis dispensary.* A licensed cannabis dispensary shall be a permitted use only in a C-2 highway commercial district, a C-3 central business district, an I-1 industrial park district, and an I-2 unrestricted industrial district.
- (2) *Cannabis cultivating facility.* A licensed cannabis cultivating facility shall be a permitted use only in an I-1 industrial park district and an I-2 unrestricted industrial district.
- (3) *Cannabis product manufacturing facility.* A licensed cannabis product manufacturing facility shall be a permitted use only in an I-1 industrial park district, and an I-2 unrestricted industrial district.
- (4) *Cannabis testing facility.* A licensed cannabis testing facility shall be a permitted use only in an I-1 industrial park district and an I-2 unrestricted industrial district.

**Sec. 60- 355. - Application for permit; fees.**

(a) To obtain a permit required under this article to operate a cannabis establishment, the applicant shall submit to the zoning official a written application and the required documents.

(b) The processing fee and permit fee in the amount provided in the city fee schedule on file in the office of the finance officer shall be submitted with the application. The permit fee shall be refunded if the application is denied.

**Sec. 60-356. - Term of permit; renewal; active use.**

(a) Any permit issued under this article shall expire one year following its issuance, unless sooner revoked, canceled, or otherwise terminated.

(b) The zoning official or designee may renew a permit if satisfied that the applicant has complied with all of the terms and provisions of this article and if the evidence submitted in support of the application meets the conditions precedent to granting the permit. If a license is

denied by the zoning official, the applicant may appeal the denial to the city council.

(c) A permit shall not be renewed if the permit has not been actively used by the applicant during the one year preceding the date of the current application. For purposes of this section, the term “actively used” means the cannabis establishment was open to the public during permitted business hours at least thirty days during the preceding year and earned revenues from cannabis-related sales or services.

**Sec. 60-357. - Appeals.**

The board of zoning adjustment shall not hear appeals of a decision of the city council approving or denying an application for a cannabis establishment under this chapter. An appeal of a decision of the city council approving or denying such application shall be to a court of competent jurisdiction in the manner and time required by law.

**DIVISION 2.  
CANNABIS DISPENSARIES**

**Sec. 60-360. - Permit required for cannabis dispensary.**

No person may operate a cannabis dispensary without first obtaining a permit from the city council. A permit for a cannabis dispensary may be issued by the city council subject to the following:

- (1) Submission of a site plan to the zoning official containing the following:
  - a. Any information required for applicable building permit;
  - b. Ingress and egress plan;
  - c. Parking plan;
  - d. Lighting plan (including security lighting);
  - e. Screening and security fencing plan;
  - f. Refuse plan;
  - g. Hours of operation; and
  - h. Any other information as lawfully may be required by the city to determine compliance with this ordinance;
- (2) Documentation of ability to meet separation requirements;
- (3) Documentation of state licensure; and
- (4) Payment of all fees required for such permit.

**Sec. 60-361. - Maximum number of cannabis dispensaries.**

The number of cannabis dispensary permits shall not exceed one for each 5,000 of population of the city as determined or estimated annually by the United States Census Bureau.

**Sec. 60-362. - Required separation distances.**

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

(b) A cannabis dispensary shall be located not less than 150 feet from a church, synagogue, mosque, temple or building which is used primarily for religious worship and related worship activities, a public library, a public park, or a licensed or registered day care existing before the date of the cannabis dispensary application.

(c) The separation distance requirement under subsection (b) above may be waived in writing by the legal title holder, and equitable title holder where there is a recorded contract for deed, of the lot(s) benefiting from the separation requirement. The applicant shall provide proof of such waiver.

(d) Prescribed separation distances from certain existing uses and where the dispensary is proposed are to be measured from the lot lines of the properties.

**Sec. 60-363. - Other locational requirements.**

Permanent or temporary dispensaries are prohibited in all other zoning districts and are not eligible for a home occupation use.

**Sec. 60-364. - Controlled access.**

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

**Sec. 60-365. - Hours of operation.**

Cannabis dispensaries may be open only between the hours of 7:00 a.m. and 10:00 p.m.

**DIVISION 3.  
CANNABIS CULTIVATING FACILITY**

**Sec. 60-371. - Permit required for cannabis cultivating facility.**

No person may operate a cannabis cultivating facility without first obtaining a permit from the city council. A permit for a cannabis cultivating facility may be issued by the city council subject to the following:

- (1) Submission of a site plan to the zoning official containing the following:
  - a. Any information required for applicable building permit;

- b. Ingress and egress plan;
  - c. Parking plan;
  - d. Lighting plan (including security lighting);
  - e. Screening and security fencing plan;
  - f. Refuse plan;
  - g. Hours of operation; and
  - h. Any other information as lawfully may be required by the city to determine compliance with this ordinance;
- (2) Documentation of ability to meet separation requirements;
  - (3) Documentation of state licensure; and
  - (4) Payment of all fees required for such permit.

**DIVISION 4.  
CANNABIS PRODUCT MANUFACTURING FACILITY**

**Sec. 60-381. - Permit required for cannabis product manufacturing facility.**

No person may operate a cannabis product manufacturing facility without first obtaining a permit from the city council. A permit for a cannabis product manufacturing facility may be issued by the city council subject to the following:

- (1) Submission of a site plan to the zoning official containing the following:
  - a. Any information required for applicable building permit;
  - b. Ingress and egress plan;
  - c. Parking plan;
  - d. Lighting plan (including security lighting);
  - e. Screening and security fencing plan;
  - f. Refuse plan;
  - g. Hours of operation; and
  - h. Any other information as lawfully may be required by the city to determine compliance with this ordinance;
- (2) Documentation of ability to meet separation requirements;

- (3) Documentation of state licensure; and
- (4) Payment of all fees required for such permit.

**DIVISION 5.  
CANNABIS TESTING FACILITY**

**Sec. 60-391. - Permit required for cannabis testing facility.**

No person may operate a cannabis testing facility without first obtaining a permit from the city council. A permit for a cannabis testing facility may be issued by the city council subject to the following:

- (1) Submission of a site plan to the zoning official containing the following:
  - a. Any information required for applicable building permit;
  - b. Ingress and egress plan;
  - c. Parking plan;
  - d. Lighting plan (including security lighting);
  - e. Screening and security fencing plan;
  - f. Refuse plan;
  - g. Hours of operation; and
  - h. Any other information as lawfully may be required by the city to determine compliance with this ordinance;
- (2) Documentation of ability to meet separation requirements;
- (3) Documentation of state licensure; and
- (4) Payment of all fees required for such permit.

[End of Article XIII]

2. The following sections of Chapter 60 – ZONING are hereby amended with underline indicating text to be added and the remainder to be left unaffected:

**Sec. 60-57. - C-2 highway commercial district.**

...  
 (b) *Permitted uses.* In the C-2 highway commercial district, buildings, structures, and land shall be used only for the following purposes:

- ...  
 (14) A licensed cannabis dispensary.  
 ...

**Sec. 60-58. C-3 central business district.**

...  
(b) *Permitted uses.* In the C-3 central business district zone, buildings, structures, and land shall be used only for the following purposes:

...  
(23) A licensed cannabis dispensary.  
...

**Sec. 60-60. - I-2 unrestricted industrial district.**

...  
(b) *Permitted uses.* Within the unrestricted industrial district, buildings, structures, and land shall be used only for the following purposes:

...  
(29) A licensed cannabis establishment.  
...

3. **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.

4. **Effective Date.** The City Finance Officer shall cause this ordinance to be published in the official newspaper in clean text with all deletions and additions incorporated therein. This ordinance shall become effective twenty (20) days after the completed publication, unless the referendum is invoked.

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/s/ Travis Schaunaman  
Travis Schaunaman, Mayor

ATTEST:

/s/ Karl Alberts  
Karl Alberts, Finance Officer