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BUTTE COUNTY ORDINANCE # 2021-02

SECOND AMENDED 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 implemented by Administrative Rules (ARSD) Chapter 44:90; 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 and ARSD 40:90:01:01 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, four 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 characteristics 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;
- (23) **“Safety-sensitive job,”** any position with tasks or duties that an employer reasonably believes could:
- a. Cause the illness, injury, or death of an individual; or
 - b. Result in serious property damage
- (24) **“Under the influence of cannabis”** any abnormal mental or physical condition that tends to deprive a person of clearness of intellect and control that the person would otherwise possess, as the result of consuming any degree of cannabis or cannabis products;
- (25) **“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 dispensaries operating in Butte County may open between the hours of 7:00am and 7:00pm, Monday through Friday.
- (2) No medical cannabis dispensary may operate in Butte County on any Federal or State Holiday, or on days when County Government offices are closed.
- (3) The hours of operation for cannabis cultivation facilities, cannabis testing facilities, or cannabis production facilities are not limited for the purposes of agricultural or product production. However, public business hours for these medical cannabis establishments are limited to the hours of 7:00am and 7:00pm, Monday through Friday.

B. Place of Operation.

- (1) No medical cannabis establishment may operate within one thousand feet (1,000 feet) of a religious institution, public park, residence, or public or private school, including day care facilities, registered in-home daycare establishments, or licensed foster home.
 - a. The personal residence of an owner/operator of a medical cannabis establishment may be within the one-thousand-foot (1000 foot) setback from an established medical cannabis facility.
- (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, available for inspection by County or State officials, detailing appropriate security measures designed to deter theft of cannabis.
- (4) All medical cannabis establishments must have written procedures, available for inspection by County or State officials, 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 an agent of the medical cannabis establishment.
- (6) A medical cannabis establishment, such as a cannabis dispensary, cannabis cultivation facility, or cannabis testing facility, 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. However, pursuant to ARSD 44:90:05:02, a cannabis cultivation facility may package and label for retail sale, in packages of three ounces or less, cannabis flower and trim, and pre-rolled cannabis cigarettes, containing only cannabis flower or trim, and unflavored wrapper, and (if desired) an unflavored filter.
- (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 of any type.
- (10) Butte County may inspect any medical cannabis facility during regular business or operating hours to ensure compliance with this Ordinance.
- (11)

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 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.
- (5) All medical cannabis establishments in Butte County must comply with the terms and requirements of ARSD 44:90 applicable to that type of medical cannabis establishment.

Section 3. Permitting of Medical Cannabis Establishment.

- (1) In order to operate as a medical cannabis establishment, of any type, in Butte County, the prospective entity must obtain both a permit to operate from Butte County and a current State registration certificate issued by the South Dakota Department of Health.
- (2) No permit for a medical cannabis establishment, of any type, will be issued to any organization, entity, or any person named as an owner or operator in the permit application who owes property or other taxes to Butte County, or where Butte County has a lien, for any reason, against that organization, entity, or person named as owner or operator in the permit application, nor will any permit issue to a medical cannabis establishment, of any type, who is operating on land rented from another if the renter owes property or other taxes to Butte County, or where Butte County has a lien, for any reason, against the renter of the property.
- (3) 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. Butte County will issue permits for medical cannabis facilities located in Butte County as follows:
 - a. Cannabis Dispensaries. Butte County will issue one (1) cannabis dispensary permit for every 5000 people who claim full-time residency in Butte County, as documented by the latest Federal Census.
 - b. Cannabis Cultivation Facilities. Butte County will issue no more than five (5) permits for cannabis cultivation facilities. . However, Butte County has the discretion to cease issuing permits for cannabis cultivation facilities, should it be

in the best interests of the citizens of Butte County based on the number of permits issued and the need, or lack thereof, for additional cannabis cultivation facilities. This determination will be made on a case-by-case basis after a full review of all relevant factors

- c. Cannabis Production Facilities. Butte County will issue one (1) cannabis production facility permit for every 5000 people who claim full-time residency in Butte County, as documented by the latest Federal Census.
 - d. Cannabis Testing Facilities. Butte County will issue one (1) cannabis testing facility permit for every 5000 people who claim full-time residency in Butte County, as documented by the latest Federal Census.
- (4) Permit Application Procedures:
- a. A prospective medical cannabis establishment seeking to operate in Butte County must apply for a permit to operate from Butte County prior to seeking licensing as a medical cannabis establishment from the South Dakota Department of Health under the provisions of SDCL 34-20G-55 and ADSC 44:90:03:01. The permitting process begins with a Certificate of Compliance indicating that the applicant has complied with this Ordinance. A Butte County permit for medical cannabis facilities, of any type, will be issued only after State licensure or registration.
 - b. All permit applications must be submitted to the Butte County Auditor's Office on an approved application form with all required attachments. If the application is complete the County may issue a Certificate of Compliance stating that the permit applicant has met all the requirements of this Ordinance. A Certificate of Compliance may be issued within 60 days of application.
 - c. A permit application to operate as a medical cannabis establishment requires:
 - i. The legal name of the prospective medical cannabis establishment.
 - ii. The location of the prospective medical cannabis establishment.
 - iii. A certification that the location of the prospective medical establishment is not within one thousand feet (1000 feet) of a religious institution public park, residence, or public or private school, including day care facilities, registered in-home day care facilities, or licensed foster home.
 - iv. The name and date of birth of each principle officer and board member of the prospective medical cannabis establishment.
 - v. A certification that at least one officer or board member of the prospective medical cannabis establishment is a resident of Butte County, South Dakota.

- vi. A certification that the organization, entity, officers, and board members do not owe property taxes to Butte County or the State of South Dakota
- vii. A certification that the organization, entity, officers, and board members do not owe any other monies to Butte County or the State of South Dakota.
- viii. A certification that the organization is not renting property for the purpose of building or operating a medical cannabis establishment from someone who owes property taxes or other monies to Butte County or the State of South Dakota.
- ix. A certification that none of the employees of the prospective medical cannabis establishment has been convicted of a disqualifying felony offense.
- x. A certification that none of the principle officers or board members have served as a principle officer or board member for a medical cannabis establishment that has had its permit or license revoked.
- xi. A certification that the employees of the prospective medical cannabis establishment are over the age of 21 years;
- xii. A current background check for each officer, board member, agent, volunteer or employee associated with or working in the prospective medical cannabis establishment;
- xiii. 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;
- xiv. A copy of the operating documents for the prospective medical cannabis establishment that detail oversight of the establishment and procedures to ensure accurate recordkeeping, as well as a certification that the operating procedures comply with the requirements of ARSD 44:90 for the type of prospective cannabis establishment.
- xv. A description of appropriate security measures designed to deter and prevent theft of cannabis and unauthorized entry into any area containing cannabis,
- xvi. If the medical cannabis facility will be located on leased property or use leased buildings or structures, a copy of any applicable rental agreement or lease.
- xvii. An initial non-refundable application fee of \$5,000.00 and proof that the final permit fee of \$10,000 is available to the applicant upon final State licensing. The proof that funds are available must be satisfactory to the

Butte County Auditor. The initial non-refundable application fee must be presented in the form of a certified or cashier's check payable to "Butte County Treasurer."

- 1) Should an applicant for a medical cannabis establishment, of any type, voluntarily withdraw his/her application prior to issuance of a Butte County Certificate of Compliance, the County may, but is not required to, refund ninety percent (90%) of the application fee. Any refund is at the discretion of the Butte County Board of Commissioners, who will consider factors such as the cost to the County for processing the application and any other relevant factor.
- xviii. All applications for medical cannabis establishments, of any type, will be submitted to a public hearing for comment prior to approval of a Certificate of Compliance. Public comments may be made in writing, submitted to the County Auditor prior to the public hearing, or may be made orally at the public hearing. Comments made at a public hearing may be subject to time limitations, depending on circumstances.
- 1) Notice of the public hearing will be made by publication in the local newspaper for two weeks prior to the public hearing. There is no requirement to submit the notice to landowners or taxpayers by letter.
- xix. The Board of Commissioners for Butte County has final approval for issuance of a Certificate of Compliance for medical cannabis establishments to submit with their application for state licensure as a medical cannabis establishment.
- xx. Once a successful applicant obtains a valid state issued medical cannabis establishment license under the provisions of provisions of SDCL 34-20G-55 and ARSD 44:90:03:01, and has paid the balance of the application fee, the Butte County Board of Commissioners may, at their discretion, issue a permit to operate. The Butte County Board of Commissioners will not arbitrarily or capriciously withhold a medical cannabis establishment permit to operate without having due cause to do so.

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, ARSD 44:90, this Ordinance, and all other applicable state and local regulations.

- (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 at least 30 days prior to the expiration of the medical cannabis facility's current State license.
- (5) The permit renewal application requires the following certifications:
 - a. That the medical cannabis establishment is not within one thousand feet (1000 feet) of a religious institution, public park, residence, or public or private school including a day care, a registered in-home day care, or a licensed foster home.
 - b. That at least one officer or board member of the prospective medical cannabis establishment is a resident of Butte County, South Dakota.
 - c. That the organization, entity, officers, and board members do not owe property taxes to Butte County or the State of South Dakota
 - d. That the organization, entity, officers, and board members do not owe any other monies to Butte County or the State of South Dakota.
 - e. That the organization is not renting property for the purpose of building or operating a medical cannabis establishment from someone who owes property taxes or other monies to Butte County or the State of South Dakota.
 - f. That none of the employees of the prospective medical cannabis establishment has been convicted of a disqualifying felony offense.
 - g. That none of the principle officers or board members have served as a principle officer or board member for a medical cannabis establishment that has had its permit or license revoked.
 - h. That the employees of the prospective medical cannabis establishment are over the age of 21 years.
 - i. That the medical cannabis facility is currently licensed to operate as a medical cannabis facility in the State of South Dakota and is in full compliance with all State requirements.
- (6) All permit renewal applications must include a renewal fee of \$5,000 in the form of a certified or cashier's check, payable to the "Butte County Treasurer."
- (7) If a renewal application does not meet the requirements for renewal, or the renewal fee has not been paid, and there is a state "waiting list" of qualified applicants for a particular type of medical cannabis facility, the permit may be offered to the next qualified applicant as an initial permit under the provisions of Section 3 of this Ordinance.

- (8) If there is not a “state waiting list” of qualified applicants, the available permit will be advertised for a period of sixty (60) days, during which time Butte County will accept applications for the available permit pursuant to the requirements of this Ordinance.

Section 5. Miscellaneous Provisions

- (1) Medical Cannabis Establishments, of any type, who hold a valid Butte County permit and State license, must begin operation within a year of the issuance of the permit and license.
 - a. If the holder of a Butte County Medical Cannabis Establishment permit, of any type, does not begin operations within one year of the issuance of a state license, the permit will expire and the permit will be advertised as available
 - b. Available permits will be advertised for a period of sixty (60) days, during which time Butte County will accept applications for the available permit pursuant to the requirements of this Ordinance.
- (2) All medical cannabis facilities, of any type, must obtain a valid Butte County building permit prior to beginning construction of the facility or prior to expanding, remodeling or renovating the facility.
- (3) Butte County Medical Cannabis permits may not be sold, leased, or transferred to a third party.
- (4) Butte County also has the discretion not to reissue a permit that has been voluntarily or involuntarily surrendered or has not been properly renewed.
- (5) Medical Cannabis Establishments must be fully compliant with all State statutes and regulations at all times. Failure to remain compliant will result in revocation of the County Permit to Operate, and/or refusal of a Permit renewal.

Section 6. 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 7. Cultivation of Cannabis

- (1) Cultivation of cannabis in any place other than a licensed and permitted medical cannabis facility is prohibited, except for the following:
- (2) In the home of a registered card holder or a designated caregiver under the provisions of SDCL 34-20G and ARSD 44:90:02:08.

Section 8. Supersedes Prior Ordinances

- (1) The provisions of this Second Amended Ordinance supersedes all requirements and provisions of any Ordinance or Amended Ordinance issued prior to the effective date of this Second Amended Ordinance. All pending or future applications for Butte County medical cannabis permits must comply with this Second Amended Ordinance.

Section 9. Civil Penalties for Violation of this Ordinance.

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

Dated the _____ day of _____, 2022 at Belle Fourche, South Dakota.

Kim Richards
Chair, Butte County Commission

Attest: _____
Annie Reich
Butte County Auditor