

## ORDINANCE # 6-2021

### AN ORDINANCE CREATING ZONING 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

WHEREAS, such state statutes explicitly provide local governments with certain regulatory authority over aspects of cannabis establishments, including zoning matters; and

WHEREAS, the City of Colton 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 COLTON, SOUTH DAKOTA AS FOLLOWS:

Section 1.

That a NEW ARTICLE be ADDED to the 2013 Revised Zoning Ordinance of the City of Colton – to read as follows:

# 19

## REGULATION OF CANNABIS ESTABLISHMENTS

### 19.01 Intent

In order to minimize the negative effects that 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 the City has a great interest in the present and future character of its 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 rather to ensure Cannabis Establishments are not located in areas contrary to public interest, injurious to nearby properties, nor concentrated in one area of the City.

## **19.02 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.

**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 PRODUCTS:** 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 and ointments, oils and tinctures.

**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.

**CITY:** The city of Colton, South Dakota.

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

### 19.03 Location for Cannabis Dispensary

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: **Central Business and General Business**. A Cannabis Dispensary shall be considered a conditional use in the following districts: **Light Industrial**.

### 19.04 Cannabis Dispensary Regulations.

- A. Maximum Number of Cannabis Dispensaries. The City shall allow no more than one (1) Cannabis Dispensary provided the time, place, and manner of said Cannabis Dispensary complies with this ordinance. The numerical limits on cannabis dispensaries may be altered at any time by resolution of the City Council.
- B. Required Separation Distances
  - 1. The Cannabis Dispensary shall be located not less than one thousand feet (1,000') from a public or private school existing before the date of the Cannabis Dispensary application.
  - 2. The Cannabis Dispensary shall be located not less than four hundred feet (400) from any public parks existing before the date of the Cannabis Dispensary application.
  - 3. Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided, the applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.
  - 4. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the Cannabis Dispensary is proposed.
- C. Other Locational Requirements.
  - 1. Permanent or temporary Cannabis Establishments are prohibited in all other zoning districts and not eligible for a home occupation use.
  - 2. It shall be unlawful to operate a Cannabis Dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.
  - 3. Unless specifically listed as a conditional use in a particular zoning district, cannabis establishments shall be prohibited in said district.
  - 4. Any other requirements set by City.

- D. Controlled Access – No Cannabis Establishment shall share premises with or permit access directly another medical cannabis establishment, business that sells alcohol or tobacco, or, if allowed by law, other Cannabis Establishment.
- E. Hours of Operation. The Cannabis Dispensary is allowed to be open between the hours of 8:00 a.m. and 8:00 p.m. six (6) days of the week. Cannabis Dispensaries are not allowed to be open on Sundays and Christmas Day.
- F. Documentation of State Licensure. No Cannabis Dispensary shall acquire, possess, store, deliver transfer, transport, supply or dispense cannabis, cannabis products or paraphernalia without providing documentation of licensure from the State of South Dakota.
- G. The Zoning Official is authorized to issue permits (building and/or use) for the Cannabis Dispensary subject to the following:
  - 1. Submission of a site plan containing the following:
    - i. Any information required for applicable building permit,
    - ii. Ingress and egress plan
    - iii. Parking plan
    - iv. Lighting plan (including security lighting)
    - v. Screening/security fencing plan,
    - vi. Refuse plan;
    - vii. Hours of operation;
    - viii. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance
  - 2. Documentation of ability to meet setback/separation requirements.
  - 3. Documentation of State Licensure:
  - 4. Documentation of compliance with all State regulations regarding cannabis establishments.
- H. The Cannabis Dispensary is required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.

## **19.05 Prohibited Districts for Non-Licensed Cannabis Establishment**

All Non-Licensed Cannabis Establishments are prohibited in all zoning districts.

## **19.06 Prohibition of Cannabis Cultivation Facility, Cannabis Testing Facility and Cannabis Product Manufacturing Facility**

The City does not allow any of the following Cannabis Establishments within the

municipal city limits of the City:

- A. Cannabis Cultivation Facility.
- B. Cannabis Testing Facility.
- C. Cannabis Product Manufacturing Facility.

Section 2.

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

Section 3.

The Municipal 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.

PASSED AND APPROVED this 29<sup>th</sup> day of September 2021.

CITY OF COLTON, SOUTH DAKOTA

ATTEST:

Rick Lehman  
Mayor

Heather Madison  
Municipal Finance Officer

(SEAL)

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Second Reading: September 29, 2021  
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