

## SECTION 329 – MARIJUANA BUSINESS PRESCREENING

This Section establishes the initial screening requirements for Marijuana Business applications in Pennington County.

- A. *Procedure.* Prior to the operation of any Marijuana Business, each potential licensee must submit its application for preliminary screening to the Pennington County Planning Department. The application must include payment of the required fee and all supporting documentation.
- B. *Application Deadlines.* The following deadlines shall apply to all initial applications, any application for an open license, and any new licenses added by ordinance amendment:
  - 1. *Initial Applications.* Upon the adoption and publication of PCZO §§ 325, 326, 327, and 328, prescreening applications must be submitted electronically or in person within ten (10) calendar days to the Pennington County Planning Department.
  - 2. *Existing Open License.* The Planning Department shall notify the public of any available Pennington County Marijuana Business license and date of prescreening application acceptance at least ten (10) days in advance of the application open date in a legal newspaper of the county. Prescreening applications must be submitted electronically or in person within ten (10) calendar days date of prescreening application acceptance to the Planning Department.
  - 3. *Addition of New License.* Upon the adoption and publication of a revision to PCZO § 328(A)(2) increasing the number of available county licenses, a potential applicant must submit a prescreening application electronically or in person within ten (10) calendar days of publication to the Pennington County Planning Department.
- C. *County Response Time.* The Planning Department shall provide, in writing, acceptance or denial of the potential applicant’s prescreening application at the close of business hours within three (3) business days of receiving the application. This may be delayed at applicant’s request or for good cause.
- D. *Prescreening Criteria.* The Pennington County Planning Director or his/her designee shall utilize the following criteria for approval of the pre-screening application:
  - 1. No applicant may have a *Disqualifying Felony Offense*, and
  - 2. The applicant must be entitled to possession of the premises for which application is made under a lease, rental agreement or other arrangement for possession of the premises, or by virtue of ownership of the premises at the time of application, and
  - 3. The location of the proposed Marijuana Business must meet the requirements of Pennington County Zoning Ordinance (PCZO) § 326(A)(4), and
  - 4. The location must meet the distance, isolation or separation distances in PCZO § 326(A)(5).
- E. *Fees.* Nonrefundable pre-screening application fee - \$500.

## **SECTION 325 – MARIJUANA ORDINANCE DEFINITION OF TERMS**

This Section defines the terms used in §§ 326, 327, and 328.

The following terms mean:

1. *Cultivation Facility*. A legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells marijuana and related supplies to a Marijuana Business.
2. *Department*. The Department of Health.
3. *Dispensary*. A legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, marijuana, marijuana products, paraphernalia, or related supplies and educational materials.
4. *Disqualifying Felony Offense*. A violent crime that was classified as a felony in the jurisdiction where the person was convicted.
5. *Fire Code*. South Dakota fire safety standards pursuant to ARSD 61:15.
6. *Licensee*. A person licensed by the State of South Dakota and Pennington County who obtains a license as a condition of engaging in a Marijuana Business.
7. *Manufacturer*. A legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells marijuana products to a marijuana dispensary.
8. *Marijuana or Cannabis*. As defined in SDCL 22-42-1(7).
9. *Marijuana Business*. A Marijuana Dispensary, Marijuana Cultivation Facility, Marijuana Manufacturer or Marijuana Testing Facility.
10. *Testing Facility*. A legally licensed entity legally authorized to analyze the safety and potency of marijuana.
11. *Marijuana Waste*. Cannabis flower or trim, cannabis seeds, cannabis products, by-products containing cannabis, or cannabis plants, excluding stalks without trichomes and root balls, that are unfit for retail transfer to another cannabis establishment including any expired products sold at dispensaries.

## SECTION 326 – MARIJUANA BUSINESSES

This Section establishes Conditional Use Permit (CUP) requirements for Marijuana Businesses operating in Pennington County.

- A. *Requirements.* A Marijuana Business, as defined in this Section, is subject to all rules of South Dakota Codified Law, South Dakota Administrative Rules and to the following conditions:
1. *Prerequisites.* Prior to the operation of any Marijuana Business, each business must comply with the following:
    - a. Compliance with the preliminary screening procedure as required in PCZO § 329;
    - b. A CUP must be obtained from Pennington County;
    - c. A license must be obtained from Pennington County; and,
    - d. A license must be obtained from the State of South Dakota.
  2. Compliance with PCZO § 204.
  3. Compliance with PCZO § 510.
  4. *Allowable Zoning Districts.*
    - a. Marijuana Dispensaries are allowed with a Conditional Use Permit in general commercial and highway service zoning districts.
    - b. Marijuana Cultivation Facilities are allowed with a Conditional Use Permit in general commercial and industrial zoning districts.
    - c. Marijuana Manufacturers are allowed with a Conditional Use Permit in industrial zoning districts.
    - d. Marijuana Testing Facilities are allowed with a Conditional Use Permit in general commercial and industrial zoning districts.
  5. *Zoning Restrictions.*
    - a. A Marijuana Dispensary shall not be located within 1,000 feet of any other Marijuana Dispensary.
    - b. Marijuana Businesses shall not be located within 1,000 feet of a:
      - 1) Church; or
      - 2) Public or private elementary or secondary school; or
      - 3) Public or private day care center, preschool, nursery, kindergarten, or similar use; or
      - 4) Public park or playground.
    - c. A Marijuana Business shall not be located within 100 feet of:
      - 1) Residentially zoned property; or
      - 2) Residential dwelling unit; or
      - 3) Youth center; or
      - 4) Public swimming pool; or
      - 5) Video arcade; or
      - 6) Alcohol or drug rehabilitation facility; or
      - 7) Halfway house or group home; or
      - 8) Correctional facility; or
      - 9) Adult oriented business.
    - d. *Prohibited Conduct.*

- 1) No Marijuana Business shall be allowed as a home occupation use.
  - 2) No Marijuana Business shall be located in a residentially zoned or residentially used building.
  - 3) No Marijuana Business shall be located in a movable or mobile structure.
- e. *Development Standards.* All Marijuana Businesses shall develop properties in harmony with the surrounding area and shall enhance design elements of buildings and properties accordingly.
- B. *Measuring of Distances.* All distances referred to in this Section shall be measured from property line to property line unless the distance is to a residential dwelling unit. Distances to a residential dwelling unit shall be from lot line to the closest portion of the residential structure.
- C. *Conditional Use Permit.* A CUP is required for all Marijuana Businesses.
1. *Application Requirements.*
    - a. All applications for a CUP shall be filed with the Planning Department on the official form supplied by the Planning Department and shall be accompanied by a CUP application fee pursuant to this section.
    - b. *Requirements.* A CUP application shall include the following information:
      - 1) All Marijuana Businesses must submit:
        - a) *Screening.* Proof the applicant has satisfied Pennington County's preliminary screening procedure, as directed by Ordinance, for the proposed premises.
        - b) *Identifier.* The address or legal description of the property on which the proposed Marijuana Business will be located.
        - c) *Neighborhood Context Map.* An accurate straight-line drawing depicting the boundaries of the premises, the boundaries of all other properties within 1,000 feet of the premises, and the uses of those properties, specifically including, but not limited to, any use identified in Section 326(A)(5)(b) and 326(A)(5)(c). The map must be professionally prepared by a licensed civil engineer, architect or registered land surveyor.
        - d) *Design and Plans.*
          - 1) A site plan and floor plan of the Marijuana Business denoting all the use of areas of the Marijuana Business, including storage, employee areas, exterior lighting, restrooms, security cameras, areas of ingress and egress, signage, limited access areas, and restricted access areas.
          - 2) Plans and specifications for the interior of the proposed premises 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 shall file a plot plan and a detailed sketch for the interior and shall further submit an architect's or engineer's drawing of the building to be constructed.

- 3) A description of the design of the proposed premises evidencing that the design conforms to applicable County, State laws, and applicable regulations.
  - 4) A plan for the management of marijuana waste generated from the facility as required by South Dakota law and regulation.
  - e) *Ownership.* The name and address of the person who owns the real property upon which the Marijuana Business is to be operated. In the event the applicant does not legally own the property, the application must be accompanied by a notarized acknowledgement from the person who owns the property that a Marijuana Business will be operated on the subject property.
  - f) *Hours.* Proposed hours of operation. Such hours must conform to §§ 326, 327, and 328 of these Ordinances and any State statute or regulations.
  - g) *Certification.* A statement in writing by the applicant that certifies under penalty of perjury that all the information contained in the application is true and correct.
  - h) Any additional information as deemed necessary by the Planning Department to administer this Section.
- 2) Cultivation and Manufacturing Facilities must also submit the following:
- a) An environmental plan indicating how cultivation or manufacturing will be conducted in accordance with State and local laws related to hazardous material disposal, land conversion, grading, electricity usage, water usage, and agricultural discharges.
  - b) An emergency response plan that sets out standard operating procedures to be followed by all individuals in case of a fire, chemical release, chemical spill, or other emergency.
  - c) A description of the source of power (electric utility company, solar, diesel generators), the size of the electrical service or system, and the total demand to be placed on the system by all proposed uses on site.
- 3) *Cultivation.* In addition to the above requirements a Cultivation Facility must additionally submit verification of all water sources used by the proposed premises and verification that the proposed premises do not utilize water that has been or is illegally diverted from any stream, creek, or river.
- 4) *Manufacturing.* In addition to the above requirements a Manufacturing Facility must additionally submit:

- a) A report from a professional engineer that details the type of equipment that will be used to extract cannabinoids from marijuana. If flammable gas, flammable liquefied gas, flammable and combustible liquids, or compressed carbon dioxide (CO<sub>2</sub>) are used for extraction; the report must certify that only closed-loop extraction system(s) that are UL or ETL listed, are capable of recovering the solvent utilized.
  - b) *Extraction Room Diagram.*
    - 1) A separate diagram showing any room where extraction occurs that details the location of the extraction equipment,
    - 2) areas of ingress and egress,
    - 3) emergency eye-wash stations, and
    - 4) any other fire suppression or emergency equipment required by the International Building Code, Fire Code, Electrical Code and any other applicable laws.
  
- 2. *Application Review.* The Planning Department shall review, verify, and investigate all information on the application. Staff will prepare a report for the Planning Commission incorporating the findings of such investigation and verification, including, but not limited to, the suitability of the proposed location and the applicant's compliance with the requirements of this Section.
  
- 3. *Conditions of CUP Approval.*
  - a. Every CUP for a Marijuana Business shall be subject to the following Conditions of Approval:
    - 1) *Odor.* A Marijuana Business must be equipped with an odor absorbing ventilation and exhaust system so that odor generated inside the premises that is distinctive to its operation is not detected outside the Marijuana Business.
      - a) Such mitigation is for the peaceful enjoyment of any adjacent property, public rights-of-way, any exterior or interior common area walkways, hallways, breeze-ways, foyers, lobby areas, or any other areas available for common use by tenants or the visiting public, or within any other unit located within the same building as the Marijuana Business.
      - b) As such, Marijuana Businesses must install and maintain the following equipment or any other equipment which local licensing authority determines has the same or better effectiveness:
        - 1) An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or
        - 2) An air system that creates negative air pressure between the Marijuana Businesses' interior and exterior so that the odors generated inside the

Marijuana Business are not detectable outside the Marijuana Business.

- 2) *Security.*
    - a) All windows on the premises of the Marijuana Business shall be appropriately secured.
    - b) All Marijuana and Marijuana Products must be securely stored.
  - 3) *Signage.* From a public right-of-way, there should be no exterior evidence of the Marijuana Business except for one permitted on-premise sign, in accordance with § PCZO 312, for a Marijuana Dispensary.
    - 4) *Compliance.* All Marijuana Businesses and all equipment used in the operation of the business, must be operated in compliance with all applicable State and local laws and regulations, including all building, electrical, and fire codes, and in compliance with the businesses' State and County Licenses.
  - 5) *Additional Conditions.* Any additional conditions as required by the Planning Department, the Planning Commission, or the Board of Commissioners consistent with State law and this Section for the health, safety, and welfare of the public.
- b. *Manufacturing Facility.* Every CUP for a Manufacturing Facility shall also include the following Conditions of Approval:
- 1) All manufacturing of Marijuana and Marijuana Products shall occur in an enclosed locked structure.
  - 2) Manufacturing activities shall only occur in the areas depicted on the floor plan submitted by the applicant and shall not exceed the square footage authorized pursuant to the Conditional Use Permit.
  - 3) *Fire and Hazard Mitigation.*
    - a) The use of hazardous materials, flammable gas, flammable liquefied gas, flammable and combustible liquids, or other flammable material to process marijuana must be located on the premises where required by the Fire Administrator or his or her designee.
    - b) Storage, use, and handling of compressed gases in compressed gas containers, cylinders, tanks and systems shall be in accordance with the Fire Code.
    - c) Prevention, control and mitigation of dangerous conditions related to storage, use, dispensing, mixing and handling of flammable and combustible liquids shall be in accordance with the Fire Code.
    - d) *New Structure.* Manufacturing sites are a Group F-1 (Factory Industrial Moderate-Hazard) Occupancy under the Fire Code. All new construction is required to have a fire sprinkler system per the Fire Code.
    - e) *Existing Structure.* For manufacturing sites that will be sited

in an existing structure, a sprinkler system shall be provided throughout all buildings containing a Group F-1 occupancy where one of the following conditions exists:

- 1) A Group F-1 fire area exceeds 12,000 square feet; or
- 2) A Group F-1 fire area is located more than three stories above grade plane; or
- 3) The combined area of all Group F-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet.

c. *Cultivation Facility.* Every CUP for a Cultivation Facility shall also include the following Conditions of Approval:

- 1) All cultivation of marijuana shall occur in an enclosed locked structure. Outdoor cultivation is prohibited.
- 2) Cultivation activities shall occur only in the areas shown on the floor plan submitted by the applicant and shall not exceed the square footage authorized pursuant to the CUP.
- 3) *Fire and Hazard Mitigation.*
  - a) *Electrical.* Areas where marijuana is cultivated are wet locations. As such, the electrical system in cultivation areas must comply with Article 300.6(D) of the National Electric Code, International Building Codes, Fire Code, and all other applicable laws.
  - b) *New Structure.* Cultivation facilities are a Group F-1 (Factory Industrial Moderate-Hazard) Occupancy under the Fire Code. All new construction is required to have a fire sprinkler system per the Fire Code.
  - c) *Existing Structure.* For cultivation facilities that will be sited in an existing structure, a sprinkler system shall be provided throughout all buildings containing a Group F-1 occupancy where one of the following conditions exists:
    - 1) A Group F-1 fire area exceeds 12,000 square feet; or
    - 2) A Group F-1 fire area is located more than three stories above grade plane; or
    - 3) The combined area of all Group F-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet.

d. *Dispensary.* Every CUP for a Dispensary shall also include the following Conditions of Approval:

- 1) Dispensary facilities shall store all Marijuana and Marijuana Products in a locked safe room, safe, or vault and in a manner to prevent diversion, theft, and loss when not on display for sale.
- 2) The storage of marijuana and marijuana products shall occur only in the areas shown on the floor plan submitted by the applicant and shall not exceed the square footage authorized pursuant to the CUP.



D. *Required Notices.*

1. *Notice to Property Owners.* The applicant must notify abutting and surrounding property owners (inclusive of Contract for Deed buyers) of record within 1,000 feet by registered or certified mail of the requested CUP at least 10 days prior to the public hearing by the Planning Commission.
2. *Notice of Planning Commission Hearing.* The Planning Commission shall hold at least one public hearing on the proposed CUP. Notice of the time and place of the hearings shall be given once at least 10 days in advance by publication in the legal newspapers of the County.
3. *Sign.* The Planning Department shall provide a sign, which is to be posted on or near the property involved in the CUP request in a location with the greatest public visibility. If the property is not adjacent to any public right-of-way, the sign shall be placed at the access point to the property along the nearest public right-of-way. Said sign shall be placed no less than 10 days prior to the date of the public hearing before the Planning Commission.

E. *Public Hearings.*

1. Planning Commission.
  - a. *Prerequisites.* Before a hearing may be held, the applicant must do the following:
    - 1) fill out the application form completely;
    - 2) submit the application form and all supporting documentation to the Planning Department; and
    - 3) pay the CUP Application Fee.
  - b. *Scheduling a Hearing.*
    - 1) *Compliance with Prerequisites.* If the applicant has complied with PCZO § 326(D)(1), then the Planning Director must schedule a hearing before the Planning Commission.
      - a) *Role.* The Planning Commission reviews the CUP application.
      - b) *Decision* In making its decision, the Planning Commission may:
        - i. continue and request further information; or
        - ii. approve, continue, or deny.

F. *Review of CUP.*

1. *Annual Review.* The CUP is subject to review by the Planning Commission for compliance with Conditions of Approval on an annual basis.
2. *Renewal Fee.* A fee is required for each annual review and is due 30 days prior to the annual review date.
3. *Determination.* At the conclusion of the review, the Planning Commission may:
  - a) approve the CUP under the conditions already imposed;

- b) approve the CUP with additional conditions, subject to another review;
- c) schedule another review; or
- d) request a revocation hearing in accordance with subsection (G) of this Section.

G. *Revocation of Conditional Use Permit.*

1. Any CUP approved under this Section must be established and conducted in conformity with the Conditions of Approval of the Permit. Failure to comply with Conditions of Approval is cause for revocation of the Permit.
2. *Grounds.* The Planning Director may schedule a revocation hearing before the Planning Commission if:
  - a. The owner or applicant has failed repeatedly to comply with the conditions of the approved Permit; or,
  - b. The continued conditional use is a threat to public health, safety, or general welfare.
3. *Notice.* Notice of time and place of hearing shall be given, in writing, to the permit holder at least 30 days in advance of hearing. Surrounding property owners must also be given written notice of the hearing as provided under PCZO § 326(D)(1). Notice of time and place of the hearing shall be published at least 30 days in advance of hearing in the legal newspapers of the County.
4. *Hearing.* Upon hearing, the Planning Commission may revoke the Permit pursuant to the standards set forth in PCZO § 510 or order remedial action to be taken by the owner or operator.
5. *Revocation.* Any revocation of a CUP by the Planning Commission shall be reported to the applicable State enforcement division.

H. *Verification of Conditions of Approval.*

1. The Planning Department shall have the right to enter all Marijuana Businesses from time to time unannounced for the purpose of making reasonable verifications and observations to enforce compliance with the Marijuana Business' CUP. Such verification and observation shall be limited to observing the premises for purposes of determining whether the Marijuana Business is being operated or maintained in compliance with this Section.
2. Applicants and permittees must cooperate with employees of the Planning Department who are conducting verification and observations relevant to the enforcement of this Section. No applicant or permittee shall by any means interfere with, obstruct or impede ~~the~~ any Planning Department Staff from exercising their duties under the provisions of this Section.

I. *Fees.*

1. Marijuana Business CUP Application - \$3,000.
2. Marijuana Business CUP Annual Review Fee - \$500.
3. Marijuana Business CUP Transfer Fee - \$1,000.

J. *Enforcement.*

1. Failure to comply with conditions of approval of a CUP is a violation of Pennington County Zoning Ordinance and subject to the enforcement provisions of PCZO § 514.
2. This Ordinance shall in no way limit application and enforcement of any statutes or administrative rules of the state of South Dakota.

K. *Appeals.* Any appeal of a decision taken under this section must be done in accordance with SDCL Chapter 11-2.

## SECTION 327 – MARIJUANA BUSINESS DEVELOPMENT PLAN STANDARDS

This Section establishes development plan standards for Dispensaries, Cultivation Facilities, Manufacturers and Testing Facilities.

A. *General Requirements.* Development standards are subject to all rules of South Dakota Codified Law, South Dakota Administrative Rules and to the following:

1. *Security.* The following requirements are for ALL Marijuana Businesses:
  - a. *Security System.* The following requirements shall be imposed:
    - 1) Each premises must have a security alarm system on all exterior doors, windows, and gates.
    - 2) Each Licensee must ensure that all of its licensed premises are continually monitored by a security company capable of contacting the Licensee and, if necessary, law enforcement.
    - 3) The system must include an audible alarm, which must be capable of being disabled remotely by the security company.
    - 4) Surveillance systems must alert the security company during a power failure and must operate for a minimum of four hours on backup power.
  - b. *Locks.* At all points of ingress and egress, the Licensee must ensure the use of a commercial-grade, nonresidential door locks in accordance with Department regulations.
  - c. *Video Recording System.*
    - 1) Installation of a fully operational video surveillance and camera recording system.
    - 2) The recording system must be placed and record in digital format pursuant to all Department regulations.
2. *Waste Disposal.* The following requirements are for ALL Marijuana Businesses:
  - a. All Marijuana Waste must be made unusable and unrecognizable prior to leaving any licensed premises.
  - b. Marijuana waste must be ground and incorporated with non-consumable, solid wastes listed below such that the resulting mixture is at least 50 percent non-marijuana waste:
    - 1) soil;
    - 2) sawdust;
    - 3) grease;
    - 4) food waste;
    - 5) yard waste;
    - 6) shredded paper; and
    - 7) other solid wastes approved by the Department that will render marijuana waste unstable and unrecognizable.
  - c. Marijuana Waste must be disposed of in compliance with the Marijuana Business' Department approved operating procedure.

3. *Egress.* All egress doors from Marijuana Businesses must be readily openable from the egress side without the use of a key, special knowledge or effort except as provided in Department regulation of co-located Marijuana Businesses.
4. *Ventilation.* A Marijuana Business must be properly ventilated to filter odor from marijuana so that the odor cannot be detected by a person with a normal sense of smell at the exterior of the Marijuana Business or at any adjoining use or property.
  - a. Mechanical Ventilation must be in accordance with the International Mechanical Code (IMC) Section 403.3.
  - b. A licensed building official, architect or registered engineer must verify and stamp plans for the ventilation system.
5. *Exhaust Systems.*
  - a. *Contaminant Sources.* Stationary local sources producing air-borne particulates, heat, odors, fumes, spray, vapors, smoke or gases in such quantities as to be irritating or injurious to health shall be provided with an exhaust system in accordance with Chapter 5 of the IMC.
  - b. Exhaust shall discharge directly to an approved location at the exterior of the building.
  - c. Single or mechanical exhaust system shall be independent of all other exhaust systems and be in accordance with IMC 501.2.1.
  - d. A licensed building official, architect or registered engineer must verify and stamp plans for the exhaust system.
6. *Fire Sprinklers.* The following is required for Marijuana Manufacturing and Cultivation Businesses:
  - a. *New construction.* All new construction is required to have a sprinkler system pursuant to all requirement of the Fire Code and the Department.
  - b. *Existing construction.* A sprinkler system shall be provided throughout all buildings where one of the following conditions exists:
    - 1) A Group F-1 fire area exceeds 12,000 square feet; or
    - 2) A Group F-1 fire area is located more than three stories above grade plane; or
    - 3) The combined area of all Group F-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet.
7. *Electrical.* The following requirements apply to all Marijuana Businesses:
  - a. An Electrical Permit is required from the State of South Dakota.
  - b. All wiring and electrical work must be performed by a Licensed Electrician in accordance with International Building Code, 2021.
  - c. Proof of a successful inspection by the State Inspector required prior to operation of any Marijuana Business.
8. *Plumbing.* The following requirements apply to all Marijuana Businesses:
  - a. A Plumbing Permit is required from the State of South Dakota.
  - b. All plumbing work must be performed by a Licensed Plumber in accordance with International Building Code, 2021.

- c. Proof of a successful inspection by the State Inspector required prior to operation of any Marijuana Business.

B. *Development Plan.* An approved Development Plan is required prior to issuance of a Pennington County Marijuana Business License as provided for in PCZO § 328.

1. *Application.* All applications for a Development Plan shall be filed with the Planning Department on the official form supplied by the Planning Department and shall be accompanied by the Development Plan Fee as specified in this Section.
2. *Requirements.* An application for a Development Plan shall include, but shall not be limited to, the following information:
  - a) Proof the applicant has received an approved Conditional Use Permit (CUP) in accordance with PCZO § 326.
  - b) All CUP submittal information.
  - c) Stamped architect or engineer building plans which conform to the requirements of PCZO §327(A).
  - d) All other proof as required to demonstrate the business will conform with PCZO § 327(A).
3. *Plan Review.* The Planning Department and appropriate County staff shall review and verify all information on the application.
  - a) *Meeting.* Staff from all impacted County Departments will be informed of the application and shall have the opportunity to attend formal meeting(s) to review the Development Plan.
  - b) *Comments.* Any comments or concerns raised by a County Department will be compiled and communicated to the applicant.
  - c) *Required Plan Revisions.* Plan revisions and staff reviews will be necessary until all County Department comments have been addressed.
4. *Plan Approval.* When all necessary corrections have been made and the plans are approved by Pennington County, the applicant may apply for a Marijuana Business License in accordance with PCZO § 328.
5. *Deadline.* The Planning Department must render a decision on the development plan within ten (10) days of its submission unless the delay is due to a failure by the applicant to meet the requirements of this Section, a request by the applicant for additional time, or for good cause.
6. *Changes to Development Plan.* Any change to the Development Plan after approval will require additional reviews by Pennington County staff. A Development Plan Review Fee, as specified by this Section, is required at the time of the requested change.

C. *Fees.*

1. Development Plan Fee - \$1,000.
2. Development Plan Review Fee (changes) - \$250.

D. *Enforcement.*

1. Failure to comply with approved Development Plan is a violation of Pennington County Zoning Ordinance and subject to the enforcement provisions of PCZO § 514.  
6.

## SECTION 328 – MARIJUANA BUSINESS LICENSE

This Section establishes the requirement for all Dispensaries, Cultivation Facilities, Manufacturers and Testing Facilities to obtain a License in Pennington County.

- A. *Licenses.* All Marijuana Businesses operating in the unincorporated areas of Pennington County must have a County Marijuana Business License. Pennington County may issue a County Marijuana Business License subject to the provisions and restrictions provided in Pennington County Zoning Ordinance (PCZO) §§ 326, 327, and this Section.
1. *Types of Licenses.* The following Marijuana Business Licenses can be issued:
    - a. Marijuana Dispensary.
    - b. Marijuana Cultivation Facility.
    - c. Marijuana Manufacturer.
    - d. Marijuana Testing Facility.
  2. *Number of Licenses.* Pennington County will issue the following number of County licenses for the purpose of regulating Marijuana Businesses subject to the provisions and restrictions provided in the PCZO §§ 326, 327, and this Section:
    - a. Three (3) Marijuana Dispensary Licenses;
    - b. Three (3) Marijuana Cultivation Facility Licenses;
    - c. Two (2) Marijuana Manufacturing Facility Licenses;
    - d. One (1) Marijuana Testing Facility License.
- B. *Application.* An applicant for a Marijuana Business License shall file with the Planning Department the following:
1. *CUP.* A copy of the approved Conditional Use Permit (CUP) granted pursuant to PCZO § 326 and all supporting documentation.
  2. *Development Plan.* A copy of the approved Development Plan approved pursuant to PCZO § 327 and all supporting documentation.
  3. *Products and Services.* A description of the products and services to be provided by the Marijuana Business.
  4. A description of the design of the establishment.
  5. *Certifications.*
    - a. *Background Checks.* A certification that the Marijuana Business will or has conducted criminal background checks of all of its principal officers, board members, agents, volunteers, or employees before each individual begins working at the Marijuana Business.
    - b. *Employment Restrictions.* A certification that the Marijuana Business shall not employ individuals convicted of a Disqualifying Felony Offense.
    - c. *Previous Marijuana Business Revocation.* A certification that no principal officers or board members of the proposed Marijuana Business has served as a principal officer or board member for a Marijuana Business or its equivalent in any other jurisdiction that has had its registration certificate revoked.



6. *Statements.*
    - a. *Fraud or False Statements.* A statement whether any of the principal officers or board members of the proposed Marijuana Business has been convicted of a criminal offense involving fraud or false statements to a unit of government in the previous ten (10) years.
    - b. *Previous Recreational Business Revocation.* A statement whether any principal officers or board members of the proposed Marijuana Business has served as a principal officer or board member of any business that has had a license or permit suspended or revoked for violations of laws or regulations relating to alcohol, tobacco, or gaming.
  7. Any additional document(s) or information reasonably requested by Pennington County or as required by the Department for State licensing.
- C. *Application Submittal.* Applications will be deemed submitted only when all requirements of PCZO § 328(B) have been met and the application is accompanied by the applicable fee(s) set forth in PCZO §328(O).
- D. *Notice.*
1. *Notice of Board of Commission Hearing.* The Board of Commissioners shall hold at least one public hearing on a Marijuana Business License. Notice of the time and place of the hearing shall be given once at least 10 days in advance by publication in the legal newspapers of the County.
  2. *Sign.* The Planning Department shall provide a sign, which is to be posted on or near the property involved in the License request in a location with the greatest public visibility. If the property is not adjacent to any public right-of-way, the sign shall be placed at the access point to the property along the nearest public right-of-way. Said sign shall be so placed no less than 10 days prior to the date of the public hearing before the Board.
- E. *Hearing.* The Board will hold at least one public hearing on a Marijuana Business License.
1. *Review.* The Board may consider the facts and evidence obtained as part of the CUP and Development Plan process as well as any other facts pertinent to the type of License for which an application has been made. Such information may include:
    - a. The number, type and availability of Marijuana Businesses located in or near the premises under consideration;
    - b. Any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed; and
    - c. Whether the evidence presented to the Board indicates the applicant will comply with this Section, South Dakota Codified Law, and South Dakota Administrative Rules.
  2. *Decision.* In making its decision, the Board must make one of the following findings:

- a. *Conditional approval.* Applicable only to new Marijuana Business Licenses.
- b. *Approval.* Applicable only to license renewals and transfers pursuant to PCZO §§ 328(K) and (M).
- c. *Continuance;* or
- d. *Denial.* The Board may deny any application pursuant to the reasons set forth in PCZO §§ 328(H)(1) and 328(H)(2).

F. *Conditional Approval.* Upon an affirmative vote from the Board, the Licensee will receive Conditional Approval of a County License. Conditional Approval is valid for one year. If after one year, the licensee has not obtained a State License and received final approval of the County License, the Conditional Approval will end.

G. *Final Approval.* The Licensee will not receive final approval until:

1. A State License is issued;
2. The building or structure in which the Marijuana 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 this Section, South Dakota Codified Law, South Dakota Administrative Rules or any other applicable state, local law or regulation; and
3. After the Planning Department has verified the applicant has complied with all requirements of PCZO §§ 326, 327, and this Section.

H. *County Licensing Requirements.*

1. *Required Denial.* A County License provided by this Section shall not be issued to or held by any person or entity under the following conditions:
  - a. The person or entity is prohibited as a licensee under any State or local law, rule or regulations.
  - b. The applicant is not, or will not be, entitled to possession of the premises for which application is made under a lease, rental agreement or other arrangement for possession of the premises, or by virtue of ownership of the premises;
  - c. The location of the proposed Marijuana Business is not expressly permitted and approved under the provisions of a CUP in accordance with PCZO § 326.
  - d. The location does not meet the distance, isolation or separation distances required for the specified Marijuana Business as required in PCZO §§ 326, 327, and 328, South Dakota Codified Law, South Dakota Administrative Rules or any other applicable state, local law or regulation.
  - e. The Marijuana Business will not or is not in compliance with PCZO §§ 326, 327, and 328, South Dakota Codified Law, South Dakota Administrative Rules or any other applicable state, local law or regulation.
2. *Permissible Denial.* The Board may deny a Marijuana Business license provided by this Section to any person or entity under the following conditions:
  - a. The applicant has prior to, or on the date of the application, made misrepresentations concerning the business for which the license is being

- sought or on any of the submittals made with an application.
- b. Evidence presented demonstrates that the premises upon which the County License is to be located is unable to be operated by the Licensee in a manner which will not adversely affect the public health, safety or welfare of the immediate neighborhood in which the establishment is to be located or for good cause.
3. *Waiting Period Upon Denial.* If an applicant has been denied any County license or County renewal license pursuant to this Section, the applicant must wait twelve (12) months prior to re-applying for any license issued pursuant to this Section unless the waiting period is waived by the Board at the time of denial by the Board.
  4. *Conditions of Approval.* The Board may place conditions upon the approval of any County License which are reasonably related to the protection of the health, safety or welfare of the general public or the neighborhood in which the establishment is to be located.
  5. *Inactive License.* The Board may revoke or elect not to renew any license issued pursuant to this Section if it determines that the licensed premises have been inactive, without good cause, for a period of at least one year. Such revocation shall be conducted pursuant to PCZO § 328(Q).
  6. *Standards.* A license issued pursuant to this Section shall specify:
    - a. The date of issuance;
    - b. The period of licensure (1 year from the date of issuance); and
    - c. The name of the licensee and the premises licensed.
  7. *License Display.* The licensee shall conspicuously place the license at all times on the licensed premises.

I. *License Operation Standards.*

1. *Maintain Possession.* At all times subsequent to the issuance of a license pursuant to this Section, a licensee shall possess and maintain possession of the premises for which the License is issued by ownership, lease, rental or other arrangement for possession and use of the premises.
2. *Operation Hours.* No Dispensary approved pursuant to this Section may sell marijuana at any time except between the hours of 9:00 am to 9:00 pm, unless a more restrictive time is set by the State of South Dakota.
3. *Compliance with Ordinance.* A Marijuana Business shall comply with all requirements and in accordance with all submissions and conditions made pursuant to PCZO §§ 326, 327, and this Section.

J. *License Expiration.* A Marijuana Business license shall expire one (1) year after issuance of final approval pursuant to Section G of this Ordinance. A current licensee may apply for license renewal pursuant to Section K of this Ordinance.

K. *License Renewals.*

1. *Timing.* A licensee choosing to renew shall apply for the renewal of an existing license to the Board not less than 45 days prior to the date of the expiration of the License.
2. *CUP.* The licensee must meet the conditions of approval of the CUP issued pursuant to PCZO § 326 for the Marijuana Business.
3. *Hearing.* The Planning Department may schedule a hearing on the application for renewal if:
  - a. The licensee has had formal complaints filed against it;
  - b. Any ordinance violation(s) in the preceding year;
  - d. The licensee has committed any unlawful acts; or
  - e. Allegations have arisen that constitute good cause to deny renewal of an application.
4. *Hearing Notice and Procedure.* In the event that a hearing is scheduled, notice and procedure of the same must be in accordance with PCZO § 328(D) and (E).
5. *Determination without Hearing.* Where no hearing is scheduled, all renewal applications shall be approved by the Planning Director. A hearing pursuant to PCZO § 328(D) and (E) is required for any recommended denial of license renewal.
6. *Late Application.*
  - a. *Up to 90 Calendar Days.* A licensee whose license has expired for no more than 90 calendar days may file a late renewal application upon the payment of a nonrefundable late license fee pursuant to PCZO § 328(O). A licensee who files a late renewal application and pays the requisite fee may continue to operate until the County has taken final action to approve or deny the licensee's late renewal application.
  - b. *Past 90 Calendar Days.* The County will not accept a late renewal application more than 90 calendar days after the expiration of the licensee's annual license. A licensee whose license has been expired for more than 90 calendar days shall not, under any circumstances, operate a Marijuana Business until a new County License has been obtained pursuant to PCZO §§ 326, 327, and this Section.

L. *Change in Financial Interest of a Marijuana Business.*

1. *Reporting Required.* A licensee of a license issued pursuant to this Section must report each transfer or change of financial interest in the license and the licensee to the Planning Department.

2. *Report.* A report to the Planning Department shall be required for the following transfers:
  - a. Any capital stock of any corporation regardless of size;
  - b. Any member interests of any limited liability company regardless of size; and
  - c. Any interest in a partnership or other entity or association regardless of size.
3. Nothing in PCZO § 328(L) shall be construed as limiting in any way the authority of Pennington County to determine the allowable transfer of a Marijuana Business license issued pursuant to this Section.

M. *Transfer of Ownership of License.*

1. *Non-Transferrable.* A Marijuana Business license granted under the provisions of this Section shall not be transferrable to any other person or entity except as provided in this Section.
2. *Exception.* A transfer of a license issued pursuant to this Section is authorized pursuant to the below requirements:
  - a. Same Property.
    - 1) The transferee, with the transferor's consent, shall apply to Pennington County pursuant to PCZO §§ 327 and this Section, and in accordance with South Dakota law.
    - 2) The application shall include the required transfer fee pursuant to PCZO § 328(O).
    - 3) *Hearing, Notice, and Procedure.* A hearing shall be held on the license transfer in accordance with the requirements in PCZO § 328(D)-(E).
  - b. New Property
    - 1) The transferee, with the transferor's consent, shall apply to Pennington County pursuant to PCZO §§ 326, 327, and this Section, and in accordance with South Dakota law.
    - 2) The application shall include the required transfer fee pursuant to PCZO § 328(O).
    - 3) *Hearing, Notice, and Procedure.* A hearing shall be held on the license transfer in accordance with the requirements in PCZO § 328(D) and (E).
3. *Prohibition.* No application for a transfer of ownership will be considered by the Board if, at the time of such application, the current licensee is under a notice of violation of Ordinance or charged/noticed of any other unlawful acts.
4. Nothing in PCZO § 328(M) shall be construed as limiting in any way the authority of Pennington County to regulate a change in location of a license issued pursuant to this Section.

N. *Change in License Location.*

1. *Application Required.* A licensee may apply to the Planning Department to change the location attached to an approved license issued pursuant to this Section.
2. *Allowed Locations.* A licensee shall only transfer to approved locations as specified by this Section, PCZO §§ 326 and 327 in unincorporated Pennington County.
3. *Outer Jurisdiction Transfer.* A Marijuana Business licensee in any South Dakota jurisdiction may transfer its license to Pennington County so long as:
  - a. The transfer would not exceed the allowable number of Pennington County licenses specified in PCZO §328(A)(2);
  - b. The State approves the transfer; and
  - c. The applicant is approved under the application process set forth in PCZO §§ 326, 327, and this Section.
  - d. It shall be unlawful to cultivate, manufacture, distribute, test, store or sell medical or retail marijuana at any such place or location until express permission to do so is granted by the State and the Board.
4. *Property Transfer Without Approval Unlawful.*
  - a. It shall be unlawful to operate any Marijuana Business at any unapproved location.
  - b. Express permission must be granted by Pennington County and the State of South Dakota prior to operation at a new location.
  - c. Failure to comply with this requirement may be grounds for revocation or suspension of a Marijuana Business license.
5. All changes in location shall be subject to all of the application requirements for new Marijuana Businesses under PCZO §§ 326, 327, and this Section.

O. *Fees.* Operating fees and all other fees necessary for the administration, regulation, and implementation of this Section are as follows:

1. *Initial Operating Fees*
  - a. Marijuana Dispensary: \$5,000
  - b. Marijuana Cultivation Facility: \$5,000
  - c. Marijuana Manufacturing Facility: \$5,000
  - d. Marijuana Testing Facility: \$5,000
2. *Administrative Operating Fees*
  - a. Change of Location Fee: \$5,000
  - b. Modification of Premises Fee: \$1,000

3. Annual Renewal Fees
  - a. Marijuana Dispensary: \$5,000
  - b. Marijuana Cultivation Facility: \$5,000
  - c. Marijuana Manufacturing Facility: \$5,000
  - d. Marijuana Testing Facility: \$5,000
4. Late Renewal Fees
  - a. Late Renewal fees for all allowed establishments: \$2,500
5. Transfer Fees
  - a. Marijuana Dispensary: \$5,000
  - b. Marijuana Cultivation Facility: \$5,000
  - c. Marijuana Manufacturing Facility: \$5,000
  - d. Marijuana Testing Facility: \$5,000
6. *Revision by Resolution.* The Board may revise any application, license operating fee or application due date by resolution.

P. *License Violations.*

1. *Failure to Comply.* It is a violation of the terms and conditions of every license issued under this Section to commit unlawful acts under South Dakota law or operate a Marijuana Business not in compliance with South Dakota Law, South Dakota Administrative Rules, Pennington County Ordinances, or any conditions imposed on the license.
2. *Penalties.* In addition to any civil penalties or criminal charges that may be imposed by law enforcement, the Department, or Pennington County, any licensee who fails to comply with State and local law may be subject to suspension and revocation of its County License.
3. Nothing in this subsection shall be construed as limiting in any way the authority of Pennington County to seek criminal, civil, or injunctive relief as allowed at law.

Q. *Enforcement.*

1. *Board Powers.* In addition to any other civil or criminal sanction prescribed by South Dakota law or rules, the Board has the following powers:
  - a. *Suspension and Revocation.* On its own motion or on complaint the Board may restrict, suspend or revoke a Marijuana Business license for a violation by the licensee or any of its agents or employees.
  - b. *Hearing.* The Board shall review and provide an opportunity for a hearing at which the licensee shall be afforded an opportunity to be heard.

2. *Criteria for Suspension or Revocation.* In determining whether a Marijuana Business license should be suspended or revoked in accordance with this Section, and in deciding any conditions to impose in the event of a suspension, the Board must consider:
  - a. The nature and seriousness of the violation;
  - b. Corrective action, if any, taken by the licensee;
  - c. Prior violation(s), if any, at the licensed premises by the licensee and the effectiveness of prior corrective action, if any;
  - d. The likelihood of recurrence;
  - e. All circumstances surrounding the violation;
  - f. Whether the violation was willful;
  - g. The length of time the License has been held by the licensee; and
  - h. The number of violations by the licensee within the applicable twelve (12) month period.
3. *Conditions.* Any conditions may be presented to the Board for consideration by an interested party. The Board may accept or reject any proposed condition in its discretion.
4. *Notice.* Notice of suspension or revocation must be given by mail in writing to the licensee at the licensee's last address of record with the County.
5. *Remedies.* The remedies provided in this Section are in addition to any other remedy provided by law.

R. *Compliance with State Law Required.*

1. *State Law Amendments.* To the extent the State has adopted or adopts in the future any additional or stricter laws or regulations governing the sale or distribution of marijuana, the additional or stricter regulations shall control the establishment or operation of any Marijuana Business in Pennington County.
2. Compliance with any applicable State law or regulation shall be deemed an additional requirement for issuance of any County License under these Sections.

S. *Appeals.* An appeal from the Board's decision to grant or deny a County License must be brought in accordance with SDCL ch. 7-8.