



102 3<sup>rd</sup> Avenue SE  
 Jamestown, ND 58401  
 Office: (701)252-5900  
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(Revised 04/09/2019)

## SPECIAL USE PERMIT APPLICATION COMPASSION CENTER

<b>Application for:</b> <input type="checkbox"/> New <input type="checkbox"/> Renewal <input type="checkbox"/> Change of Ownership		<b>Application Fee:</b> \$4,000.00
<b>Application Type:</b> <input type="checkbox"/> Compassion Center – Dispensary <input type="checkbox"/> Compassion Center – Manufacturing		
<b>Applicant</b>		
Legal Business Name / Trade Name (DBA)		Mailing Address
Name		Mailing Address
Telephone		E-mail
<b>Property Owner (If Different than Applicant)</b>		
Name		Mailing Address
Telephone		E-mail
<b>Contact Person / Agent:</b>		
Name		Mailing Address
Telephone		E-mail

<b>Property Information</b>
Property Street Address
Legal Description of Property (Addition, Block, Lot)
Zoning District

## Requirements

1. A special use permit under Appendix C, Section 12 of the Municipal Code is required in order to operate a Compassion Center.
2. A special use permit is subject to a non-refundable fee for new, renewal, and change in ownership applications. Fees are determined by the City Council. Additional costs beyond the application fee will be billed to the applicant. Permits will run from July 1 to June 30. Permits will not be pro-rated.
3. Renewal Applications are due May 1<sup>st</sup>.
4. A special use permit terminates upon expiration of the North Dakota Health Department license to operate a Compassion Center.
5. If the State of North Dakota or its electorate repeals the Compassionate Care Act, or the Act is otherwise negated, this application is immediately unavailable, and all Compassion Center special use permits previously approved by the City Council will be deemed to have terminated.
6. The issuance of a special use permit does not override the requirement for a building permit and its associated requirements.
7. The requirements of this special use permit are in addition to already enacted zoning ordinances. See Zoning Ordinance, Appendix C of the Municipal Code.
8. The City will conduct background investigations on all compassion center agents. Compassion center agents are defined in N.D.C.C Sec. 19-24.1-01(13), to specifically include all employees and volunteers.
9. The City will conduct background investigations on any new compassion center agents before they are allowed to work/volunteer at the facility.

## Submittal Requirements

- Upon issuance of a Registration Certificate from the North Dakota Department of Health, the applicant shall submit a copy to the City.
- A special use permit applicant must submit a site plan showing the proposed location, including all dimensions and square footages, complete legal description of all parcels affected in by N.D.C.C 19-24 and Municipal Code, present structure or uses, proposed structure or uses, and measurements to lot lines.
- The applicant shall provide proof of coverage annually in the minimum amount of third-person insurance coverage for a Compassion Center of one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate for bodily injury and property damage arising out of licensed activities, one million dollars (\$1,000,000) products and completed operations aggregate, one million dollars (\$1,000,000) commercial automobile coverage, and a minimum excess liability of three million dollars (\$3,000,000). The City of Jamestown 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 the City and any other valid and collectible insurance.
- The applicant shall acknowledge and sign the attached Indemnification Agreement.
- The applicant shall acknowledge and sign the attached investigation authorization and authorize release of information pertaining to background investigations. If a special use permit is granted, additional authorizations will be required for each agent.
- The applicant shall complete the attached Criminal History Record Check form pertaining to background investigations. If a special use permit is granted, additional forms will be required for each agent.



**City of Jamestown North Dakota  
Compassion Center Special Use Permit  
Indemnification Agreement**

**THIS AGREEMENT** is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (“APPLICANT”) and the City of Jamestown, North Dakota, a municipal corporation, referred to herein as “City”.

**RECITALS**

**WHEREAS**, APPLICANT desires to operate a Compassion Center as defined and set forth under N.D.C.C. §19-24.1 within the jurisdiction of CITY;

**WHEREAS**, APPLICANT has requested that City process its application for a Special Use Permit submitted by APPLICANT which, when issued by the City, will allow APPLICANT to operate a Compassion Center as described in APPLICANT’S submittal documents (collectively “PERMIT”).

**WHEREAS**, APPLICANT desires waive, release, defend and indemnify CITY from liability or loss connected with the approval of the PERMIT and environmental clearances, if any, as provided in this Agreement.

**NOW, THEREFORE, IT IS MUTUALLY AGREED between CITY and APPLICANT** as follows:

**AGREEMENT**

**1. Recitals.** The above recitals are hereby incorporated by reference.

**2. Parties.** For the purposes of this Agreement, the term CITY shall include the City, the City’s Planning Commission, City Council, City Administrator, City Attorney and/or any City’s agencies, departments, commissions, agents, officers, and/or employees. For purposes of this Agreement, the term APPLICANT shall include all parties applying for approval on the PERMIT, including but not limited to the owner or owners of the property or properties upon which the Compassion Center will be sited, the agent, its successors or assigns

**3. Indemnification and Defense by APPLICANT.** APPLICANT shall defend (with legal counsel chosen by CITY), indemnify, and hold harmless the CITY from and against any and all claims, damages, demands, suits and/or proceedings of any kind brought by anyone challenging the validity and/or legality of the PERMIT, including the process followed. APPLICANT shall further defend, indemnify, and hold harmless the CITY from and against any and all claims, damages, demands, suits, and/or proceedings of any kind brought by anyone challenging the validity and/or legality of the APPLICANT’S Compassion Center that is the subject of the PERMIT.

APPLICANT shall defend (with legal counsel chosen by CITY), indemnify, and hold harmless the CITY from and against any and all liability whatsoever that relates in any way to the Compassion Center that is the subject of the PERMIT and/or arising out of the acts or omissions of APPLICANT in the operation of the Compassion Center that is the subject of the PERMIT.

APPLICANT shall pay all costs of defense, including but not limited to, attorneys’ fees and costs, City Staff time, and City Attorney time. In the event APPLICANT fails to make payment, CITY, at CITY’s discretion may make payment for the cost of CITY’s defense. In that event, CITY may seek any remedy at law or equity to recoup such costs including all reasonable court costs, fees, and attorney’s fees incurred in such action.

#### **4. Cooperation in the Event of Initiative or Legal Challenge.**

**a. Legal Challenge.** If any legal action or special proceeding related to the PERMIT is commenced by anyone for any reason, the CITY and APPLICANT agree to cooperate with each other in good faith to defend the CITY. The APPLICANT shall not be required to pay or perform any settlement unless the settlement is approved in writing by the APPLICANT, which approval shall not be unreasonably withheld. The City must approve any settlement affecting the rights and obligations of the City in writing.

**b. Initiative.** Should a non-City initiative measure or measures be enacted which could affect the PERMIT:

1. APPLICANT and CITY shall meet and confer in good faith to mutually determine the proper course of action; and
2. In the event CITY and APPLICANT jointly determine to challenge such initiative measure, APPLICANT shall provide for any challenge to such initiative measure at its sole cost and expense.
3. In the event that a court determination has the effect of preventing, delaying or modifying the development of the PERMIT as set forth above, CITY and APPLICANT shall meet and confer in good faith to determine if there are alternative means of achieving the mutual goals and objectives of this Agreement, in light of such court action.

**5. No Duty of CITY.** APPLICANT acknowledges and agrees that the Compassion Center that is the subject of the PERMIT is a private development and CITY has no interest in, responsibility for, or duty to anyone concerning the PERMIT and/or the business operated by the APPLICANT pursuant to the PERMIT.

**6. Acknowledgement, Waiver, and Release.** APPLICANT acknowledges that by operating a Compassion Center, APPLICANT may be in violation of state or federal criminal and civil law. City's granting or denying of a permit in no way condones, pardons, or effects these laws or their use against APPLICANT. In applying for and accepting a Special Use Permit, APPLICANT waives and releases City, from any liability for injuries, damages, costs and expenses of any nature whatsoever that may result or relate to the investigation, arrest or prosecution of business owners, operators, employees, clients or customers of the applicant/licensee for a violation of state or federal laws, rules or regulations relating to marijuana.

APPLICANT further acknowledges that by operating a Compassion Center there may be inherent risks to its business, employees, and patrons due to the nature of the business and due to precarious legislative nature of allowing such businesses to operate in North Dakota. APPLICANT waives any and all rights and releases any and all liability for injuries, damages, costs and expenses of any nature whatsoever that may result or relate to the action or inaction of CITY.

**7. Termination and Agreement Survival.** The CITY may without cause terminate this Agreement by giving written notice as provided below. APPLICANT may not terminate this Agreement for any reason. This Agreement shall remain in full force and effect if APPLICANT does not receive a Special Use Permit or if APPLICANT, after receiving a Special Use Permit, relinquishes the permit, closes its business, or otherwise loses its permit. Further, the parties agree that this Agreement shall constitute a separate agreement from any Permit approval, Permit or APPLICANT's status as a Compassion Center, in part or in whole, is invalidated, rendered null or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Agreement, which shall survive such invalidation, nullification or setting aside.

**8. Notices.** Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as set forth above. Either party may update their address by sending notice as set forth in this section.

**9. Entire Agreement.** This Agreement represents the complete understanding between the parties with respect to matters set forth herein.

**10. Enforcement Action.** In the event it becomes necessary for CITY to take any action against the APPLICANT to enforce or interpret the terms of this Agreement, CITY shall be entitled to its reasonable attorneys' fees and costs, including all costs of investigation, and all pre-litigation costs.

**11. Severability.** If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated to the extent that the remaining portions of the agreement do not substantially alter the rights of the parties.

**12. Governing Law.** The rights and obligations of the parties and the interpretation and performance of this Agreement shall be governed by the laws of the State of North Dakota and venue shall be in the County of Stutsman. The parties hereby waive any objection to venue.

**13. No Third Party Beneficiaries Intended.** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

**14. Waiver.** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

The undersigned APPLICANT expressly warrant his/her authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

**MY SIGNATURE BELOW INDICATES THAT I, THE UNDERSIGNED, HAVE READ AND UNDERSTAND THIS ENTIRE COMPASSION CENTER SPECIAL USE PERMIT INDEMNIFICATION AGREEMENT AND AGREE TO BE BOUND BY THE TERMS HEREIN.**

Date \_\_\_\_\_

PRINTED NAME OF LOCAL APPLICANT: \_\_\_\_\_

By: \_\_\_\_\_

Authorized Signature of Local Applicant

(Must be signed in front of Notary)

STATE OF \_\_\_\_\_ )  
 : ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_ by and through \_\_\_\_\_, its \_\_\_\_\_, known to me to be the person who executed the foregoing instrument and acknowledged to me that the entity executed the same.

\_\_\_\_\_  
NOTARY PUBLIC  
\_\_\_\_\_ County, \_\_\_\_\_ (State)

**ACCEPTED AND AGREED TO BY THE CITY OF JAMESTOWN, NORTH DAKOTA, CITY COUNCIL, ACTING IN ITS CAPACITY AS THE SPECIAL USE PERMIT AUTHORITY PURSUANT TO THE N.D.C.C 19-24.1, CITY OF JAMESTOWN ORDINANCE NO.1507 AND CITY OF JAMESTOWN MUNICIPAL CODE APPENDIX C, SECTION 12, D.**

**CITY OF JAMESTOWN, NORTH DAKOTA  
CITY COUNCIL**

Acting in the capacity of the  
**SPECIAL USE PERMIT AUTHORITY**

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Administrator

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.





**Criminal History Record Information**

**RECORD CHECK WILL BE CONDUCTED ON INDIVIDUAL LISTED BELOW**

Please use additional form for each subsequent individual.

<b>Last Name</b>	<b>First Name (no initials)</b>	<b>Middle Name</b>
<b>(AKA/Maiden/Former) Last Name(s)</b>	<b>First Name</b>	<b>Middle Name</b>
<b>Date of Birth (MM/DD/YYYY)</b>	<b>Social Security Number</b>	
<b>Current Address</b>		
<b>City</b>	<b>State</b>	<b>Zip Code</b>

Your social security number is requested to permit the North Dakota Bureau of Criminal Investigation to conduct a criminal history record information background investigation under N.D.C.C § 12-60-16.6. Disclosure of your social security number is voluntary. However, not providing this information will result in the requirement that other information be provided, including a reportable criminal event or the submission of fingerprints.

**INFORMATION CONTAINED ON THIS RECORD REQUEST FORM IS SUBJECT TO THE NORTH DAKOTA OPEN RECORDS LAW**