

**ORDINANCE #O2021-07**

**AN ORDINANCE CREATING LICENSING REGULATIONS  
FOR CANNABIS ESTABLISHMENTS.**

WHEREAS, Initiated Measure 26 (IM 26), regarding Medical Cannabis, was passed by South Dakota voters in November 2020; and

WHEREAS, the provisions of IM 26 have been codified under South Dakota Codified Laws (SDCL) Chapter 34-20G and become effective July 1, 2021; and

WHEREAS, such state statutes explicitly provide local governments with certain regulatory authority over aspects of cannabis establishments, including time, place, manner, and quantity regulations; and

WHEREAS, the City of Mitchell has the lawful authority to regulate other aspects relating to cannabis establishments by and through its use of existing municipal powers.

**BE IT ORDAINED BY THE CITY OF MITCHELL, SOUTH DAKOTA AS FOLLOWS:**

Section 1.

That a NEW CHAPTER be ADDED to the Mitchell City Code under Title 4 – Business and License Regulations – to read as follows:

**Chapter 11 – Cannabis Establishments**

**4-11-1: Intent:**

The city council of the city of Mitchell hereby enacts the following licensing ordinances in order to ensure that cannabis establishments within the municipal boundaries of the City operate in a manner which complies with state laws and regulations, protects the health, safety, and welfare of the general public, prevents potential conflicts and issues arising from ownership and employees, recognizes certain safety and security considerations, and minimizes risk of unauthorized use or access of cannabis by the general public.

**4-11-2: Definitions:**

Unless an alternative definition is explicitly stated in this section, this chapter utilizes the definitions for cannabis related terms which are defined by SDCL 34-20G-1.

**APPLICANT:** a person or entity seeking or renewing a cannabis establishment license.

**CANNABIS (or MARIJUANA):** all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

**CANNABIS CULTIVATION FACILITY:** a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

**CANNABIS DISPENSARY:** a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials.

**CANNABIS PRODUCT MANUFACTURING FACILITY:** a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

**CANNABIS TESTING FACILITY:** a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

**CANNABIS ESTABLISHMENT:** a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

**CANNABIS ESTABLISHMENT LICENSE or LICENSE:** a license issued pursuant to this chapter for the purpose of operating a type of cannabis establishment.

**CITY:** the city of Mitchell, South Dakota.

**CITY COUNCIL:** the city council of the city of Mitchell, South Dakota.

**FINANCE OFFICER:** the finance officer of the city of Mitchell, South Dakota.

**LICENSEE:** a person, people, or entity in possession of a cannabis establishment license issued pursuant to this chapter.

**MAYOR:** the mayor of the city of Mitchell, South Dakota.

**MENTAL HEALTH FACILITY:** an entity engaged in diagnosing, treating, caring for, or counseling people requiring mental health services, including substance abuse disorders, but which does not regularly provide other types of personal health services.

**RETAIL AREA:** the area of a cannabis establishment where a customer can view and/or purchase cannabis or cannabis products.

**SECURED AREA:** all parts of a cannabis dispensary except an unsecured waiting room where people may gather before entering the verification lobby or after leaving the secured exit.

**SECURED EXIT:** the controlled location of a cannabis dispensary located between the retail area of a cannabis dispensary and the non-secured area or exterior with a secured door at both its entrance and exit which allows eligible persons to exit the retail area.

**STATE:** the state of South Dakota.

**VERIFICATION LOBBY:** the controlled location of a cannabis dispensary located between the non-secured area or exterior of a cannabis dispensary and the retail floor with a secured door at both its entrance and exit which allows eligible persons to enter the retail area.

#### **4-11-3: Cannabis Establishment License Required**

- A. **Classes of License:** Each type of the four cannabis establishments shall have its own class of license relating to the activities unique to each type of cannabis establishment. The four license classes are Cannabis Cultivation License, Cannabis Dispensary License, Cannabis Product Manufacturing License, and Cannabis Testing License.
- B. **License Required:** It shall be unlawful for any person or entity to create or operate a cannabis establishment in the city without first having obtained a license from the city and a registration certificate from the state for each cannabis establishment to be operated in connection with such business. Such license and certification shall be kept current at all times, and the failure to maintain a current license and certification shall constitute a violation of this section.
- C. **Multiple Licenses:** A person or entity who intends to conduct activities which would meet the definition of multiple cannabis establishments must, prior to operating such cannabis establishments, obtain a license for each class of cannabis establishment which pertain to the intended activities. A person or entity may hold more than one class of license except when otherwise prohibited by this chapter.
- D. **License Location:** Each license issued pursuant to this chapter shall authorize a single cannabis establishment to operate at a single location. Licenses of different classes may overlap except when otherwise prohibited by this chapter.

- E. License Duration: Each license issued is effective from January 1 through December 31 of the year applied for, regardless of the time of year such license is approved. Each license expires at 11:59:59 P.M. on December 31 unless, prior to the expiration, the city council has approved, or conditionally approved, the renewal of such license for the following calendar year.

**4-11-4: Number of Licenses Restricted:**

- A. The number of cannabis establishment licenses which may be issued at a single time shall be restricted by license class. For Cannabis Dispensary Licenses, no more than 5 licenses shall be issued at any given time. For all other cannabis establishment licenses, no numerical limit is set at the time of adoption. The numerical limits for each class of cannabis establishment may be altered at any time by resolution of the city council.
- B. In the event the numerical cap is lowered to an amount less than the number of the existing licenses in that class, no existing licensee shall be prevented from continuing operation during the license term, requesting modifications to application information, from renewing such license for consecutive, subsequent years, or from transferring such license, on the basis that the numerical limit would otherwise prohibit the issuance of a license to a new applicant. However, this exception shall not prevent a license from being suspended or revoked, nor shall it prevent a license from not being renewed or a transfer approved, based upon grounds other than the numerical limit being exceeded.

**4-11-5: Application Process:**

- A. Application for License: An applicant must submit a signed application, in writing, to the city finance office using the form established by the city. Such application must include:
1. The legal name of the applicant.
  2. The physical address of the applicant.
  3. The name and date of birth of each principal officer and board member of the applicant entity.
  4. Previous experience operating a legal cannabis establishment, if any.
  5. Summary of operating procedures, including procedures to ensure accurate record keeping, adequate security measures, sufficient fire and building code considerations, and compliance with all other requirements of this chapter.
  6. Confirmation that none of the principal officers or board members has served as a principal officer or board member for a cannabis establishment that has had governmental license or certification revoked in any jurisdiction.
  7. Confirmation that none of the principal officers or board members is under twenty-one years of age.

8. Confirmation that the applicant has conducted a background check into the criminal history of each principal officer, board member, agent, volunteer, or employee involved in the operation at the time of application.
9. Proof that at least one principal officer is a resident of this state.
10. Payment of the applicable license fee.
11. A copy of the applicant's sales tax license.
12. Proof that all property taxes, business improvement district taxes, and pending assessments relating to the cannabis establishment location have been paid.
13. Proof of financial responsibility in the amounts and manner established in this chapter below.
14. A sworn statement that the application contains no false statements made or omissions of any material matter in any application for a license.
15. The applicant's notarized signature.

B. Action by City Council:

1. The city council will consider a completed application at the next available city council meeting following submittal, provided that such application must be submitted in advance of the general agenda item submission deadline established by the finance office. Applications are generally processed on a first come, first served basis except as further provided by this chapter.
2. The city council may approve or deny an application in full or on condition. Such action of the city council must take place within thirty (30) days after the application's first presentment to the city council.
3. If approved, the mayor and finance officer will endorse the application and notify the applicant of approval by close of business on the next business day following the city council's approval. If the council imposes any conditions, such conditions shall be listed on the license at the time of issuance. No approved application shall become effective and no license shall be issued until the applicant provides to the finance officer a copy of the applicant's certificate of registration from the state relating to the cannabis establishment for which the license was approved.
4. If denied, the council must state the basis on which the application was denied, which may include, but is not limited to: incorrect application information, missing required application criteria, insufficient detail in application, nonpayment of any obligation, proposed activity would violate city ordinance, proposed activity would violate state law or regulations, no license available due to maximum number already issued, proposed location not zoned properly, proposed location does not comply with an applicable buffer zone, or concerns over potential building, fire, or nuisance code issues.

5. No application for a license of any kind under this chapter may be received by the city finance office until such time as the state of South Dakota promulgates their initial regulations under SDCL Section 34-20G-72. Any application submitted prior to such time shall be deemed rejected.

C. Special Procedures for Capped Licenses:

1. For license classes where the council has established a numerical cap, applications shall be accepted by the special procedures provided in this section.
2. These special procedures shall apply whenever a new license becomes available in a capped license class.
3. When such availability occurs, the city shall publish an invitation for applications on the city's website stating the deadline to apply and the location applications may be submitted. No application for a capped license class will be accepted prior to publication of the invitation nor after the deadline established in the invitation.
4. Applications submitted pursuant to an invitation must be submitted in writing and sealed. An applicant may not supplement their application after the deadline has passed.
5. Once the deadline has passed, the finance officer shall open all sealed applications received during the invitation submittal window and review each application for completeness. Applications which are objectively incomplete shall be rejected and ineligible for further consideration. Applications which may be incomplete, but which require subjective interpretation, may continue through the process for the city council to make such determination. Such review shall be completed within 5 business days from the established deadline to receive applications.
6. The remaining applications shall be placed into order by the finance officer utilizing a lottery system to establish the order in which applications will be considered. Following the review period, the finance officer shall publish notice of the lottery on the city's website at least 24 hours in advance of the lottery being conducted and such lottery shall be open to the public. Once the lottery is completed, the remaining applications will be placed on the agenda of the next regularly available city council meeting.
7. Remaining applications will then be considered by city council on their merits in the order set by lottery. City council will approve or deny applications in the established order, but may review all applications before deciding on any individual application. City council will approve or deny the applications in order until all applications have been acted on or the numerical cap has been reached. If the numerical cap has been reached and there are still applications which have not been acted on, such undecided applications shall be deemed rejected.
8. If no applications are received following an invitation for applications, or if the numerical cap is not reached pursuant to an invitation for

applications, these special rules shall no longer apply and applications may be received, processed, and considered on a first come, first served basis beginning at open of business the day following the city council meeting at which the last application was acted upon pursuant to the invitation for applications. Such applications must be delivered in writing to the finance office no earlier than the time specified above and applications received before such time are deemed rejected.

9. If the numerical cap is then reached while using the first come, first served system, and a license subsequently lapses making a new license available, these special procedures shall apply to issuing the new license.

**D. Renewal Process:**

1. A person or entity operating pursuant to a license must submit an application for renewal of such license at least 45 days but not more than 90 days prior to the expiration of such license using the form provided by the city finance office. Such application must include payment of the renewal application fee.
2. The city council will consider renewal applications using the same factors and timelines applicable to new applications. In addition, the city council may also consider in approving, denying, or conditionally approving a renewal application, any changed information from prior applications, concerns over actual operations or violations, nonpayment of obligations, or any other information reasonably related to the continued operation of the cannabis establishment.
3. Applications for renewal submitted within the applicable window will be given priority over new applications in a capped license class. Renewal applications submitted after the window has expired will be given no priority and must submit a new application.
4. The renewal application must specify if any information has changed from its prior application.
5. The renewal application must be accompanied by all payments relating to the renewal application as well as a copy of the licensee's state certification.
6. The renewal application must re-confirm or prove all the requirements applicable to new applications remain met, including but not limited to financial responsibility, background checks, age, residency, etc.
7. An applicant is not automatically entitled to renewal of their license and the license will only be renewed by city council after full consideration of the unique facts and circumstances pertaining to each individual license.

**4-11-6: Transfer or Modification of License:**

- A. No license shall be transferred or modified except with the approval of the city council.

- B. Prior to any transfer of a license from a licensee to an unaffiliated person, people, or entity, the licensee and the proposed transferee must complete a transfer application. Such transfer application must include all information required for a new application as to the proposed transferee and pay a transfer application fee. The city council shall then approve, deny, or conditionally approve the proposed transfer using the same factors and timetables as apply to renewal applications. A transferred license is subject to all provisions and timelines applicable to a new or renewed license.
- C. Prior to any modification of ownership or management of a licensed cannabis establishment, the licensee must provide 30 days' notice to the finance officer in writing of the proposed changes.
- D. Prior to any modification of location or layout of a licensed cannabis establishment, the licensee must provide 30 days' notice to the finance officer in writing of the proposed changes.
- E. In relation to a change in ownership, management, location, or layout, the mayor may approve minor changes administratively and charge an administrative modification fee. However, if the mayor determines the proposed changes are not minor and may substantially alter the operation of the cannabis establishment as previously approved, the mayor shall direct the matter to be placed on the next available city council meeting. The city council shall then approve, deny, or conditionally approve the proposed changes using the same factors and timetables as apply to renewal applications. For changes referred to the city council, applicant shall also pay a full modification fee.
- F. Transfers, modifications, and renewals occurring simultaneously for the same license require separate applications and payment of separate fees. However, the city council may waive one or more, but not all, of the fees and consider the matters as a joint application.

**4-11-7: License to Remain Active:**

Every license issued pursuant to this chapter must remain in continuous, active use. A license that is not being actively used for a period of more than 14 consecutive days or for 60 cumulative days per year may be deemed inactive by the city finance officer. Active use includes times where the licensee is open and available to conduct business but such business cannot occur due to factors outside of the control of the licensee. However, days where the license is suspended by the city shall not be used for purposes of calculating inactivity.

**4-11-8: Fees Established:**

Fees relating to cannabis establishment licenses are established as further provided by this section. The fees established apply to each class of cannabis establishment license

unless expressly stated otherwise. All amounts set for fees in this section may be modified at any time by resolution of the city council. The types and amounts of fees are as follows:

New cannabis establishment application fee- \$5,000.00  
Renewal cannabis establishment application fee- \$5,000.00  
Transfer cannabis establishment application fee- \$5,000.00  
Administrative modification fee- \$50.00  
Full modification fee- \$500.00.

**4-11-9: General Obligations of Licensee:**

- A. The following obligations shall apply to each licensee and cannabis establishment:
1. Each licensee must keep any information stated in an approved application current and up to date.
  2. Each licensee shall have a continuing duty to maintain any eligibility criteria or certifications required by this chapter for an application.
  3. All cannabis establishments shall conduct all business activities within an enclosed structure, including but not limited to, cultivating, growing, processing, displaying, manufacturing, selling and storage except such loading and unloading which is incidental to such indoor activities.
  4. No cannabis or related paraphernalia shall be displayed or kept in a business so as to be visible from outside the cannabis establishment.
  5. No cannabis establishment shall allow the emission of any gas, vapors, odors, smoke, dust, heat, or glare that is noticeable at or beyond the property line of the cannabis establishment. Sufficient measures and means of preventing the escape of such substances from a cannabis establishment must be provided at all times. In the event that any gas, vapors, odors, smoke, dust, heat, or glare or other substances exit a cannabis establishment, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items, and other substances in a safe, sanitary, and secure manner and in accordance with all applicable federal, state, and local laws and regulations.
  6. Each licensee will retain all books and records necessary to show fully the business transactions of the licensee for a period of the current tax year and the three immediately prior tax years. Such records shall be maintained in a manner which, if released to the city, would not contain information protected by state law. Such records must be provided to the city upon request.
  7. No cannabis establishment may employ any person who is not at least 21 years of age.

8. Each licensee shall provide adequate security to prevent criminal activity on cannabis establishment premises, including parking areas.
9. A licensee shall be required to pay all delinquent court judgments arising out of their dispensary and dispensary operations.
10. A licensee shall not permit the general public to access any part of a cannabis establishment except where such access is permitted by law. A licensee must put in place reasonable security measures to prevent such access.
11. A licensee must operate as provided in the application, comply with any conditions attached to their license, and comply with all state and local laws.
12. A person or entity may not take any actions for which a license is required without holding both a valid license issued under this chapter and a valid corresponding state license.

B. Additional Requirements for Cannabis Dispensaries

1. No cannabis dispensary may share any physical location with any other type of business or land use type. A cannabis dispensary may only sell cannabis, cannabis products, and paraphernalia aiding in the consumption of these items and is prohibited from selling any other item or service.
2. Entry to a cannabis dispensary shall be restricted. Each cannabis dispensary must have a verification lobby and secured exit. The verification lobby and the secured exit must be separated from each other.
3. No more than 10 non-employees may be permitted within the secured area at one time.
4. When granting access to non-employees, the licensee shall unlock the entry door to the verification lobby, allow the person or people to enter the verification lobby, and then verify that each person in the verification lobby is legally permitted to access and purchase cannabis or cannabis products in the retail area. If any person is found to be ineligible, that person must leave the verification lobby prior to the verification lobby exit door being opened into the retail area. Once all individuals in the verification lobby have been confirmed to be eligible to enter the retail area, the entry door to the verification area must be closed and locked then the exit door of the verification lobby into the retail area may be unlocked and the individuals may enter the retail area. The exit door of the verification lobby must then be locked after all individuals leave and before allowing any other individuals through the entry door to the verification lobby. At all times the exit door of the verification lobby is unlocked the entry door to the verification area must be closed and locked.
5. When individuals leave the retail area, all individuals must use the secured exit. The entry door to the secured exit from the retail area shall remain locked until needed for use. The licensee shall then unlock the

entry door to the secured area to allow individuals to enter the secured exit from the retail area, ensure that the entry door is closed and locked, and then unlock the exit door of the secured exit. Once all individuals have left the secured exit, the exit door to the secured exit shall be closed and locked.

6. A licensee shall not permit a non-employee to access any secured area of a cannabis dispensary other than the verification lobby, retail area, and secured exit.
7. A cannabis dispensary may be open to the public only between the hours of 8:00 a.m. and 8:00 p.m. daily.
8. A cannabis dispensary shall not maintain any quantity of cannabis in excess of the amount permitted by State law.
9. All sales of cannabis shall be made in person, directly to the purchaser, within the retail area of the cannabis dispensary. No sales shall be made via telephone, internet, or other means of remote purchase. Deliveries shall occur only in person to the purchaser at the time of purchase within the retail area of the cannabis dispensary. No drive up windows or other similar delivery process shall be allowed.
10. All cannabis dispensaries licensed under this ordinance are required to maintain their cannabis dispensary and premises within the following minimum requirements:
  - a. Every dispensary licensee shall inspect their premises from lot line to lot line, all adjacent streets, sidewalks and alleys adjoining their premise, and sidewalks and alleys within one hundred (100) feet of such premise lot lines and shall remove any litter and debris found there on a daily basis to prevent the accumulation of litter and debris and the accidental or uncontrolled release of cannabis or cannabis products.
  - b. All solid waste and recyclable materials shall be stored in refuse containers made of metal or approved plastic and shall be equipped with secure lids or covers, and such covers shall remain closed so as to prevent the intrusion of storm water or vermin.
  - c. Refuse storage containers shall be enclosed on all four sides by screening compatible with the principal structure and not less than two feet higher than the refuse container or shall be otherwise effectively screened from the street and adjacent properties.

C. Crossover of Other Cannabis Establishments:

1. A cannabis testing facility may share a physical location with testing facilities that are authorized to handle other types of controlled substances.
2. A cannabis testing facility, cannabis cultivation facility, and a cannabis product manufacturing facility may share a physical location and the licensed area for each may overlap each other. However, a cannabis testing facility may not share a physical location with other types of

cannabis establishments if the cannabis testing facility conducts activities other than cannabis testing.

**4:11-10: Fire and Building Regulations:**

- A. Licensees shall be required to comply with all applicable provisions of the city's fire and building codes.
- B. The building code official is authorized to require and apply standards applicable to any use and occupancy classifications to a cannabis establishment regardless of the cannabis establishment's classification when application of such other standard is substantially related to mitigating a unique hazard presented by a cannabis establishment.
- C. The fire code official is authorized to require and apply standards applicable to any use and occupancy classifications to a cannabis establishment regardless of the cannabis establishment's classification when application of such other standard is substantially related to mitigating a unique hazard presented by a cannabis establishment.
- D. All cannabis cultivation facilities, cannabis product manufacturing facilities, and cannabis dispensaries must be equipped with a fire sprinkler system throughout the entire licensed area.

**4-11-11: Surveillance Cameras:**

- A. Purpose. The city council finds that cannabis establishments can become targets of opportunity for theft and violent crimes. The purpose of this section is to protect the public health, safety and welfare by increasing security for patrons and employees of these dispensaries by the use of surveillance cameras. Surveillance cameras will assist in deterring crime in and adjacent to such dispensaries and can provide information to assist the police in investigating crimes that do occur.
- B. Every cannabis establishment shall install a security camera system of a type, number and placement approved by the police department.
- C. The camera(s) must be capable of producing a retrievable image on digital recording video that can be made a permanent record and which can be viewed through projection or other means. Camera(s) and digital recording equipment shall be maintained in proper working order and recording twenty-four hours per day.
- D. Each cannabis establishment shall post a conspicuous sign which states that the property is under camera surveillance.
- E. At least one camera shall be positioned to record the frontal view of each person entering the cannabis establishment. Such other cameras as may be necessary to monitor substantially all of the premises shall be placed by the licensee.
- F. The cannabis establishment shall maintain surveillance recording materials for a period of one month within the recording system before overwriting or destruction. Digital recording materials shall be marked with the accurate time and date in a method that does not interfere with the image being recorded.

Proprietary formats must have appropriate player software included with all requested video copies. Copies may be created on CD, DVD, USB or any other functional digital media recommended by the manufacturer of the installed equipment.

**4-11-12: Financial Responsibility:**

- A. An applicant or licensee must file with the city finance officer certificates or policies of insurance issued by a responsible insurer in the amounts and for the purposes established below. The applicant must list the city as an additional insured on each policy.
- B. The applicant or licensee must maintain a commercial general liability policy, or equivalent, with a limit of not less than two million dollars (\$2,000,000.00) for each occurrence. If such insurance contains a general aggregate limit, it must be no less than double the occurrence limit.
- C. Upon request, the city may demand and the applicant or licensee must provide proof of any other type of insurance required by law.

**4-11-13: Unauthorized Conduct relating to Cannabis:**

- A. No person may engage in any of the following conduct:
  - 1. Undertaking any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice.
  - 2. Possessing cannabis or otherwise engaging in the use of cannabis in any correctional facility.
  - 3. Smoking cannabis on any form of public transportation, in any public place or any place that is open to the public, or on the property of any cannabis establishment.
  - 4. Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of cannabis.

**4-11-14: Signage and Advertising:**

- A. Cannabis establishments shall apply for a sign permit with the public works department. All exterior signage associated with a cannabis establishment must meet the standards established in the city code. In addition, no exterior signage shall use the word "marijuana," "cannabis," or any other word, phrase, or symbol commonly understood to refer to cannabis.
- B. A cannabis establishment may not advertise in a manner that is misleading, deceptive, false, or is designed to appeal to minors.

- C. Within each cannabis dispensary, there shall be posted in a conspicuous location a legible sign containing the following warnings:
1. A warning that the use of cannabis may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or operate machinery when under the influence of or impaired by cannabis;
  2. A warning that possession and distribution of cannabis is a violation of federal law;
  3. A warning that consumption of cannabis on the property of a cannabis establishment is prohibited by law; and
  4. A warning that smoking cannabis in public or on any form of public transportation is prohibited by law.
- D. Except as otherwise provided in this section it shall be unlawful for any person licensed under this article or any other person to advertise any cannabis establishment or any cannabis product anywhere within the city where the advertisement is in plain view of, or in, a place open to the general public, including advertising utilizing any of the following media: any billboard or other outdoor general advertising device as defined by the zoning code; any sign mounted on a vehicle; any hand-held or other portable sign; or any handbill, leaflet, or flier directly handed to any person in a public place, left upon a motor vehicle, or posted upon any public or private property. The prohibition set forth in this section shall not apply to:
1. Any sign located on the licensed premises of a cannabis establishment which exists solely for the purpose of identifying the location of the premises and which otherwise complies with this Code and any other applicable city laws and regulations; or
  2. Any advertisement contained within a newspaper, magazine, or other periodical of general circulation within the city or on the internet.
- E. No cannabis establishment shall distribute or allow the distribution of any cannabis without charge within a cannabis establishment or at any other place for purposes of promotion, advertising, or any other purpose.

#### **4-11-15: Suspension and Revocation:**

- A. A license is subject to suspension or revocation under certain circumstances including, but not limited to:
1. Violation of any provision of this ordinance.
  2. The license has been deemed inactive.
  3. Nonpayment of any obligation, including utilities.
  4. Failure to maintain proof of financial responsibility.
  5. Inadequate or faulty security measures or surveillance cameras.
  6. Public safety concerns have been identified which may or may not rise to the level of a violation.

- B. Upon determination by the mayor that grounds exist for the suspension or revocation of a license, a notice of suspension or revocation shall be physically delivered and posted at the licensed location. Such notice shall state the grounds for the suspension or revocation, the time and date of a hearing with the city council if the licensee wishes to contest the suspension or revocation, and whether or not the license is temporarily suspended pending the outcome of such hearing. Upon issuance of the notice, the mayor shall direct that a hearing be scheduled for the next available city council meeting in order to consider the suspension or revocation of the license.
- C. In deciding whether a license will be suspended or revoked, the city council shall consider all facts and circumstances relating to the grounds alleged in the notice to warrant suspension or revocation of the license. At the close of the hearing, the city council may uphold the suspension or revocation or reverse the suspension or revocation. In the event that the suspension or revocation is reversed, the city council may impose any additional conditions on the license which are reasonably calculated to ensure that the aggrieved conduct does not reoccur, including an administrative penalty not to exceed \$500.00.
- D. In the event a licensee's state certification is suspended or revoked, the licensee's city license shall automatically be suspended until such time as the state certification returns to good standing. If such state certification status persists long enough for the city license to be deemed inactive, such inactivity may serve as independent grounds for revocation of the city license.

**4-11-16: Liability and Indemnification:**

- A. By accepting a license issued pursuant to this chapter, the licensee, and all principal officers and board members thereof, waive and release the city, its officers, elected officials, employees, attorneys, and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients, or customers for a violation of state or federal laws, rules, or regulations.
- B. By accepting a license issued pursuant to this chapter, each licensee agrees to indemnify, defend, and hold harmless the City, its officers, elected officials, employees, attorneys, agents, and insurers against all liability, claims, and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the cannabis establishment that is the subject of the license.

**4-11-17: Compliance with other applicable laws.**

- A. Except as may be otherwise provided in this ordinance, any law or regulation adopted by the state governing the cultivation, production, possession, or distribution of cannabis use shall also apply to cannabis establishments licensed within the city.
- B. If the state prohibits the sale or other distribution of cannabis in such a manner as to make operation of a cannabis establishment pursuant to this chapter conflict with such state prohibition, any license issued hereunder which would be in conflict with state law shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.
- C. The issuance of any license pursuant to this chapter shall not be deemed to create an exception, defense, or immunity for any person or entity in regard to any potential criminal liability the person or entity may have under federal law for the cultivation, possession, sale, distribution, or use of cannabis.

**4-11-18: Enforcement, Penalty, and Nuisance:**

- A. Any person or entity violating a provision of this chapter shall be subject to the general penalty provisions of chapter 1-4 of the Mitchell City Code. Such liability shall be in addition to any other penalty or remedy which may be applicable under the terms of this chapter or by law.
- B. No person, while acting as an agent of a licensee, shall take any action, or fail to take any action, that would cause a licensee to violate the provisions of this chapter. Such person causing a violation shall be subject to the general penalty provisions of chapter 1-4 of the Mitchell City Code. Such liability shall be in addition to any other penalty or remedy which may be applicable under the terms of this chapter or by law.
- C. In addition to any other remedy, the city attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this chapter. Continued violations of this chapter are deemed to be a public nuisance. Such application for relief may include seeking a temporary restraining order, temporary injunction, permanent injunction, or any other remedy available at law or in equity.
- D. In the event of a violation, suspension, or revocation where the licensee may no longer legally possess cannabis, cannabis products, or other restricted items, the licensee shall be responsible to pay the costs incurred by the city for securing, storing, safeguarding, transferring, or disposing of any cannabis, cannabis products, or other restricted items.

**4-11-19: Severability:**

If any section, sentence, clause, or phrase of this chapter is for any reason held to be invalid, unenforceable, or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this code and the remainder shall remain in full force and effect.

Section 2.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 3.

The City Finance Officer shall cause notice of adoption of this ordinance to be published in the official newspaper and twenty (20) days after the completed publication, unless the referendum is invoked, this ordinance shall become effective.

Adopted by majority vote of the Mitchell SD City Council in regular session this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Robert B. Everson, Jr. – Mayor

Attest:

(seal)

\_\_\_\_\_  
Michelle Bathke – City Finance Officer

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Adoption: \_\_\_\_\_

Published: \_\_\_\_\_