

STATE OF SOUTH DAKOTA

)

IN CIRCUIT COURT

:SS

COUNTY OF PENNINGTON

)

SEVENTH JUDICIAL CIRCUIT

PUFFY’S, LLC, a South Dakota Limited
Liability Company

Plaintiff,

vs.

City of Rapid City, a political subdivision and
municipality of the State of South Dakota,

Defendant.

51CIV25-____

COMPLAINT

COMES NOW, Puffy’s, LLC, a South Dakota limited liability company, by and through its attorney of record, Ryan D. Cwach, Birmingham & Cwach Law Offices, PLLC, and hereby submits its complaint against the Defendant as follows:

FACTUAL BACKGROUND

1. Plaintiff Puffy’s, LLC (Hereinafter “Puffy’s”) is a South Dakota medical cannabis establishment that possesses several dispensary only medical cannabis state certificates and City of Rapid City licenses.
2. Defendant City of Rapid City, South Dakota (hereinafter “Rapid City”) is a South Dakota municipality with limited authority to regulate medical cannabis dispensaries within its territorial boundaries. SDCL § 34-20G-58.
3. Jurisdiction and venue is appropriate in this court because both parties are located in Pennington County and all substantial events giving rise to this cause of action occurred in Pennington County.

LOCAL MEDICAL CANNABIS ORDINANCE LICENSING PROCESS

4. Pursuant to such limited authority, Rapid City adopted Chapter 5.74 of the Rapid City Municipal Code (hereinafter “RCMC”) through Ord. No. 6497 and Ord. No. 6505 in 2021. Rapid City further adopted certain zoning regulations located in RCMC Chapter 17.50.105 through Ord. No. 6497 and Ord. No. 6500 in 2021.
5. Local jurisdictions must allow one dispensary in its jurisdiction but may limit the total number of dispensaries. *See* S.D. Codified Laws §§ 34-20G-56 & 34-20G-59. Rapid City ordinance limits the number of dispensaries to “one for every 5,000 of population of the city,” which limited the number to 15 dispensaries in 2022. RCMC § 5.74.070.
6. The ordinance requires a medical cannabis establishment to submit an application for a provisional license for the inaugural application process, Rapid City received 47 total applications for a provisional license. Rapid City approved all 47 applications. This entitled all 47 applicants to apply for a state certificate for a medical cannabis dispensary in Rapid City.
7. While Rapid City was conducting its review of local applications, on October 5, 2021, Deputy City Attorney Justin Williams (hereinafter “Williams”) inquired with Puffy’s representative Kittrick Jeffries about investing, stating “hypothetically, if I was interested in joining Puff’s [sic], but wanted to wait until after city and state licenses are issued our of concern about conflict of interest, would that be allowed? What’s the process for allowing new members of the LLC? Vote?” A true and correct screenshot of the text message is attached as Exhibit A. Puffy’s now fears that many of the subsequent events and acts outlined below by Williams are retaliatory for declining Williams overture due to Puffy’s legitimate concerns about a conflict of interest and the appearance of impropriety.

8. Because Rapid City approved more applications for provisional licenses than allowed under its ordinance, that South Dakota Department of Health (hereinafter “Department”) must score and rank all the applications. All applications received the same score. Therefore the Department performed a random drawing. See S.D. Admin. R. § 44:90:03:16(4).
9. After the Department’s random drawing, Puffy’s received seven dispensary state certificates in March 2022 for Rapid City. Puffy’s presented its state certificates to Rapid City, and upon presentation, Rapid City issued seven annual local licenses to Puffy’s. This litigation concerns the following licenses and locations:

SD Cert. No.	Rapid City License No.	Address
22ESTC0916	RC-DISP-2023-12	910 Main St.
22ESTC5635	RC-DISP-2023-09	4024 Biernbaum Ln
22ESTC5788	RC-DISP-2023-13	3324 Cambell Ave.
22ESTC6030	RC-DISP-2023-14	3310 Cambell Ave.
22ESTC9436	RC-DISP-2023-08	4025 Biernbaum Ln

10. Each state certificate and local license above was issued in March 2022.
11. S.D. Admin. R. § 44:90:03:16 provides that an establishment subject to S.D. Admin. R. § 44:90:03:16, which is limited to Yankton and Rapid City dispensary establishments and North Sioux City cultivation establishments, must become operational within one year after the certificate is issued. During the first year, establishments subject to the rule can submit an operation extension request to receive up to an additional year to become operational.

12. Due to the vague and ambiguous nature of the language, Puffy's submitted operational extension requests to the Department for the above state certificates. Each extension request was denied on April 20, 2023.
13. S.D. Admin. R. § 44:90:03:16 authorized Puffy's to pursue a contested case under the S.D. Administrative Procedures Act. Puffy's timely filed an appeal. This contested case is ongoing, with Puffy's and the State each having recently submitted competing motions for summary judgment.
14. Rapid City has a slightly different "operations" requirement. RCMC § 5.74.110(A) requires a licensed establishment to "begin operations" "no later than 1 year after the city's issuance of the annual license." However, in 2021 and 2022, "the Finance Director may extend a licensee's time to commence operations for an additional one year upon good cause shown by the licensee."
15. RCMC § 5.74.110 is vague and ambiguous in that it does not define what constitutes "good cause" or "operations." RCMC § 5.74.110(B) requires a medical cannabis dispensary to "continuously and actively conduct business." This phrase is also undefined.
16. To the extent "operations" is defined, RCMC § 5.74.120 identifies 7 requirements to be operational, including (A) complying with all laws, regulations and rules of the State and City, (B) displaying license in conspicuous place during business hours, (C) limiting the time of day the establishment may be open, (D) owning or leasing the property, (F) limiting odors beyond property line, (G) no alcohol sales, and (H) only allowing certain persons in the establishment.
17. Puffy's complies with each operational requirement of RCMC § 5.74.120.

18. While Puffy's had developed site plans, engaged engineers, contractors, electricians, plumbers, fire sprinkler specialists, etc., to complete the construction of the above licensed locations with plans to complete construction on all locations in 2023, Puffy's submitted a local request for extension out of an abundance of caution.
19. On March 03, 2023, Rapid City granted each request for extension. The Department's denial of an operation extension request for a state certificate and Rapid City's grant of an extension request for a local license creates the current conflict of law before the court.
20. Puffy's has never received notice in accordance with RCMC § 5.74.110(B) that the licenses above have been deemed inactive.

910 MAIN ST. BUILDING PERMIT

21. Shortly after Puffy's filed its notice of appeal of the Department's denial of Puffy's operation extension requests for state certificates, including for Puffy's location at 910 Main St., Puffy's submitted a building permit to Rapid City Zoning Office for 910 Main St. with the intent of starting construction on its third dispensary.
22. Rapid City denied the building permit. A true and correct copy is attached as Exhibit B. At the time of denial, orally and not in writing, Rapid City officials indicated that Rapid City denied the building permit because the Department essentially told them to do so. At the same time, Rapid City officials assured Puffy's representatives that Rapid City was going to "let the process play out" and that Rapid City would not take adverse actions concerning Puffy's local licenses while the contested case proceeding was pending.
23. Rapid City never provided a written reason for denial of the building permit to Puffy's.
24. Relying on these assurances, Puffy's did not elect to request any hearing or engage in any litigation with Rapid City to require the issuance of the building permit. Puffy's also did

not proceed with applying for building permits on the other locations due to these assurances.

REFUSAL TO ACCEPT RENEWAL APPLICATIONS

25. Despite denying the building permit at 910 Main St. in May 2023 on the purported grounds that Puffy's did not have a valid state certificate for the location, Rapid City accepted Puffy's 2024 applications (due in September 2023) for annual license renewal, and such local licenses were renewed for the 2024 calendar year. Puffy's renewal fee checks were cashed on October 19, 2023. Rapid City provided "Form Es" to the Department of Health for each location for 2024. A true and correct copy of a Rapid City employee's email and the associated Form Es are attached as Exhibit C.
26. In March 2025, without any demand from Puffy's, Williams attempted to return the 2024 annual license renewal fees for these five locations plus interest by check made payable to Puffy's, claiming 15 months later that the licenses were issued in error. Ms. Weaver's email in Exhibit C however states that the Form Es were still being sent while state licenses were "on hold." Williams received this email in December 2023.
27. Puffy's refused and returned the Rapid City check shortly after receiving it.
28. Puffy's submitted its 2025 renewal applications and renewal fees to Rapid City Finance Office in late September/early October 2024, prior to the implementation of Resolution 2024-079 discussed below. The 2025 renewal applications were neither denied or approved. Instead, Rapid City Finance Office, upon the instruction of Williams, refused to accept the applications.
29. RCMC § 5.74.060 requires the Rapid City Finance Office to accept completed applications and renewal fees from currently licensed establishments. RCMC § 5.74.060(C) states "The city *will* consider renewal applications in the same manner as

new applications. In addition, the city may also consider any changed information from prior applications, concerns about actual operations or violations, calls for services, nonpayment of obligations, a dispensary's failure to actively use the license pursuant to § 5.74.110, or any other information reasonably related to the continued operation of the medical cannabis establishment.” (emphasis added).

30. RCMC § 5.74.060(E) requires that “the denial of a renewal license application shall be issued in writing by the Finance Director and shall include the reasons for denial. Denials may be appealed to the Common Council pursuant to § 5.74.090.”
31. Because the Rapid City Finance Office did not accept the applications, Rapid City never reviewed the applications, never made the considerations required by RCMC § 5.74.060(C), and never approved the applications or issued a denial in writing stating the reasons for denial as required by RCMC § 5.74.060(E). Puffy's also was not afforded its due process appeal rights in the event of a denial. RCMC § 5.74.060(E).
32. Rapid City's position is tenuous. Rapid City refuses to issue a building permit to Puffy's so it cannot build a dispensary, but Rapid City accepted and processed the 2024 renewals and notified the Department of such approval despite being beyond the operational extension request deadline.

RESOLUTION #2024-079: THE MORATORIUM

33. On October 02, 2024, City Attorney Joel Landeen (hereinafter “Landeen”) and Williams pulled Kittrick Jeffries and Ron Jeffries aside for an “unofficial and off the record” conversation concerning the five locations above. In this meeting, Landeen and Williams tried to pressure Puffy's to relinquish any claim to these local licenses. Prior to this time, Williams had numerous conversations with Puffy's attorney Ryan Cwach and both

attorneys and the Rapid City attorney office knew that Puffy's was represented by counsel on this issue.

34. During the meeting, the City Attorney and Deputy City Attorney made the following statements and took the following actions:

- a. Landeen threatened that he was going to reallocate Puffy's licenses without legal authority. Landeen, while admitting that he had not done any research, opined that Puffy's was probably going to lose its contested case with the state.
- b. Williams warned Puffy's that if Puffy's filed a lawsuit against Rapid City that "we would not necessarily have the cordial relationship we've had in the past" and that Rapid City would essentially stop working with Puffy's, and further stated that if the parties compromised, Puffy's would be viewed as a "team player."
- c. Landeen indicated if we had a "kumbaya solution" that "didn't get us sued" that Rapid City would look towards Puffy's favorably.
- d. Landeen acknowledged that Puffy's is working on its contested case "as fast as you can," acknowledged that Puffy's had an administrative process, but stated the process was taking too long for other persons.
- e. Landeen falsely represented positions of the City Council that were ultimately in conflict with the City Council's actual position.
- f. Landeen claimed there was a "common understanding" of "operational" to only mean marijuana sales, but provided no justification for how such understanding was "common" or any statutory authority for such claim.

- g. Throughout the meeting, Landeen specifically characterized and advocated for the positions of medical cannabis competitor Jacob Johnson, and stated that the Council really wanted to “give Jake Johnson a license.”
 - h. Landeen acknowledged that the Department was delaying Puffy’s contested case administrative proceeding out of “spite,” acknowledged the situation is a “mess,” that he “felt bad,” while acknowledging “this isn’t your fault.”
 - i. Landeen and Williams made a settlement proposal directly to an entity with known legal representation.
 - j. Landeen expressed that Rapid City “preserved the status quo” because Puffy’s had a City extension to become operational under Rapid City’s ordinance.
35. This last claim though conflicts with the facts. In May 2023, Rapid City denied a building permit to Puffy’s to build a dispensary during the timeframe that Mr. Landeen said Puffy’s “had a year to become operational.” It is illegal to construct a building without a building permit in Rapid City and obviously impossible to legally sell medical marijuana without a dispensary. The City’s conflicting positions, in addition to being in conflict with its ordinance and state law, also had the effect of deny Puffy’s a legitimate opportunity to open its five remaining dispensaries.
36. Since this meeting, Landeen and Williams' threats of Rapid City hostility towards Puffy’s and its representative Kittrick Jeffries has come to fruition as Rapid City employees refuse to accept renewal applications, delay transfer requests, delay building permit applications, and at times, Mr. Jeffries has been threatened with no entry to City Hall.
37. Rapid City adopted Resolution 2024-079 at its October 07, 2024 meeting. Exhibit D. The resolution created a “moratorium” on new applications for medical cannabis dispensaries.

As part of that moratorium, the Resolution states that “City staff shall not redistribute or reallocate [a disputed Puffy’s] license during the term of this moratorium.”

38. During consideration of the resolution, Councilman Roberts expressed surprise that “the city would not issue the building permits for the other five licenses for Puffy’s” and that “he wasn’t aware of what was going on with the state or Puffy’s lawsuit.” Exhibit D.

Councilman Strommen supported a moratorium because the “outcome of these licenses will be decided by the State Supreme Court.” Exhibit D. City Attorney Landeen stated “the moratorium doesn’t automatically eliminate the five licenses that are pending with the State right now. That would not be decided until later.” Exhibit D.

39. The original Resolution was adopted in part due to concerns of the voters approving recreational marijuana in the 2024 election. With the voters rejecting recreational marijuana, the Rapid City Council discussed whether the moratorium should remain in place. Without much fanfare, on December 02, 2024, the Rapid City Council voted to “Keep the moratorium in place until the State litigation is decided regarding Puffy’s licenses. Councilman Strommen said the State’s decision will directly affect these pending licenses. Landeen said the council can lift the moratorium and deal with the State’s decision after it’s made.” Exhibit E.

40. At the August 04, 2025 meeting, the Rapid City Council repealed the portion of Resolution #2024-079 that prohibited existing medical cannabis dispensaries from transferring ownership or locations. During that meeting, there was an attempt to repeal the moratorium, but again, the Council rejected this effort. Councilwoman Searchis noted “the City created the moratorium pending a Supreme Court ruling for these five licenses.” Exhibit F. Councilman Strommen expressed his preference that the “Council wait for the

Supreme Court to make their decision on the five Puffy’s licenses before anything is done with the ordinance.” Exhibit F. Again, the Rapid City Council acknowledged and affirmed that the Council would not take any adverse action concerning the five locations until after Puffy’s had full due process on the state certificates related thereto.

41. For purposes of this lawsuit, the final resolution in Resolution #2024-079 is most relevant, which states:

“BE IT FURTHER RESOLVED that City staff may accept renewal applications for *existing and operational* medical cannabis dispensary licenses if they are compliant with applicable laws and regulations and may issue renewal licenses pursuant to 5.74.060. City staff shall *not renew any medical cannabis dispensary licenses for businesses which are not operational and have not become operational*, and City staff shall not redistribute or reallocate any such licenses during the term of this moratorium.” (Emphasis added).

42. The Resolution fails to identify which medical cannabis dispensaries are not

“operational.” At the time, Puffy’s had valid local licenses. Puffy’s believes it is operational under all five licenses.

43. To the extent Puffy’s was not “operational” at the five above locations on October 09, 2024, it was solely because Rapid City refused to issue building permits at the five above locations or to accept timely submitted renewal applications. But for this decision and subsequent assurances, Puffy’s would have completed construction and started operations at all five locations.

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44. On or around October 31, 2024, a medical cannabis establishment competitor of Puffys, Black Hills Cannabis Care, LLC (“BHCC”) sued Rapid City in a case known as 54CIV24-1611 in Pennington County.

45. As part of that litigation, on May 20, 2025, BHCC issued Interrogatory No. 19 requesting a list of all of Puffy's members and Request for Production No. 4 for copies of any documents referenced in interrogatories, "including any operating agreements or other business documents of Puffy's, LLC." The discovery requests did not define these terms.
46. Upon information and belief, Rapid City provided BHCC with copies of Puffy's membership list, operating agreements and business structure, leases, security plans, site plans, information showing the location of stored cannabis, security cameras, alarm sensors, alarm systems, plans including how Puffy's monitors its dispensaries, tracks its cannabis inventory, and manages waste.
47. Rapid City officials subsequently informed Puffy's that Rapid City has determined that Puffy's entire application and supporting documentation is open and available to the public. Puffy's considers much of this information as proprietary business information or confidential because it includes sensitive security information.

OCTOBER 2025 ADVERSE ACTIONS

48. On October 16, 2025, Puffy's submitted its 2026 renewal applications for above locations with associated renewal fees. Unlike the prior year, Puffy's representative Kittrick Jeffries demanded that the Finance Office accept the renewal application and renewal fees.
49. On October 23, 2025, Deputy City Attorney sent a letter to Puffys and its counsel stating that the "finance office will not process the applications" and the applications and checks have "been set aside." This is the first time that Rapid City has ever provided a written explanation, but this letter is not in compliance with RCMC § 5.74.060. The effect of the

letter is to again abrogate Puffy's due process rights under the ordinance. A true and correct copy of this letter is attached as Exhibit G.

50. Despite these official acts of Rapid City to essentially pause a decision until the litigation resolves, Williams has continued to interfere with and invalidate Puffy's local licenses. Williams recently filed an affidavit in the state contested case proceeding, which is attached as Exhibit H, that essentially argues that Puffy's has no local licenses. This conflicts with Resolution #2024-079, and the statements of the Council members during consideration of the Resolution. Williams has also requested all recent filings from that proceeding.

51. Upon information and belief and based upon the comments of the Common Council, the purpose of the adoption of this resolution was to affirm Rapid City's long stated position that it would allow the contested case proceeding to be resolved before re-addressing Puffy's existing licenses.

52. Puffy's presently has a state certificate and local license at 3308 Cambell Ave. and desires to transfer both licenses to its 910 Main St. location. Puffy's would then transfer its existing state certificate presently under litigation and local license for 910 Main St. to 3308 Cambell Ave. This is essentially a swap of a local license between two locations, both previously approved as suitable locations for medical cannabis dispensaries.

53. Rapid City has approved the transfer of the local license for 3308 Cambell Ave. to 910 Main St., however, refuses to transfer the existing local license from 910 Main St. to 3308 Cambell Ave. Rapid City has asserted that the local license (RC-DISP-2023-12) for 910 Main St. is no longer valid.

COUNT I – DECLARATORY JUDGMENT AND MONETARY DAMAGES

54. Puffy's restates and realleges paragraphs 1 through 53 as if particularly stated herein.

55. On October 01, 2025, Williams swore under oath that Rapid City denied Puffy's 2023 application for building permit for 910 Main St. solely because of Rapid City's conclusion that Puffy's LLC did not "have a state medical cannabis certificate for its location. This was a decision made in compliance with city ordinances." Exhibit H.
56. Since the contested case proceeding began, Puffy's has continued to annually renew the state certificates under Paragraph 9, including the payment of \$115,000.00 in renewal fees. Upon information and belief, Puffy's is able to sell medical cannabis to qualified patients under each above state certificate, but is unable to do so due to the actions of Rapid City to prevent it.
57. At the time of the denial of building permit and at the time of the affidavit, upon information and belief, Williams was aware that Puffy's had continued to pay its renewal fees both locally and with the Department.
58. At the time of the denial of the building permit, Puffy's had a valid local license at 910 Main St.
59. Williams on behalf of Rapid City appears to make an official determination in an improper forum on behalf of Rapid City that Puffy's did not have a state certificate and was not operational. However, if so, this "official determination" has not been made in compliance with RCMC § 5.74.070.
60. This court has subject matter jurisdiction to declare the rights, status, and other legal relations, including confirming that Puffy's LLC continues to possess the five state certificates for medical cannabis dispensaries in Rapid City until its litigation with the Department of Health is finally determined. SDCL § 1-26-28. *See Also In re Exploration Permit Renewal of Silver King Mines, Permit EX-5*, 323 N.W. 858 (1982) ("[T]he

legislature provided therein that such license or permit is subject to renewal proceedings does not expire until the ‘final determination’ on the application by the agency.”).

61. Puffy’s never received a written explanation for the denial of the building permit at time of denial or any time after. Instead, Puffy’s was assured that the City would hold the local licenses in abeyance until the litigation with the Department was concluded.
62. The now stated reason to deny Puffy’s 2023 application for a building permit is arbitrary and capricious, made without factual or lawful authority, and has caused damages in an amount to be determined at trial, including damages for prohibiting Puffy’s from opening at the location and subsequent locations, including but not limited to lost revenue, and from effectively prohibiting Puffy’s from having five additional open dispensaries in Rapid City, or alternatively, transferring the licenses for valuable consideration.

COUNT II – DECLARATORY JUDGMENT

63. Puffy’s restates and realleges paragraphs 1 through 62 as if particularly stated herein.
64. Since 2023, Puffy’s use and operation of the five locations above has not materially changed.
65. Rapid City approved and issued 2024 renewal licenses for each location above while Puffy’s was in contested case proceedings with the Department. There has been no change in law or fact to justify a denial of subsequent renewal applications for the above locations.
66. Prior to adopting the moratorium, Rapid City refused to accept Puffy’s 2025 renewal applications (due in 2024) for the above locations.
67. This court has subject matter jurisdiction to declare the rights, status, and other legal relations, including declaring that RCMC § 5.74.060 requires Rapid City to accept,

review, and approve Puffy’s applications for renewal of local licenses for 2025 (due in 2024) and for 2026 (due in 2025).

COUNT III – DECLARATORY JUDGMENT

68. Puffy’s restates and realleges paragraphs 1 through 67 as if particularly stated herein.
69. Williams in his affidavit in the state proceeding and in his October 23, 2015 letter, states, either for himself personally or on behalf of Rapid City, that Puffy’s does not have a local license at the above location for failure to become operational and so the licenses have been “Deemed forfeited.”
70. This is not factually or legally true. Puffy’s applied for a local operation extension request at the end of 2022 for 2023 pursuant to RCMC § 5.74.110(A). Rapid City granted this request. Rapid City renewed Puffy’s local licenses for 2024, which Williams desperately tried to nullify by returning the fee payments in March 2025, 18 months later.
71. Under the ordinance, a local license is “deemed forfeited” “in the event that a medical cannabis dispensary does not timely commence operations *pursuant to this section.*” RCMC § 5.74.110(A). Under a plain reading of the ordinance, a license could only be “deemed forfeited” at the end of 2023 because extension requests are only allowed for licenses issued in 2021 or 2022. However, Rapid City renewed Puffy’s licenses at the end of 2023, and notified the Department of renewal. Exhibit C.
72. The RCMC § 5.74.070’s statement that a license “shall be deemed forfeited” is without lawful authority and was applied with the effect of obstructing and denying due process rights of applicants, including Puffy’s in this particular instance. Rapid City’s position is that Rapid City does not have to accept a renewal application and further does not have to take any action before the license is forfeited; however, this position ignores the requirement that someone must do the “deeming” and conflicts with RCMC §

5.74.060(C), which requires that renewal applications must be considered and then either approved or rejected, which triggers an appellate process to the Common Council.

73. This court has subject matter jurisdiction to declare the rights, status, and other legal relations, including declaring as follows:

- a. The Rapid City Municipal Code has defined “operational” for purposes of a medical cannabis dispensary under RCMC § 5.74.120;
- b. Puffy’s local license affected hereby were renewed at the end of 2023 when Rapid City processed renewal applications, accepted the annual renewal fees, and notified the Department that Puffy’s had a valid license.
- c. Puffy’s met the operational requirements under RCMC § 5.74.120 in 2024 for the five local licenses and continues to meet the requirements.
- d. Rapid City is required to “Deem” a license forfeited in writing as part of a renewal application. RCMC § 5.74.060.

COUNT IV – DECLARATORY JUDGMENT

74. Puffy’s restates and realleges paragraphs 1 through 73 as if particularly stated herein.

75. This court has subject matter jurisdiction to declare the rights, status, and other legal relations, including declaring that upon the submission of a completed application, Rapid City must issue a building permit to Puffy’s for each of the above local license locations, and specifically that such building permit cannot be denied for the stated reason that Puffy’s does not have a state license to operate a medical cannabis dispensary at that location.

COUNT V – DECLARATORY JUDGMENT AND MONETARY RELIEF

76. Puffy’s restates and realleges paragraphs 1 through 73 as if particularly stated herein.

77. The operation of the ordinance and the informal decision-making of Rapid City, which Puffy's has relied upon, has made the operation of a dispensary impossible.
78. Upon information and belief, Rapid City has arbitrarily and without authority refused to accept Puffy's renewal applications and denied valid building permit applications specifically to position Rapid City to lower the number of medical cannabis dispensary licenses from the current allotted number, specifically targeting these five locations, and but for the actions of the City, Puffy's would have pursued and completed build outs of each location.
79. This court has subject matter jurisdiction to declare the rights, status, and other legal relations, including declaring that RCMC § 5.74.110 is unconstitutionally vague and overbroad, and not a valid exercise of delegated statutory authority for the following reasons:
- a. A municipality may not prohibit a dispensary through the enactment of an ordinance that makes the operation of a dispensary impracticable. SDCL § 34-20G-59.
 - b. RCMC § 5.74.110 does not contain narrow, objective and definite standards, thereby denying fair notice of the standard of conduct to which license holders are to be held accountable.
80. Puffy's has been damaged in an amount to be determined at trial due to Rapid City's actions to make operation of these locations impossible.

COUNT VI – DECLARATORY JUDGMENT AND MONETARY RELIEF

81. Puffy's restates and realleges paragraphs 1 through 80 as if particularly stated herein.

82. This court has subject matter jurisdiction to declare the rights, status, and other legal relations, including declaring that Puffy's documentation submitted to Rapid City for purposes of applying and renewing local licenses is proprietary and confidential under SDCL § 1-26 and is not available to the public or to parties in litigation pursuant to SD Chapter 1-27.

83. Puffy's has been damaged in an amount to be determined at trial as a result of this unlawful disclosure of proprietary and confidential information.

COUNT VII – MISREPRESENTATION

84. Puffy's restates and realleges paragraphs 1 through 83 as if particularly stated herein.

85. Prior to the adoption of the moratorium, Rapid City officials operating in their official capacities represented to Puffy's representatives that Rapid City was not going to take any actions, adverse or otherwise, relating to Puffy's local licenses while the litigation with the Department was ongoing.

86. Rapid City continued to renew Puffy's licenses during the course of the contested case proceedings, and has never denied a renewal, but instead refuses to accept Puffy's submitted renewal applications.

87. Rapid City officials have acknowledged this position both orally and in writing. *See e.g.* Exhibit I.

88. Rapid City Councilmembers at public meeting affirmed this position during the discussion of Resolution 2024-079 and subsequent reconsiderations.

89. Rapid City officials knew or should have known that Puffy's would materially rely on these representations and such representations would cause Puffy's to alter its positions, including but not limited to not challenging the denial of its building permit in late 2023 for 910 Main St., and not taking action regarding its renewal applications.

90. The RCMC medical cannabis chapter provides for certain due process rights upon the submission of an application for renewal. Because Rapid City refused to consider Puffy's third annual renewal application for license year 2025, Puffy's was not able to invoke those procedures. Neither was Puffy's able to contest a revocation of license as no license was revoked. Puffy's however relied on the representations of Rapid City officials in electing a course of action to not challenge these decisions.

91. Puffy's has been damaged by Rapid City's misrepresentations in an amount to be proven at trial.

COUNT VIII – INVERSE CONDEMNATION (REGULATORY TAKING)

92. Puffy's restates and realleges paragraphs 1 through 91 as if particularly stated herein.

93. At the time of the denial of the building permit, Puffy's had valid state and local medical cannabis dispensary licenses at the above locations that legally allowed Puffy's to sell medical cannabis to medical cannabis cardholders at those locations.

94. Rapid City's actions had the effect of condemning and taking Puffy's license at 910 Main St. and all other locations prior to their expiration or subsequent renewal without just compensation for such licenses, allegedly for a public use, specifically to lower the number of dispensaries available to the public in Rapid City for 2023, 2024, 2025, and beyond.

95. Rapid City has not paid or offered just compensation to Puffy's for the taking of its property, and such taking was without lawful authority.

COUNT IX – TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY

96. Puffy's restates and realleges paragraphs 1 through 95 as if particularly stated herein.

97. Upon information and belief, Rapid City officials believe and have complained that Puffy's received too many licenses as a result of the license awarding system that Rapid City and the state of South Dakota developed.
98. Through the following the state and local laws, ordinances and regulations concerning the licensing of medical cannabis establishments, Puffy's was validly awarded 7 out of 15 medical cannabis dispensaries within the jurisdiction of Rapid City.
99. Puffy's developed a substantial and material business expectancy to develop a significant market share of the medical cannabis retail market in Rapid City and surrounding areas because it would be the only medical cannabis establishment with seven dispensary locations in the largest Blck Hills metro area.
100. Puffy's business expectancy was reasonable and likely to occur.
101. Defendants knew of Puffy's business expectation due to its review and approval of Puffy's plans for dispensaries.
102. Defendants intentionally interfered in this relationship by preventing Puffy's from continuing to develop its dispensaries while Puffy's contested case proceeding was ongoing, and specifically, for denying the application for building permit for 910 Main St. in 2023 and discouraging other actions when Puffy's possessed both valid state certificate and local licenses.
103. Defendant's simultaneous assurances that Rapid City would take no adverse actions against Puffy's while the contested case proceeding was pending further induced Puffy's to alter its business expectancy.
104. Defendants' refusal to issue a building permit, simultaneous assurance of no adverse action, refusal to accept renewal applications, and imposition of moratorium, and

subsequent position that these local licenses were somehow then forfeited were intentional and malicious acts to interfere with Puffy's business expectations.

105. Puffy's has been denied an opportunity to develop this market share, and during this interim, competitors have captured market share that Puffy's would otherwise have obtained. For example, one medical cannabis establishment originally had two locations and has expanded to four, and is capturing market share that otherwise would have gone to Puffy's.

106. Puffy's has suffered specific damages, including but not limited to lost customer relationships, lost profits, and market share, in an amount to be proved at trial.

COUNT X – INJUNCTIVE RELIEF

107. Puffy's restates and realleges paragraphs 1 through 106 as if particularly stated herein.

108. Rapid City is providing Puffy's proprietary and confidential information to members of the public in litigation or upon request.

109. Rapid City has imposed a moratorium in effect until Puffy's state litigation is resolved. Upon information and belief, Rapid City is considering lifting the moratorium and reducing or restricting the number of licenses, which would have the effect of confiscating or condemning Puffy's valid licenses. Williams has stated that he believes that this action has been completed already without any formal decision or due process being afforded to Puffy's.

110. The purpose of the moratorium as stated at multiple public meetings was to allow Puffy's litigation with the Department to be completed before addressing the local licenses.

111. Upon information and belief, Rapid City is considering revoking the moratorium before Puffy's litigation with the Department is completed.

112. Puffy's materially and detrimentally relied on the public statements of officials and actions of Rapid City regarding the duration and purpose of the moratorium.

113. Puffy's has no adequate remedy at law for the harm or damages that will result if Rapid City lifts the moratorium before Puffy's litigation with the Department is concluded.

114. Puffy's will suffer immediate and irreparable harm unless Rapid City is enjoined from lifting, repealing, or otherwise terminating the moratorium before Puffy's state litigation is concluded.

WHEREFORE, Plaintiff Puffy's, LLC respectfully requests that this Court:

1. Enter declaratory judgments in favor of Plaintiff as requested in Counts I, II, III, IV, and V;
2. Issue a preliminary and permanent injunction enjoining
 - i. Rapid City from lifting, repealing, or otherwise terminating its moratorium until Puffy's litigation with the Department is concluded,
 - ii. enjoining Rapid City from participating in the state contested case proceedings known as DOH 23-08, 23-09, 23-10, 23-11, 23, 12;
 - iii. enjoining Rapid City from releasing Puffy's information protected under SD Chapter 1-27;
3. Enter judgment in favor of Puffy's, LLC on all Counts;
4. Award Puffy's, LLC general and special damages in an amount to be proven at trial;
5. Award Puffy's, LLC punitive damages in an amount to be proven at trial;
6. Award Puffy's, LLC its reasonable attorney's fees and costs incurred in this action; and
7. Grant such other and further relief as the Court deems just and proper.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL ON ALL CAUSES OF ACTION

Puffy's, LLC, Plaintiff

/s/ Ryan D. Cwach

Ryan D. Cwach, #4245

For the Plaintiff

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