

2.12 MEDICAL MARIJUANA

2.12.1 Purpose and Intent

The 2017 North Dakota Legislature enacted Senate Bill 2344, relating to the implementation of the North Dakota Compassionate Care Act, N.D.C.C 19-24.1 for the regulation of medical marijuana dispensaries and the cultivations and propagation of medical marijuana in North Dakota. All persons, entities or organizations wishing to establish a Medical Marijuana Manufacturing Center or Dispensary within the County must apply for and be granted a conditional use permit for said use.

- 1) The use, cultivation, manufacturing, production, distribution, possession and transportation of marijuana remains illegal under federal law, and marijuana remains classified as a "controlled substance" by both North Dakota and federal law;
- 2) The Board of County Commissioners does not have the authority to, and nothing in this chapter is intended to, authorize, promote, condone or aid the production, distribution or possession of medical marijuana in violation of any applicable law;
- 3) The Board of County Commissioners intends to regulate the use, acquisition, cultivation, manufacturing, and distribution of usable medical marijuana in a manner that is consistent with the North Dakota Century Code. The regulations are intended to apply to all medical marijuana operations in the county by any medical marijuana business permitted under state law. Medical marijuana cultivation and production can have an impact on health, safety, and community resources, and this chapter is intended to permit state-licensed Medical Marijuana Manufacturing Center(s) or Dispensaries where they will have a minimal negative impact;
- 4) To the extent that a Medical Marijuana Manufacturing Center or Dispensary is registered and authorized by the State of North Dakota to operate in the county, this board desires to provide for their licensing and regulation to protect the public health, safety and general welfare of the citizens of the county;
- 5) This chapter is to be construed to protect the public over medical marijuana business interests. Operation of a medical marijuana business is a revocable privilege and not a right in the county. There is no property right for an individual or business to have medical marijuana in the county; and
- 6) Medical marijuana is a heavily regulated industry in the state and county, and the county has a zero tolerance policy for violations of this chapter.
- 7) The purpose of this chapter is to protect the public health, safety, and welfare of the residents and patients of the county by prescribing the manner in which medical marijuana businesses can be conducted in the county. Further, the purpose of this chapter is to:
 - a) Provide for a means of cultivating, manufacturing and distribution of usable marijuana to patients who qualify to obtain, possess, and use marijuana for medical purposes as prescribed by state law.
 - b) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, neighborhood and patient safety, security for the business and its personnel, and other health and safety concerns.
 - c) Impose fees to cover the cost to the county of permitting medical marijuana businesses in an amount sufficient for the county to cover the costs of the permitting program.

d) Create regulations that address the particular needs of the facilities, patients and residents of the county and comply with laws that may be enacted by the state regarding medical marijuana.

2.12.2 Definitions

Unless specified in this ordinance, all terms defined in N.D.C.C. § 19-24.1 or successors to that statute shall have the definitions provided therein.

2.12.3 Permitted Districts

A Medical Marijuana Manufacturing Center is permitted by conditional use permit only in the Agricultural and Industrial Districts. A Medical Marijuana Dispensary is permitted by conditional use permit only in the Agricultural, Commercial, and Industrial Districts.

2.12.4 Annual Permit Fee

As authorized by the Board of County Commissioners, the County Zoning Administrator is to establish an annual permit fee to offset costs associated with policing, site inspections, monitoring, storage of media, and/or regulating medical marijuana facilities involved in the cultivation, propagation, manufacturing, processing, refining, distribution, delivery, supply, sale or handling of Medical Marijuana.

2.12.5 Conditional Use Permit Requirements

In addition to the requirements applicable to all Conditional Use Permit applications, an application for a Conditional Use Permit for a Medical Marijuana Manufacturing Center or Dispensary must include the following:

- 1) Proof of Insurance satisfying the requirements in this ordinance for insurance.
- 2) List of all persons and entities with an ownership interest in the Manufacturing Center or Dispensary including all shareholders that hold any share in stock in the Manufacturing Center or Dispensary.
- 3) A security plan depicting the location and configuration of security cameras and surveillance equipment. The location and configuration of the security cameras and surveillance equipment must be approved by the county sheriff's department.
- 4) A complete description of the products and services to be produced or sold by the Medical Marijuana Manufacturing Center or Dispensary.
- 5) A notarized statement acknowledging that the applicant understands applicable federal laws, any guidance or directives issued by the U.S. Department of Justice, the laws of the State of North Dakota and the laws and regulations of the county applicable thereto concerning the operation of a Medical Marijuana Manufacturing Center or Dispensary. The written statement shall also acknowledge that any violation of any laws or regulations of the State of North Dakota or of the county, or any activity in violation of any guidance or directives issued by the U.S. Department of Justice, in such place of business, or in connection therewith, or the commencement of any legal proceeding relating to such Medical Marijuana Manufacturing Center or Dispensary by federal authorities, may render the license subject to immediate suspension or revocation.

- 6) A notarized statement that the applicant will hold harmless, indemnify, and defend the county against all claims and litigation arising from the issuance of license and/or a conditional use permit including any claims and litigation arising from the Manufacturing Center or Dispensary, operation or ownership of the Medical Marijuana Manufacturing Center or Dispensary.
- 7) A notarized acknowledgement that the applicant is seeking a Medical Marijuana Manufacturing Center or Dispensary Conditional Use Permit and that the applicant understands and acknowledges that the burden of proving qualifications to receive such a Conditional Use Permit is at all times on the applicant; that the granting of a Conditional Use Permit for a Medical Marijuana Manufacturing Center or Dispensary is at the discretion of the Board of County Commissioners; and that the applicant agrees to abide by the decision of the Board of County Commissioners.
- 8) A notarized acknowledgement that the applicant will allow access to the Sheriff's office, and any designees accompanying the Sheriff's office, to the Manufacturing Center or Dispensary during any business hour for the purpose of determining compliance with this ordinance and/or potential violations of the law.
- 9) The County Zoning Administrator may require additional plans, documents or other information prior to deeming the application complete.
- 10) A Medical Marijuana Manufacturing Center or Dispensary Conditional Use Permit shall be reviewed annually by the county board for renewal.
- 11) If the State of North Dakota or its electorate repeals the Compassionate Care Act or the act is otherwise declared void, all Medical Marijuana Manufacturing Centers or Dispensaries Conditional Use Permits issued by the Board of County Commissioners will be deemed to have immediately expired.
- 12) Once a conditional use permit is obtained for a Medical Marijuana Manufacturing Center or Dispensary, any change in operation of the facility or in ownership shall require prior approval of the Board of County Commissioners.
- 13) Any building modifications or alterations must be approved by the County Zoning Administrator.

2.12.6 Medical Marijuana Insurance and Bond Requirements

- 1) The minimum amount of third-person insurance coverage for a Medical Marijuana Manufacturing Center or Dispensary shall be one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage arising out of licensed activities and one million dollars (\$1,000,000.00) products and completed operations aggregate, commercial automobile coverage in a minimum of one million dollars (\$1,000,000.00) and excess liability in a minimum of three million dollars (\$3,000,000.00).
- 2) Additional insured: The County shall be named as an additional insured on all general liability, umbrella, and excess insurance policies required under this section. All insurance policies required under this section shall be primary over any other valid and collectible insurance.

2.12.7 Medical Marijuana Design Standards

- 1) Each Medical Marijuana Manufacturing Center or Dispensary must be located in a separate, permanent, stand-alone structure and have a minimum eight (8) foot high security fence encompassing the parcel

boundary. The design and type of fence material used must be approved by the county sheriff's department.

2) Each Medical Marijuana Manufacturing Center or Dispensary must be located a minimum of 2,640 feet from a public or private preschool, kindergarten, elementary, secondary or high school, public park, public community center, dependent care facility, homeless shelter, youth center, or place of worship. The distance shall be measured from the exterior fence of the Medical Marijuana Manufacturing Center or Dispensary to the property line of the protected use.

3) Each Medical Marijuana Manufacturing Center must be located a minimum of 2,640 feet from any residential district, or any residential dwelling, manufactured home, or recreational district. The distance shall be measured from the exterior fence of the Medical Marijuana Manufacturing Center to the property line or dwelling of the protected use.

4) Each Medical Marijuana Dispensary must be located a minimum of 500 feet from any residential district, or any residential dwelling, manufactured home, or recreational district. The distance shall be measured from the exterior fence of the Medical Marijuana Dispensary to the property line or dwelling of the protected use.

5) No Medical Marijuana Dispensary shall have operating hours earlier than 8:00 AM or later than 7:00 PM and comply with the state century code hours of operation laws.

6) A Medical Marijuana Dispensary shall not be allowed to locate on a non-conforming lot nor in an existing structure on a non-conforming lot.

7) Each Medical Marijuana Dispensary shall have at least 1 parking space per 250 sq. ft. of structure.

8) Each Medical Marijuana Cultivation and/or Manufacturing Facility shall have at least 1 parking space for every 1000 sq. ft. of plant cultivation area and 1 parking space for each 250 sq. ft. of all other areas of the structure.

9) With the exception of the specific Medical Marijuana Manufacturing Center or Dispensary approved as part of a Conditional Use Permit, no other activity may occur within the facility or land parcel.

10) No outdoor storage on-site shall be permitted.

11) No drive-through, drive-up, or walk-up facilities shall be permitted.

12) Each Medical Marijuana Manufacturing Center or Dispensary must ensure there is no emission of dust, fumes, pollen, vapors, or odors into the environment.

13) Windows must remain unobstructed, allowing visibility into the facility. Window tint, decals or window signage of any kind shall be strictly prohibited.

14) All applicable state standards and requirements shall apply in the design and operations of any Manufacturing Center or Dispensary.

2.12.8 Penalty:

If any Manufacturing Center or Dispensary is in violation of any portion of this ordinance or regulation thereunder, the offending party may be criminally prosecuted under the provisions of North Dakota Century Code section 11-33-21, a class B misdemeanor.

If such violations are not remedied within a reasonable period of time as set by the Board of County Commissioners, the Conditional Use Permit for the Manufacturing Center or Dispensary may be revoked. Such notice shall be served upon the owner or operator according to the North Dakota Rules of Civil Procedure.

2.12.9 Revocation, Suspension, and Administrative Sanctions:

1) Failure to comply with any obligation in this ordinance constitutes grounds for revocation, suspension, and/or administrative action.

(2) Upon cause and due process as specified in Appendix II of this Ordinance, the Board of County Commissioners may, in addition to other legal options provided by the law of the State of North Dakota, impose an administrative sanction on the holder, and/or suspend or revoke the conditional use permit.

(3) When any permit is revoked or suspended for any reason, no portion of the permit fee shall be returned to the applicant.

2.12.10 Serviceability, Exclusions and Exceptions:

1) The provisions of this chapter do not waive or modify any other provision of this ordinance with which a Medical Marijuana Manufacturing Center or Dispensary is required to comply. Nothing in this section is intended to authorize, legalize or permit the Manufacturing Center or Dispensary, operation or maintenance of any facility, building or use which violates any County ordinance or statute of the State of North Dakota regarding public nuisances, Medical Marijuana, or any federal regulations or statutes relating to the use of controlled substances.

2) This chapter shall be null and void if any determination is made, after the adoption of the ordinance enacting this chapter, by any court of competent jurisdiction, that Ch. 19-24, N.D.C.C., is invalid, or shall be null and void to the extent any portion of such section is held invalid.

3) Should any section, subsection, clause or provision of this chapter for any reason be held to be invalid or factually unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter, it being hereby expressly declared that this chapter, and each and every section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved, adopted and/or ratified irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases of this chapter be declared invalid or unconstitutional.