



## **Spearfish Planning Commission Agenda**

May 18, 2021 at 3:00 p.m.

**Meeting Location: City Council Chamber, 625 Fifth Street, Spearfish, SD**

And by Zoom Meeting

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### **A. Call To Order**

### **B. Roll Call**

### **C. Approve the Minutes from May 4, 2021**

### **D. Declaration of Conflicts of Interest**

### **E. Items for Action**

1. **Request:** Amend Appendix A Zoning to incorporate regulations for Cannabis Establishments  
**Location:** Agriculture, Commercial, and Industrial Districts  
**Applicant:** City of Spearfish  
**Action:** Set a public hearing for June 1, 2021

### **F. City Council Update**

**G. Public Comment** - Public comments are welcome at this time, however, no action will be taken.

### **H. Adjournment**

ADA Compliance: The City of Spearfish fully subscribes to the provisions of the Americans with Disabilities Act. If you desire to attend this public meeting and need special accommodations, please notify the Building and Development Office at 642-1335 and 24 hours prior to the meeting so that appropriate auxiliary aids and services are available.



**Spearfish Planning Commission**  
Regular Session Minutes  
May 4, 2021 at 3:00 p.m.

The Spearfish Planning Commission met in regular session on Tuesday, May 4, 2021 at 3:00 p.m. in the council chambers of city hall and via Zoom video conference. Vice Chairman Byrum called the meeting to order. Roll call was taken with the following members present: Meghan Byrum, Abe Kean, Greg Kruskamp, Bob Meyer, Larry Vavruska (arrived just before the second motion on minutes), and Barbara Zwetzig. Absent: Toby Bordewyk. Also present: City Planner Jayna Watson and City Attorney Ashley McDonald.

**APPROVAL OF MINUTES:**

Zwetzig moved, Kean seconded, to approve the minutes of the April 20, 2021 Commission meeting. During roll call vote, Meyer requested that the minutes reflect that written testimony from Randy Sachau was provided and should be noted as such as part of the public hearing on the Cedar Berry Canyon Estates preliminary plat. Voting on the motion was not completed. Zwetzig moved, Kean seconded to amend the minutes to include Randy Sachau's written testimony. Motion passed 5-1 with Vavruska voting no. Zwetzig moved, Kean seconded, and all voted to approve the minutes of the April 20, 2021 Planning Commission as amended.

**DECLARATIONS OF CONFLICTS OF INTEREST:**

Bordewyk called for any potential conflicts of interest to be identified. Byrum stated a conflict with item 1 and recused from discussion and voting.

- Request:** Approve a variance to the rear setback requirements of the C-2 zoning district  
**Location:** 1700 North Avenue  
**Applicant:** Jeramiah Johnson  
**Action:** Provide Input; no action required at this time

Jeramiah Johnson presented the request. Watson provided a review of the staff report and recommendation. Questions of the commission included water re-use. **Vavruska moved, Kruskamp seconded, and all voted to recommend approval and to set the Board of Adjustment public hearing for May 17, 2021.**

- Request:** Medical Marijuana Update  
**Action:** Provide Input; no action required at this time

Watson provided a summary of the memo concerning the placement of dispensaries within the commercial and industrial zoning districts. Brief discussion was held concerning the rules associated with home growing. **No action was taken.**

**City Council Update** – Watson noted that two new city council members were sworn in on Monday night: Scott Hourigan, and Ana Rath. Pam Jacobs and Dan Hodgs were also re-elected and sworn in. Cedar Berry Canyon preliminary plat was approved by City Council.

**Public Comment** – No comments were provided.

**Adjournment** - Byrum adjourned the meeting at 3:36 p.m.



**Spearfish Planning Commission Staff Report**

**Meeting Location: Council Chamber of City Hall, 625 Fifth Street, Spearfish, SD 57783**  
**See page 2 to join via zoom video conference**

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- Meeting Date and Time:** May 18, 2021 at 3:00 p.m.
- Applicant:** City of Spearfish
- Request:** Amend Appendix A Zoning to incorporate regulations for Cannabis Establishments
- Action:** Set a public hearing for June 1, 2021
- Location:** Agriculture, Commercial, and Industrial Districts
- Proposal Summary:** This will update the city's zoning ordinance to provide locations for the cultivation, testing, manufacture, and dispensing of medical cannabis in accordance with SDCL 34-20G.

**Background and History:**

State law identifies four classifications and definitions of medical cannabis establishments (CE): cultivation, testing, manufacturing, and dispensary.

After additional research for if the licensing requirements could cover the zoning aspect of this issue, Staff has determined that the best approach for regulating where a CE may be located is to specify the zoning district where each type will be allowed as a primary permitted use, provided that the CE is more than 1,000 feet from any public or private school, residence, or religious institution. The one thousand foot distance is identified in state statute as a requirement for those seeking a state issued CE registration certificate, so this distance is proposed to be used in the zoning context as well. Because the separation between the CE and the most sensitive land uses is a mandatory requirement, the conditional use permit review process is un-necessary.

The two main updates are:

- 1) Add the appropriate types of CE's as primary permitted uses in AG, CC (Central Core), C-1 (Central Commercial), C-2 (Highway Service Commercial), C-3 (Office Commercial), ILR (Light Restrictive Industrial) and IH (Heavy Industrial).
- 2) Add a new Section 15. to Article IV. of the District Regulations that incorporates an introductory statement, technical definitions, locations of CE's, unlicensed CE's, method to measure the 1,000 feet, and the continuation of a CE operation when a public or private school, residence, or religious institution locates within the 1,000 feet AFTER the CE is established.

The technical definitions come directly from statute. Because the scope of regulation that cities will be allowed to implement is unknown, close adherence to these terms is necessary to minimize legal risk. Therefore, the definitions cannot be changed. Also, time is of the essence in adopting these changes since the state law goes into effect on July 1<sup>st</sup>, 2021. For this reason, there will be no intervening work session between now and the June 1 public hearing and the next staff report will contain only revisions that have consensus from the Commission. Finally, there will likely be new rules and updates at the state level that will affect this work; future amendments will be required.

**STAFF RECOMMENDATION: Set public hearing for June 1, 2021**

**ATTACHMENTS:**

Page 3 – Proposed ordinance language

**STAFF CONTACT:** Jayna Watson, City Planner, 605-717-1122;  
[jayna.watson@cityofspearfish.com](mailto:jayna.watson@cityofspearfish.com)

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**ORDINANCE NO. 1345**

**AN ORDINANCE CREATING ZONING REGULATIONS FOR  
CANNABIS ESTABLISHMENTS**

**BE IT ORDAINED** by the Common Council of the City of Spearfish that Appendix A. Zoning Regulations of the Revised Ordinances of the City of Spearfish is hereby amended—with ~~striketrough~~ indicating text to be deleted, underline indicating text to be added, and the remainder of the Article left unaffected—as follows:

Appendix A. Zoning Regulations.

Article IV. District Regulations

\* \* \*

[...]

**Section 1b. AG agricultural district.**

[...]

B. *Primary uses permitted.* Property and structures in the AG agricultural district shall be used for the following purposes:

[...]

- 8. Cannabis Cultivation Facilities
- 9. Cannabis Testing Facilities
- 10. Cannabis Product Manufacturing Facilities

[...]

**Section 5. C1 central commercial district.**

[...]

B. *Primary uses permitted.* Property and structures in the C1 central commercial district shall be used for the following purposes:

[...]

- 25. Cannabis Testing Facilities
- 26. Cannabis Dispensaries

[...]

**Section 7. C2 highway service commercial district.**

[...]

B. *Primary uses permitted.* Property and structures in the C2 highway service commercial district shall be used for the following purposes:

[...]

15. Cannabis Product Manufacturing Facilities

[...]

**Section 7a. C3 office commercial district.**

[...]

B. *Primary uses permitted.* Property and structures in the C3 office commercial district shall be used for the following purposes:

[...]

10. Cannabis Testing Facilities

[...]

**Section 8. ILR light/restrictive industrial district.**

[...]

B. *Primary uses permitted.* Property and structures in the ILR light/restrictive industrial district shall be used for the following purposes:

[...]

- 37. Cannabis Cultivation Facilities
- 38. Cannabis Testing Facilities
- 39. Cannabis Product Manufacturing Facilities
- 40. Cannabis Dispensaries

[...]

**Section 9. IH heavy industrial district.**

[...]

B. *Primary uses permitted.* Property and structures in the IH heavy industrial district shall be used for the following purposes:

[...]

- 12. Cannabis Cultivation Facilities
- 13. Cannabis Testing Facilities
- 14. Cannabis Product Manufacturing Facilities
- 15. Cannabis Dispensaries

[...]

### **Section 15. Cannabis establishments**

(A) In order to balance the various interests and manage the effects cannabis establishments have on adjacent land uses and to promote the public health, safety, and general welfare of the city, the Common Council adopts the following regulations, recognizing that it has a great interest in the present and future character of the city's residential and commercial neighborhoods. Adoption of these regulations is not intended to unreasonably restrict the opportunity of cannabis establishments to locate in the city but is for the purpose of preventing a concentration of certain cannabis establishments in any one area.

(B) Definitions:

Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for cannabis related terms which are defined by SDCL 34-20G-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. (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.

*Cannabis 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 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.

Cannabis Establishment: a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

Unlicensed Cannabis Establishment: an entity that would otherwise meet the definition of a cannabis establishment, but which is not legally licensed by the City of Spearfish and does not have a current and valid registration certificate issued by the South Dakota Department of Health.

Public or private school. Any preschool, elementary school, middle school, secondary school, or high school. The term also includes any daycare or childcare center.

(C) Regulations Relating to Cannabis Cultivation Facilities. No cannabis cultivation facility may be located or operate at a location within the city's zoning jurisdiction except as provided in this section. A cannabis cultivation facility is a permitted use in the following zoning districts: Ag (Agriculture), IH (Heavy Industrial), ILR (Light/Restrictive Industrial).

No cannabis cultivation facility may be located or operate within one thousand (1000) feet of a public or private school, residence, or religious institution.

(D) Regulations Relating to Cannabis Testing Facilities. No cannabis testing facility may be located or operate at a location within the city's zoning jurisdiction except as provided in this section. A cannabis testing facility is a permitted use in the following zoning districts: Ag (Agriculture), CC (Central Core), C-1 (Central Commercial), C-2 (Highway Service Commercial), C-3 (Office Commercial District), ILR (Light/Restrictive Industrial), and IH (Heavy Industrial).

No cannabis testing facility may be located or operate within one thousand (1000) feet of a public or private school, residence, or religious institution.

(E) Regulations Relating to Cannabis Product Manufacturing Facilities. No cannabis product manufacturing facility may be located or operate at a location within the city's zoning jurisdiction except as provided in this section. A cannabis product manufacturing facility is a permitted use in the following zoning districts: Ag (Agriculture), C-2 (Highway Service Commercial), ILR (Light/Restrictive Industrial), and IH (Heavy Industrial).

No cannabis product manufacturing facility may be located or operate within one thousand (1000) feet of a public or private school, residence, or religious institution.

(F) Regulations Relating to Cannabis Dispensaries. No cannabis dispensary may be located or operate at a location within the city's zoning jurisdiction except as provided in this section. A cannabis dispensary is a permitted use in the following zoning districts: CC (Central Core), C-1 (Central Commercial), C-2 (Highway Service Commercial), ILR (Light/Restrictive Industrial), and IH (Heavy Industrial).

No cannabis dispensary may be located or operate within one thousand (1000) feet of a public or private school, residence, or religious institution.

(G) Unlicensed cannabis establishments are prohibited from being located or operating in any zoning district.

(H) For the purposes of this section, measurements shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing a cannabis establishment to the nearest point on the property line of a parcel containing a use listed in Sections 15(C) through (F).

(I) A cannabis establishment lawfully operating in conformity with this section does not violate this section if any of the uses in Sections 15(C) through (F) subsequently locates within one thousand (1000) feet of the cannabis establishment.

(J) It is unlawful to own, manage, or operate a cannabis establishment in zoning districts other than the zoning districts permitted by the criteria of this section. A violation of this provision is subject to the general penalty provision in Section 1-14. Each day of violation constitutes a separate offense.

\* \* \*

**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.

**Effective Date.** This Ordinance will become effective 20 days following publication, which will occur after the ordinance receives second and final reading by the City Council and is signed by the Mayor.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF SPEARFISH**

By: \_\_\_\_\_  
Dana Boke, Its Mayor

(Seal)

Attest:

\_\_\_\_\_  
Michelle DeNeui, Finance Officer

First Reading:

Second Reading:

Published:

Effective: