



1040 Harley-Davidson Way  
Sturgis, SD 57785  
605-347-4422

## City Council Report

Meeting Date: July 6, 2021  
Agenda Item: Adoption of 2021 Building Codes (IBC & IRC) and the 2021 International Fire Code  
Prepared By: Dave Smith

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### Background Information:

Building Codes Effectiveness Grading Schedule (BCEGS) — is a schedule developed by Insurance Office Services, Inc. (ISO), that categorizes communities according to the adequacy of their building codes and the effectiveness of building code enforcement. Communities are graded from 1 (indicating exemplary commitment to building code enforcement) to 10. In states where all the communities have been graded and the KEGS system has been implemented, the BCEGS grade for the community where the property is located is used in developing the insurance premiums for windstorm and hail coverage for buildings constructed during or after the year in which the community was graded. Building code effectiveness grades for communities are published in ISO's *Public Protection Classification Manual*, a community with a better BCEGS classification could have lower insurance rates. In August of 2018, the ISO increased our (KEGS) grade from a 5 to 7. By adopting the most recent Building Codes and utilizing CITIZEN SERVE we were able to reclaim the rating of 5 keeping local insurance rates down. To stay ahead of the (ISO) grading and work obtain a better (BCEGS) score the City should adopt of the most recent (IBC) Building Codes.

### Cost, Benefit or Risks:

Homeowner insurance rates will not increase if we maintain or improve our current rating.

### Budget Impact:

No direct impact to the City budget.

### Staff Recommendation:

Staff recommends the adoption of the 2021 (IRC) International residential Code Chapters 1-10, 12-16, 18 and 33 and appendices AB,AC,AE,AV,AQ,AJ but not including section 313 in its entirety. The following portions as are herein modified and listed. Subsection 3.02 and the related information and explanation

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shown at figure 301.2(4) amended to require a structure be designed to meet or exceed a 40-pound ground snow load: and figure 302.13 residential basements finished less than 50% shall not be required to have 1/2" gypsum board installed on the lid throughout: and figure 905.1.2 Ice and water barrier membrane required. In addition, the adoption of the 2021 (IBC) International Building Code Chapters 1-12, 14-26,28, 30-35 including appendix G Flood-Resistant Construction, appendix I patio covers, appendix J Grading. In addition, the adoption of the 2021 International Fire Code with the following amendments. Chapter 24 Flammable Finishes amended by deleting section 2401.3 permits, Chapter 25 Fruit and Crop Ripening amended by deleting section 2501.2 permits, Chapter 26 Fumigation and Thermal Insecticidal Fogging amended by deleting section 2601.2 permits, Chapter 27 Semiconductor Fabrication Facilities amended by deleting section 2701.5 permits.

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**City Manager Approval:** \_\_\_\_\_





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## City Council Report

Meeting Date: July 6, 2021  
Agenda Item: Consideration to approve First Reading Title 32 Animals  
Prepared By: Daniel Ainslie, City Manager

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### **Background Information:**

The City of Sturgis Animal Shelter operates under the guidelines established within the City's Title 32 Animals. From these ordinances, the City has adopted a set of Standard Operating Procedures which guide the day to day operations. The staff at the Animal Shelter have requested that the ordinance be changed as it relates to the number of days that the Shelter is required to hold animals. Section 32.03.04 and 32.03.05 state that the shelter must hold animals for 5 days before the animal can be adopted or potentially euthanized. In practice, this often is not enough time to guarantee an animal's owner has sufficient time to inquire at the shelter to see if it is holding their animal. Therefore, to assist in averting any potentially significant error, the staff is requesting that the required holding period be extended from 5 days to seven.

The Council held discussion regarding this change on June 21. Since that discussion, no change has been made to the proposed revised ordinance.

### **Budget Impact:**

None

### **Staff Recommendation:**

Staff recommends approving the first reading of a proposed amendment to the ordinance.

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**City Manager Approval:** \_\_\_\_\_

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**32.03.04: IMPOUNDMENT AND DISPOSITION OF DOGS, CATS, AND FERRETS** Any dog, cat, or ferret found running at large as defined in this ordinance may be taken by the Animal Control Officer and impounded in the animal shelter to be confined in a humane manner. Any animal impounded and not claimed by their owners at the expiration of seven ~~five~~ (7~~5~~) days may be disposed of at the discretion of the Animal Control Officer, or appointed designee, except as hereinafter provided in certain cases of certain dogs, cats, and ferrets. Immediately after impounding such dog, cat, or ferret, before euthanizing or disposing of it, the owner shall be given notice of the conditions whereby he/she may regain possession of such dog, cat, or ferret. If any owner has requested his animal to be euthanized and disposed of humanely, the Animal Control Officer or appointed designee, may collect from said owner a fee that will cover the cost of such euthanization, disposal and impoundment for the City.

**32.03.05: REDEMPTION OR DESTRUCTION OF DOGS, CATS, OR FERRETS RUNNING AT LARGE - UNTAGGED** During the period of possession, any person, by paying the City the sum of \$10.00 per day or any part thereof to a maximum of seven ~~five~~ (7~~5~~) days or any part thereof for the impound, and having a current rabies certificate may redeem and obtain possession of a dog, cat, or ferret that was untagged or tagged and thereby impounded. If the owner of any impounded dog, cat, or ferret, under the provisions of the article, shall fail to redeem such dog, cat, or ferret within seven ~~five~~ (7~~5~~) consecutive days, not counting Sunday and holidays, after such impounding, said dog, cat, or ferret shall be disposed of by humane euthanization or adoption by the Animal Control Officer. The Animal Control Officer may euthanize by a humane manner any sick or injured animal which has been impounded without holding it for seven ~~five~~ (7~~5~~) days if its condition is such that euthanization is the most humane manner to dispose of the animal.

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## Marijuana Policy Questions in Sturgis, South Dakota

City of Sturgis representatives have been involved with SD Municipal League discussions regarding the implementation this year of the Medical Marijuana Citizens Initiative as well as the recreational Marijuana Initiative that is anticipated to be implemented next year (this is currently being challenged in court, we are not likely to know the outcome until this Fall at the earliest). There are numerous policy decision that will need to be considered by the Council in the upcoming months.

### Background

Last Fall, Meade County voters followed statewide voters to pass both Medical Marijuana and Recreational Marijuana:

Constitutional Amendment A			
Legalize Recreational Marijuana			
Meade County	Yes 6,999 (51.8%)	No 6,525 (48.2%)	
South Dakota	Yes 225,260 (54.2%)	No 190,477 (45.8%)	
Initiated Measure 26 (IM 26)			
Legalize Marijuana for Medical Use			
Meade County	Yes 8,952 (66.2%)	No 4,571 (33.8%)	
South Dakota	Yes 291,754 (69.9%)	No 125,488 (30.1%)	

Constitutional Amendment A (Recreational Marijuana) is currently being challenged in state court regarding its constitutionality. At issue, is whether the ballot initiative contained more than “one” issue. The measure stated that it would go into effect by July 1, 2022. The rules will need to be established by the State Department of Revenue, after which the City will need to establish ordinances to effectuate the rules. The timing of the rules is highly questionable as it will necessarily follow the results of the court decision and will then likely follow legislative statutes that should be passed next session (January through March 2022), however the Legislature could not come to terms with State Legislation for the Medical Marijuana discussion earlier this year so there is some question that even following a court ruling, if the legislature would be able to pass enabling legislation. There is anticipated to be a very short window in the late winter/early Spring of 2022 when the city will likely need to determine how it will want to proceed with recreational Marijuana.

Initiated Measure 26 (Medical Marijuana) is a bit more straight forward. There are no known cases regarding this initiative and the Measure was to be enacted by July 1, 2021. As previously discussed, the state legislature was unable to pass legislation to regulate the sale, as such the State Department of Revenue is currently determining what the Administrative rules will be for Medical Marijuana Dispensaries. We do not know of a definitive timeline for the promulgation of these rules, but have been told that it is likely to occur in the later summer of 2021.

IM 26 requires a prescription for purchase of Medical Marijuana and the product must be sourced within the State of South Dakota. There has already been significant interest regarding opening dispensaries in Sturgis (mostly during the Rally but some year-round).

The Planning Commission held a public meeting on June 22 to consider the policy questions below. After significant discussion, some recommendations for each questions was provided.

## **Policy Question #1**

### Should a Dispensary be Authorized?

A community does not have to allow a dispensary in their community. However, if one is not licensed, then individuals with prescriptions will be allowed to grow up to five plants. Based on the experience of municipalities in Colorado and Oregon this has been identified as one of the greatest risks in a community. The reason is that homes with plants become “known” in the community and often become targets for break-ins (often involving juveniles). This can create a significant and immediate growth in crime. However, if a Dispensary is authorized within a community, privately owned Marijuana plants would not be legal.

### **Policy recommendation**

After discussion, the Planning and Zoning Commission was supportive of authorizing at least one dispensary in the community.

## **Policy Question #2**

### Number of Dispensaries

Colorado has 2,917 licensed marijuana businesses in the state. This is one business for every 1,974 residents within the state. Due to the current federal standing of Marijuana, businesses are largely cash based. History in other states have shown, similar businesses become highly targeted by criminals for robbery. Using Colorado as a point of basis, the annual per capita sales in 2019 was \$173.64. Though this number includes recreational sales, it should be anticipated that Sturgis’ per capita number would become comparable within a few years (especially once recreational sales are authorized). A significant argument could even be made that the per capita sales would be even larger given the significant tourism impact within our community. Given parity with the Colorado sales, our immediate 3-mile radius could be anticipated to generate approximately \$1.7 million annually.

A fewer number of dispensaries would reduce the number potential sites that would require additional patrolling.

### **Policy recommendation**

The Planning and Zoning Commissioners held significant discussion regarding the number of potential dispensaries. The consensus appeared to be a number of dispensaries in the range of 3-5 for the City.

## **Policy Question #3**

### Zoning Questions

The City will need to determine what zones would be appropriate for cannabis businesses and cultivation areas. In order to reduce the potential impact on residents, it would be recommended that businesses be authorized to operate solely in commercial areas (Highway Business, Central Business) and cultivation in agriculture or industrial.

In addition, additional considerations could potentially be made regarding distances from potentially sensitive uses (i.e. schools, parks, hospitals, churches, etc.). While distances might be able to withstand a challenge, distances could not be large enough to prohibit a dispensary from opening in the community.

### **Policy recommendation**

This question resulted in significant discussion. The general consensus was:

- A cannabis retailer should be in a Highway or Central Business Zone.
- A cannabis grow, production or processing/baking/cooking facility should be in an Industrial Zone

The discussion included concern that distance regulations would not truly reduce any negative impact on property owners, other than distance regulations from areas where commercial zones are adjacent to residential areas.

The Commission seemed highly supportive of additional safety requirements for any cannabis business. These would include cameras, alarms and safes as a minimum.

### **Policy Question #4**

#### Option #1 – Municipal Ownership of Dispensary

There has been significant discussion in the SDML Marijuana Group regarding the issuance of a private license for a dispensary and the assurance that the license would not become “private property.” This is a similar situation to what has occurred since the growth of liquor licenses in communities. In most communities, once a liquor license has been issued its profit potential translates into an inherent market value. That then results in significant sales prices for the licenses when they are transferred. The businesses that pay those prices have significant interest in preserving that value and have at times caused significant difficulty with various municipalities when questions of alcohol regulation are discussed.

Several members have discussed the possibilities of municipally owned dispensaries. To date, only one municipality owned dispensary is known, North Bonneville, Washington. The group is continuing to look to find others and to discuss with North Bonneville the benefits and struggles.

Potential benefits:

1. Ability to implement changing community norms
  - As the community begins to adapt to the new reality of Marijuana, different forms of ingestion and potency will evolve. There will be significant challenges to require private businesses to pull certain items if they become problematic with children or other vulnerable groups in the community. A municipally owned dispensary could take immediate action
2. Elimination of negative private profit potential
  - Some private enterprises would have a desire to sell controlled substances to individuals not legally able to purchase them as each sale results in an immediate profit. This is especially true in a small operation where the owner would be an onsite manager. A municipally owned dispensary would eliminate this attraction as the individual’s pay would not be dependent on an individual sale. This has been shown over the course of several years in the City’s alcohol sting operations, where Sturgis Liquor has never been found to be in violation.
3. Public Benefit
  - In 2021, Sturgis Liquor will return approximately \$380,000 to the residents of Sturgis. This represents approximately 15% of the property tax collections. This has allowed the public to benefit from the sales. In addition, the monopoly within the community has

allowed there to be a greater selection and variety than can be found in other towns of similar size. This has allowed Sturgis Liquor to become one of Sturgis' few destination retailers, with most months having nearly 20% of their customers coming from outside of Sturgis.

Potential adverse impacts:

1. Public Perception
  - America is a capitalistic country with many residents immediately opposed to any governmental involvement in commerce. This can be seen as an unnecessary intrusion and may even be seen as the government taking away a potential business opportunity from residents
2. Cash Basis
  - At this time, Marijuana is still a federally banned substance. As such, transactions are almost entirely in cash. This would result in additional work and loss control measures needing to be developed and rigorously implemented

#### Option #2 – Municipal Ownership of Dispensary – Lease of license to private businesses

This option would be similar to how several cities in South Dakota operate liquor stores. The City would maintain ownership of the Dispensary License but lease this license to independent private business.

Potential benefits:

1. Ability to implement changing community norms
  - Similar to the municipally owned dispensary, as the community begins to adapt to the new reality of Marijuana, the ability to stop the sales of different forms of ingestion and potency will be able to be more quickly implemented if desired.
2. Public Benefit
  - The City would be able to set a lease price, this could likely be a percentage of the gross sales amount, similar to the City's Malt Beverage Gross receipts fees. This could be used to offset some of the likely negative impacts that will arise overtime from the increased use of marijuana.

Potential adverse impacts:

1. Public Perception
  - The manner in which private businesses are selected for a license would likely come under significant scrutiny. Sturgis is likely a heightened example as there will undoubtedly be a significant contingent of Rally related interests that would bid on the licenses. Significant time would need to be invested to ensure an equitable and appropriate manner in selection is determined.
2. Capital Investment
  - Due to the significant capital investment to open a dispensary, there will likely be a market requirement for a longer term. As such, it would be challenging for the City to make changes in the operator if needed or desired.

#### Option #3 – Hybrid Option, Municipal Ownership of all licenses and Municipal operation of a dispensary and lease of at least two private dispensaries

Potential benefits:



1. Ability to implement changing community norms
  - Similar to Options 1 and 2, as the community begins to adapt to the new reality of Marijuana, the ability to stop the sales of different forms of ingestion and potency will be able to be more quickly implemented if desired.
2. Public Benefit
  - The City would be able to set a lease price, this could likely be a percentage of the gross sales amount, similar to the City's Malt Beverage Gross receipts fees. This could be used to offset some of the likely negative impacts that will arise overtime from the increased use of marijuana. In addition, any profit from the Municipally owned dispensary would be returned to the General Fund.
3. Allowance for a testing period to find best case scenario
  - No individual or group truly can see what the future holds in South Dakota once marijuana becomes legalized. A balanced approach allows the community to maintain its options to adapt its approach as the initial years pass. Once property ownership of licenses is conveyed it will be extremely difficult for the community to make other choices in years to come. If the City maintains ownership of licenses and operations it will have all options available in the immediate future, should the initial expectations prove incorrect and changes need to be made.

Potential adverse impacts:

1. Public Perception
  - The manner in which private businesses are selected for a license would likely come under significant scrutiny. Sturgis is likely a heightened example as there will undoubtedly be a significant contingent of Rally related interests that would bid on the licenses. Significant time would need to be invested to ensure an equitable and appropriate manner in selection is determined.
2. Capital Investment
  - a. Due to the significant capital investment to open a dispensary, there will likely be a market requirement for a longer term. As such, it would be challenging for the City to make changes in the operator if needed or desired.

Option #4 – Issuance of a limited number of licenses to private businesses

This option would be similar to how several cities in South Dakota operate liquor stores. The City would issue licenses for a set number of dispensaries within the community. The license could include a license fee. This is the route Mitchell recently chose and set an annual fee at \$5,000.

Potential benefits:

1. Public Perception
  - This is likely the least controversial selection, however, the manner in which private businesses are selected for a license would likely come under significant scrutiny. Sturgis is likely a heightened example as there will undoubtedly be a significant contingent of Rally related interests that would bid on the licenses. Significant time would need to be invested to ensure an equitable and appropriate manner in selection is determined.

Potential adverse impacts:

1. Ability to implement changing community norms

- Under private ownership, the City would not be able to simply stop selling certain products or require leases to stop selling products. Instead, the only option would be to regulate that certain products of concern not be legally available for sale within the community. We do not know at this time if this would even be an option. If it is, such an action would likely be seen as adversarial and might well lead a private operator to challenge the City's ability to do so in court.
2. Public Benefit
- The only revenue the community would see is the sales tax rate approved by the state and the license fee. It is believed the sales tax revenue would likely be at most 3%. Given the Colorado example this would mean a maximum return to the community of \$52,000. The only other potential source of revenue would be a licensing fee.

### **Policy Recommendation**

This question resulted in the most discussion by the Commissioners and the public that was in attendance. In general, the Commission was highly supportive of increased ownership or regulation of dispensaries by the City, with an emphasis in ownerships by locals and required operational times to mandate that they not be allowed to just be open in July and August. The Commission asked the City staff to do further investigation into the potential to have City ownership of licenses and leases to private businesses or potential municipal ownership. Since the meeting, the staff has been working with the Department of Revenue on these questions.

### **Projected Timeline**

City Council Policy Discussion  
July 6, 2021

Planning and Zoning Commission Recommendation  
Week of July 12, 2021

City Council First Reading  
July 19, 2021

City Council Second Reading  
July 26, 2021 – Becomes effective immediately