

ORDINANCE O2022-01

AN ORDINANCE REPEALING, READOPTING, AND AMENDING THE ZONING REGULATIONS FOR CANNABIS ESTABLISHMENTS IN THE CITY OF MITCHELL.

WHEREAS, the City of Mitchell previously adopted zoning regulations pursuant to Ordinance O2021-06 on June 2nd, 2021, which implemented a full chapter of zoning regulations for cannabis establishments; and

WHEREAS, such chapter as adopted incorrectly listed the Zoning Regulations title of the Mitchell City Code as Title 9 instead of Title 10, and all sections of said adopted chapter incorrectly referenced Title 9 of the Mitchell City Code instead of Title 10, resulting in the ordinance being incorrectly codified according to the erroneous number instead of the correct Zoning Regulations title. The original intention was for the chapter and subsections to be codified under the Zoning Regulations title (Title 10) and not the Building Regulations title (Title 9); and

WHEREAS, in addition, staff has discovered that the language relating to buffer zones for cannabis dispensaries is impractical in application and/or ambiguous and requires clarification.

WHEREAS, notice for this proposed ordinance was published on January 22nd, 2022, January 26, 2022 and February 2, 2022 listing dates of February 3rd, 2022 for hearing with Planning and Zoning Commission, February 7th, 2022 for hearing and first reading with city council, and February 14th, 2022 for 2nd reading and adoption with council.

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

Section 1.

That in order to ensure that the City's cannabis zoning regulations are codified in the appropriate location of the Mitchell City Code, the existing Chapter 9-15 of the Mitchell City Code is hereby REPEALED and RE-ADOPTED in its entirety as Chapter 15 of Title 10 to read as follows:

“Chapter 15 – Cannabis Establishments

10-15-1: Intent:

In order to minimize the negative effects cannabis establishments have on adjacent land uses, and to promote the public health, safety and general welfare of the city, the city council adopts the following regulations, recognizing that it has a great interest in the present and future character of the city's residential and commercial neighborhoods. Adoption of these regulations is not intended to unreasonably restrict the opportunity of

cannabis establishments to locate in the city, but is for the purpose of preventing a concentration of certain cannabis establishments in any one area.

10-15-2: 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.

BLIGHTED AREA: an area characterized by traits such as dilapidation, overcrowding, deterioration, dangerous structures, unsanitary, inadequate infrastructure, nuisance, or other factors which inhibit the growth and development of an area.

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.

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.

NON-LICENSED CANNABIS ESTABLISHMENT: an entity which would otherwise meet the definition of a cannabis establishment but which is not legally licensed.

10-15-3: Regulations Relating to Cannabis Cultivation Facilities:

No cannabis cultivation facility shall be owned or operated at a location within the city's zoning jurisdiction except as provided by this section. A cannabis cultivation facility shall be considered a permitted use in the following districts: HB highway oriented business district; TWC transportation, warehousing, and commercial district; and I industrial district. A cannabis cultivation facility shall be considered a conditional use in the following districts: CB central business district.

10-15-4: Regulations Relating to Cannabis Testing Facilities:

No cannabis testing facility shall be owned or operated at a location within the city's zoning jurisdiction except as provided by this section. A cannabis testing facility shall be considered a permitted use in the following districts: HB highway oriented business district; TWC transportation, warehousing, and commercial district; and I industrial district. A cannabis testing facility shall be considered a conditional use in the following districts: CB central business district.

10-15-5: Regulations Relating to Cannabis Product Manufacturing Facilities:

No cannabis product manufacturing facility shall be owned or operated at a location within the city's zoning jurisdiction except as provided by this section. A cannabis product manufacturing facility shall be considered a permitted use in the following districts: HB highway oriented business district; TWC transportation, warehousing, and commercial district; and I industrial district. A cannabis product manufacturing facility shall be considered a conditional use in the following districts: CB central business district.

10-15-6: Regulations Relating to Cannabis Dispensaries:

A. No cannabis dispensary shall be owned or operated at a location within the city's zoning jurisdiction except as provided by this section. A cannabis dispensary shall be considered a permitted use in the following districts: HB highway oriented business district; TWC transportation, warehousing, and commercial district; and I industrial district. A cannabis dispensary shall be considered a conditional use in the following districts: CB central business district.

B. No cannabis dispensary shall operate within three hundred feet (300') of an educational institution, religious institution, childcare center (excluding family residential childcare), preschool, nursery, detention facility, or mental health facility. No cannabis dispensary shall operate within one thousand feet (1,000') of another cannabis dispensary. Distances shall be measured from the closest point of the property lines but excluding public rights of way. Such buffer distance requirements may be waived via the variance process so long as the zoning district for the proposed location would be allowed if the applicable buffer distance requirement were waived.

10-15-7: Additional Variance and Conditional Use Factors for Cannabis Establishments:

In addition to any other factor which may be properly considered in the grant or denial of a variance or conditional use permit, the following factors shall be relevant for variance and conditional use requests relating to cannabis establishments:

1. That the proposed land use is consistent with the intent of this chapter and will not be contrary to public interest or injurious to nearby properties.
2. That the proposed land use will not cause or contribute to the formation or expansion of blighted area.
3. That all applicable ordinances and regulations will be observed.

10-15-8: Prohibited Districts for Cannabis Establishments:

A. All types of cannabis establishments are prohibited in the following districts: all R residential districts, NS neighborhood shopping, PL public lands and institutions district, CN conservation district, UD urban development district, and all PUD planned unit development districts.

B. All non-licensed cannabis establishments are prohibited in all zoning districts.”

Section 2.

That Section 10-15-6(B) as listed above (previously codified as Section 9-15-6(B)) be further AMENDED by removing the words “but excluding public rights of way” so as to read as follows:

B. No cannabis dispensary shall operate within three hundred feet (300') of an educational institution, religious institution, childcare center (excluding family residential childcare), preschool, nursery, detention facility, or mental health facility. No cannabis dispensary shall operate within one thousand feet (1,000') of another cannabis dispensary. Distances shall be measured from the closest point of the property lines. Such buffer distance requirements may be waived via the variance process so long as the zoning district for the proposed location would be allowed if the applicable buffer distance requirement were waived.

Section 3.

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

Section 4.

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 _____, 2022.

Robert B. Everson, Jr. – Mayor

Attest:

(seal)

Michelle Bathke – City Finance Officer

First Reading: _____

Second Reading: _____

Adoption: _____

Published: _____