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BUTTE COUNTY ORDINANCE # 2021-02

**AN ORDINANCE TO REGULATE MEDICAL CANNABIS
WITHIN BUTTE COUNTY**

WHEREAS, the State of South Dakota permits the sale and consumption of medical cannabis pursuant to South Dakota Codified Law (SDCL) Chapter 34-20G and,

WHEREAS, pursuant to SDCL 34-20G-55, county government may require a local registration, license, or permit for a medical cannabis establishment to operate within that county, and

WHEREAS, pursuant to SDCL 34-20G-58, county government may enact ordinances or regulations governing the time, place, manner, and number of licensees operating within its jurisdiction; and

WHEREAS, also pursuant to SDCL 34-20G-58, county government may establish civil penalties for violation of an ordinance governing the time, place, and manner of medical cannabis establishments that operate locally, and

WHEREAS, under the provisions of SDCL 34-20G-60, county government may require a medical cannabis establishment to obtain a county license, permit, or registration prior to operating, and may charge a reasonable fee for that license, permit, or registration, and

WHEREAS, the County believes that regulation of medical cannabis is necessary for the health and safety of this community; then and therefore,

BE IT ORDAINED BY THE BUTTE COUNTY COMMISSION AS FOLLOWS:

Section 1. Definitions.

The terms and definitions found in SDCL 34-20G-1 are specifically adopted for the purpose of this Ordinance. Specifically,

- (1) **“Allowable amount of cannabis,”** means:
 - a. Three ounces of cannabis or less;

- b. The quantity of cannabis products as established by rules promulgated by the department under SDCL 34-20G-72;
 - c. If the cardholder has a registry identification card allowing cultivation, three cannabis plants minimum or as prescribed by a physician: and
 - d. If the cardholder has a registry identification card allowing cultivation, the amount of cannabis and cannabis products that were produced from the cardholder's allowable plants, if the cannabis and cannabis products are possessed at the same property where the plants were cultivated.
- (2) **“Bona fide practitioner-patient relationship,”** means:
- a. A practitioner and patient have a treatment or consulting relationship, during the course of which the practitioner has completed an assessment of the patient's medical history and current medical condition, including an appropriate in-person physical examination;
 - b. The practitioner has consulted with the patient with respect to the patient's debilitating medical condition; and
 - c. The practitioner is available to or offers to provide follow-up care and treatment to the patient, including patient examinations;
- (3) **“Cannabis products,”** means any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures;
- (4) **“Cannabis product manufacturing facility,”** means an entity registered with the department pursuant to this chapter that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a medical cannabis dispensary
- (5) **“Cannabis testing facility”** or **“testing facility,”** means an independent entity registered with the department pursuant to this chapter to analyze the safety and potency of cannabis;
- (6) **“Cardholder,”** means a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card;
- (7) **“Cultivation facility,”** means an entity registered with the department pursuant to this chapter that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment;
- (8) **“Debilitating medical condition,”** means:
- a. A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating pain; severe nausea; seizures; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis; or

- b. Any other medical condition or its treatment added by the department, as provided for in SDCL 34-20G-26
- (9) **“Department,”** means the South Dakota Department of Health
- (10) **“Designated caregiver,”** means a person who:
- a. Is at least twenty-one years of age;
 - b. Has agreed to assist with a qualifying patient's medical use of cannabis;
 - c. Has not been convicted of a disqualifying felony offense; and
 - d. Assists no more than five qualifying patients with the medical use of cannabis, unless the designated caregiver's qualifying patients each reside in or are admitted to a health care facility or residential care facility where the designated caregiver is employed;
- (11) **“Disqualifying felony offense,”** means a violent crime that was classified as a felony in the jurisdiction where the person was convicted;
- (12) **“Edible cannabis products,”** means any product that:
- a. Contains or is infused with cannabis or an extract thereof;
 - b. Is intended for human consumption by oral ingestion; and
 - c. Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures, or other similar products;
- (13) **“Enclosed, locked facility,”** means any closet, room, greenhouse, building, or other enclosed area that is equipped with locks or other security devices that permit access only by a cardholder or a person allowed to cultivate the plants. Two or more cardholders who reside in the same dwelling may share one enclosed, locked facility for cultivation;
- (14) **“Medical cannabis”** or **“cannabis,”** means marijuana as defined in SDCL 22-42-1;
- (15) **“Medical cannabis dispensary”** or **“dispensary,”** means an entity registered with the South Dakota Department of Health pursuant to SDCL 34-20G that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders;
- (16) **“Medical cannabis establishment,”** means a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary;
- (17) **“Medical cannabis establishment agent,”** means an owner, officer, board member, employee, or volunteer at a medical cannabis establishment;
- (18) **“Medical use,”** includes the acquisition, administration, cultivation, manufacture, delivery, harvest, possession, preparation, transfer, transportation, or use of cannabis or paraphernalia relating to the administration of cannabis to treat or alleviate a registered qualifying patient's debilitating medical condition or symptom associated with the patient's debilitating medical condition. The term does not include:

- a. The cultivation of cannabis by a nonresident cardholder;
 - b. The cultivation of cannabis by a cardholder who is not designated as being allowed to cultivate on the card holder's registry identification card; or
 - c. The extraction of resin from cannabis by solvent extraction unless the extraction is done by a cannabis product manufacturing facility;
- (19) **“Nonresident cardholder,”** means a person who:
- a. Has been diagnosed with a debilitating medical condition, or is the parent, guardian, conservator, or other person with authority to consent to the medical treatment of a person who has been diagnosed with a debilitating medical condition;
 - b. Is not a resident of this state or who has been a resident of this state for fewer than forty-five days;
 - c. Was issued a currently valid registry identification card or its equivalent by another state, district, territory, commonwealth, insular possession of the United States, or country recognized by the United States that allows the person to use cannabis for medical purposes in the jurisdiction of issuance; and
 - d. Has submitted any documentation required by the department, and has received confirmation of registration;
- (20) **“Practitioner,”** means a physician who is licensed with authority to prescribe drugs to humans. In relation to a nonresident cardholder, the term means a person who is licensed with authority to prescribe drugs to humans in the state of the patient's residence;
- (21) **“Qualifying patient,”** means a person who has been diagnosed by a practitioner as having a debilitating medical condition;
- (22) **“Registry identification card,”** means a document issued by the department that identifies a person as a registered qualifying patient or registered designated caregiver, or documentation that is deemed a registry identification card pursuant to SDCL 34-20G-29 to SCDL 34-20G-42 inclusive; and
- (23) **“Written certification,”** means a document dated and signed by a practitioner, stating that in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's debilitating medical condition or symptom associated with the debilitating medical condition. This document shall affirm that it is made in the course of a bona fide practitioner-patient relationship and shall specify the qualifying patient's debilitating medical condition.

Section 2. Operation of Medical Cannabis Establishments in Butte County.

A. Hours of Operation

- (1) Medical cannabis establishments operating in Butte County may open between the hours of 8:00am and 5:00pm, Monday through Friday.
- (2) No medical cannabis establishment may operate in Butte County on any Federal or State Holiday, or on days when County Government offices are closed.

B. Place of Operation.

- (1) Pursuant to SDCL 34-20G-55, no medical cannabis establishment may operate within one thousand feet (1000 feet) of a public or private school, including in-home daycare establishments.
- (2) All medical cannabis establishments in Butte County must be in a facility where access to cannabis can be restricted and secured.
- (3) All medical cannabis establishments must have written procedures detailing appropriate security measures designed to deter theft of cannabis.
- (4) All medical cannabis establishments must have written procedures detailing how the establishment will prevent unauthorized entrance to any area containing cannabis.
- (5) Any cultivation, harvesting, and/or packaging of cannabis must take place in a secure facility at the address on file with Butte County as a medical cannabis establishment. This secure facility may only be accessed by agents of the medical cannabis establishment, emergency personnel, and adults who are at least 21 years of age and who are accompanied by a medical cannabis establishment agent.
- (6) A medical cannabis establishment may not produce cannabis concentrates, cannabis extractions or other cannabis products, unless the medical cannabis establishment is also licensed or registered as a cannabis product manufacturer.
- (7) A medical cannabis establishment may not share office space with a practitioner.
- (8) A medical cannabis establishment may not refer a patient to a practitioner.
- (9) No person may consume cannabis on the property of a medical cannabis establishment.
- (10) Butte County may inspect a medical cannabis facility during business hours to ensure compliance with this Ordinance.

C. Manner of Operation.

- (1) Anyone who is a board member, principle officer, agent, volunteer or employee of a medical cannabis establishment in Butte County must have had a current and valid background check before working in or with the medical cannabis establishment.
- (2) . Any medical cannabis establishment in Butte County may not employ any person who

has been convicted of a disqualifying felony offense.

- (3) All employees of a medical cannabis establishment in Butte County must be over 21 years old.
- (4) No medical cannabis establishment may issue cannabis to anyone who is not a qualifying patient with a current and valid registry identification card issued by the South Dakota Department of Health or a designated caregiver for a qualifying patient.

Section 3. Permitting of Medical Cannabis Establishment.

- (1) In order to operate as a medical cannabis establishment in Butte County, the prospective entity must obtain both a permit from Butte County and a current State registration certificate issued by the South Dakota Department of Health.
- (2) Butte County will not permit more than two (2) medical cannabis establishments to operate within the boundaries of Butte County at any one time. Under SDCL 34-20G and this Ordinance, “medical cannabis establishment” includes a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, and a dispensary. For this reason, at least one (1) of the two (2) medical cannabis establishment permits for Butte County must be for a dispensary.
- (3) Permit Application Procedures:
 - a. A prospective medical cannabis establishment seeking to operate in Butte County must first obtain a permit to operate from Butte County prior to seeking registration as a medical cannabis establishment from the South Dakota Department of Health under the provisions of SDCL 34-20G-55.
 - b. All permit requests must be submitted, with the application fee, to the Butte County Auditor’s Office. A permit decision will be made within 60 days of application.
 - c. A permit application to operate as a medical cannabis establishment requires:
 - a. The legal name of the prospective medical cannabis establishment;
 - b. The location of the prospective medical cannabis establishment;
 - c. A certification that the location of the prospective medical establishment is not within one thousand feet (1000 feet) of a public or private school, including in-home day care facilities.
 - d. The name and date of birth of each principle officer and board member of the prospective medical cannabis establishment.
 - e. A certification that at least one officer or board member of the prospective medical cannabis establishment is a resident of Butte County, South Dakota;

- f. A certification that none of the employees of the prospective medical cannabis establishment has been convicted of a disqualifying felony offense
- g. A certification that the employees of the prospective medical cannabis establishment are over the age of 21 years;
- h. A current background check for each officer, board member, agent, volunteer or employee associated with or working in the prospective medical cannabis establishment;
- i. A description of the type of medical cannabis establishment; for example whether the establishment will operate as a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary;
- j. A copy of the operating documents for the prospective medical cannabis establishment that detail oversight of the establishment and procedures to ensure accurate recordkeeping; and
- k. A description of appropriate security measures designed to deter and prevent theft of cannabis and unauthorized entry into any area containing cannabis.
- l. An application fee of \$25,000. The application fee must be presented in the form of a certified or cashier's check payable to "Butte County Treasurer."

Section 4. Renewal of Medical Cannabis Establishment Permits.

- (1) All permitted medical cannabis establishments must renew their permits annually.
- (2) No permit will be renewed unless the medical cannabis establishment is in compliance with the requirements of SDCL 34-20G, and all applicable state and local regulations, and this Ordinance.
- (3) No permit will be renewed unless all Federal, State, and local taxes are paid and current.
- (4) A permit renewal application must be submitted to the Butte County Auditor certifying the requirements for renewal are met and must be accompanied by a renewal fee of \$15,000 in the form of a certified or cashier's check, payable to the "Butte County Treasurer."

Section 5. Restrictions.

- (1) Nothing in this Ordinance permits any person to:
 - a. Undertake any task under the influence of cannabis, when doing so would constitute negligence or unprofessional malpractice;

- b. Possess cannabis or engage in the medical use of cannabis in any correctional facility, or
 - c. Smoke cannabis on any form of public transportation or in any place open to the public,
 - d. Operate, navigate or be in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of cannabis.
- (2) Nothing in this Ordinance requires an employer to allow ingestion or use of cannabis in the workplace or to allow an employee to work while the employee is under the influence of cannabis.
- (3) Nothing in this Ordinance required a person or establishment to allow a guest, client, customer, or other visitor to smoke or use cannabis on or in that property.
- (4) Nothing in this ordinance prohibits an employer from disciplining an employee for ingesting cannabis in the workplace or disciplining an employee for working while under the influence of cannabis.

Section 5. Civil Penalties for Violation of this Ordinance.

Any person or entity that violates any provision of this Ordinance is subject to a civil penalty of up to \$10,000.

Dated the 1st day of June, 2021 at Belle Fourche, South Dakota.

/s/: Karrol Herman

Karrol Herman

Chair, Butte County Commission

Attest: /s/: Elaine Jensen

Elaine Jensen

Butte County Auditor