

ORDINANCE #O2021-13

**AN EMERGENCY ORDINANCE AMENDING LICENSING REGULATIONS
FOR CANNABIS ESTABLISHMENTS.**

WHEREAS, the City of Mitchell did lawfully adopt Ordinance O2021-07 which created licensing regulations for cannabis establishments; and

WHEREAS, such regulations were adopted prior to the state Department of Health releasing their proposed regulations relating to medical cannabis; and

WHEREAS, a number of provisions of the City's cannabis regulations require revision to better fit the regulations of the Department of Health, which will be placed in Article 44:90 – Medical Cannabis of the Administrative Rules of South Dakota (ARSD); and

WHEREAS, the City's ordinances provide that applications for cannabis establishments will not be accepted until the state's initial rules are officially promulgated; and

WHEREAS, the final version of the state's rules will not be known sufficiently in advance in order to comply with the traditional timeline for adopting ordinances; and

WHEREAS, the limited time period between knowing the final version of the state's regulations and needing these revisions to immediately take effect before the city accepts applications therefore requires the use of emergency ordinance adoption procedures.

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

Section 1.

That Mitchell City Code **Section 4-11-5(A)** be AMENDED by adding the following language:

“16. All application materials the applicant intends to submit to the state Department of Health for seeking a registration certificate.”

Section 2.

That Mitchell City Code **Section 4-11-5(B)(3)** be AMENDED by adding the following sentence to the end of subsection (3):

“If the applicant made any material changes to their application materials during the process of state certification, then the applicant must provide such updated materials to the city council and the city council must approve of such changes before the license may be issued.”

Section 3.

That Mitchell City Code **Section 4-11-5(D)** be AMENDED by adding the following new subsection to read as follows:

“10. An applicant may apply for state certification for a capped license simultaneously or subsequent to applying for a city license. The city will only supply a certification of compliance to the state, as part of the state certification process, if in fact the applicant has complied with all local ordinance requirements, including the special procedures for capped license, and has been provisionally approved for a local license under Section 4-11-5(B)(3). It is the city’s intention that a lack of said certification of compliance serve as a bar to an applicant being placed on a state waitlist in that the applicant’s state application would not meet the initial application requirements under ARSD Section 44:90:03:01.”

Section 4.

That Mitchell City Code **Section 4-11-8** be AMENDED to read as follows:

“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 are due at the time the application or modification is requested and are non-refundable even if the action sought by the application or modification is denied or rejected. The city council may add a fee, delete a fee, or alter any fee amount by resolution at any time. The initial 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.”

Section 5.

That Mitchell City Code **Section 4-11-9(B)(1)** be AMENDED by deleting the first sentence with the remainder to stay in full force and effect. The sentence to be deleted reads as follows:

“No cannabis dispensary may share any physical location with any other type of business or land use type.”

Section 4.

That Mitchell City Code **Section 4-11-9(C)** be REPEALED and REPLACED to read as follows:

“C. Crossover of Other Cannabis Establishments:

1. A cannabis dispensary, cannabis cultivation facility, and cannabis product manufacturing facility may share a physical location if such collocation is done in a manner which is permitted by local ordinance and state laws and regulations.
2. A cannabis testing facility may not share a physical location with any other type of cannabis establishment.
3. Except as provided herein, no cannabis establishment may share a physical location with any other non-cannabis type of business or land use type.”

Section 5.

That Mitchell City Code Section 4-11-17 be AMENDED by adding a new subsection to read as follows:

“D. State law at the time of implementing this ordinance does not allow a municipality to prohibit all medical cannabis establishments. In the event that state law does provide a municipality with such authority, the city council may revoke, not renew, or deny the modification or transfer of, any license issued pursuant to this chapter for the purpose of discontinuing all medical cannabis establishment activities within the city. All licenses are expressly issued with such discontinuation as a possibility, licensees acknowledge and accept such possibility upon applying for a license, and shall maintain no claim or cause of action of any nature against the city for a license terminated under such circumstances.”

Section 6.

That Mitchell City Code **Section 4-11-18** be AMENDED by adding a new subsection to read as follows:

“E. For all notices, reports, or other documents required to be provided to the state, each licensee shall provide a copy of such notice, report, or document to the city at the same time the notice, report, or document is provided to the state.”

Section 7.

That Mitchell City Code **Chapter 4-11** be AMENDED by adding a new section to read as follows:

“4-11-20: Medical Cannabis:

Except for section 4-11-13, the provisions of this Chapter shall be deemed to relate exclusively to medical cannabis. In the event that recreational cannabis becomes legal in the State of South Dakota, any license granted hereunder shall not permit the license

holder to engage in business activity relating to recreational cannabis, nor shall a license holder under this chapter be granted any preference toward acquiring a recreational cannabis license, unless explicitly provided by future ordinance.”

Section 8.

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

Section 9.

The City Finance Officer shall cause notice of adoption of this ordinance to be published in the official newspaper and, pursuant to SDCL 9-19-13, this ordinance is necessary for the immediate preservation of the public peace, health, safety, and welfare of the City and shall become effective immediately upon publication of this ordinance after adoption.

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: _____