

Colton City Council Meeting
Monday, September 13, 2021
City Hall
6:30 pm

1. Call to Order:

2. Roll call:

| | |
|---|--|
| <input type="checkbox"/> Rick Lehman | <input type="checkbox"/> Becky Sehr |
| <input type="checkbox"/> Chas Foster | <input type="checkbox"/> Trevor Bunde |
| <input type="checkbox"/> Riley Amundson | <input type="checkbox"/> Diann Nesheim |
| <input type="checkbox"/> Colby Jensen | |

3. Public Hearing: Amending the Zoning Regulations to Create Zoning Regulations for Cannabis Establishments

4. Public Time:

5. Minutes:

6. Department Reports:

- a) **Fire Department** – 2022 Fire Department Contract
- b) **Parks/Recreation**
- c) **Sheriff** – 72.59
- d) **Public Works**
- e) **City Administrator/Municipal Finance Officer**

7. Claims:

8. Items to be address by the Council:

- 2nd Reading of Ordinance # 5-2021 – FY2022 Annual Appropriations
- 1st Reading of Ordinance #6-2021 – Regulations of Cannabis Establishments
- 1st Reading of Ordinance #7-2021 – Establishing Licensing Regulations for Medical Cannabis Dispensary Businesses.
- Special Meeting for 2nd reading of Ordinance 6-2021 and 7-2021 – 9/23/2021 5:45pm

9. Executive Session:

10. Adjournment:

Heather Madison
City Administrator

COLTON PLANNING COMMISSION AND COLTON CITY COUNCIL

NOTICE OF JOINT PUBLIC HEARING

ORDINANCE # 6-2021

AN ORDINANCE AMENDING THE ZONING REGULATIONS OF THE CITY OF COLTON, SOUTH DAKOTA, AND ALL AMENDMENTS THERETO, IN ACCORDANCE WITH THE PROVISION OF CHAPTER 11-4, 1967 SDCL, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND ORDINANCES IN CONFLICT THEREWITH

The Colton Planning Commission and the Colton City Council will hold a joint public hearing on September 13, 2021 at 6:30 p.m. at 309 E. 4th Street, Colton, South Dakota. All interested persons are encouraged to attend in person and comment on Ordinance # 6-2021. After the public hearing, the Planning Commission may pass a resolution recommending approval of Ordinance # 6-2021, with or without amendment, to the City Council. The City Council may have first reading of Ordinance # 6-2021 by title and set a 2nd reading date.

The proposed Ordinance # 6-2021 will be made available for public inspection at the office of the Municipal Finance Officer located at 201 S. Main Street, Humboldt, South Dakota and on-line at <https://coltonsd.govoffice3.com/> pursuant to SDCL Section 11-4 and amendments thereto.

Written comments may be filed by emailing the Finance Officer at cityofcoltonsd@gmail.com or by mailing them to the Finance Officer at 309 E. 4th Street, PO Box 66, Colton, South Dakota 57018 on or before noon on September 10, 2021.

Colton City Council Meeting
August 9, 2021

The Colton City Council met in regular session on Monday, August 9, 2021, at Colton City Hall. Mayor Lehman called the meeting to order at 6:30 with the following members present for roll call: Nesheim, Amundson, Jensen, Bunde and Sehr. Madison was present for city personnel. Foster was absent with cause.

Kathy Siegel addressed the council regarding the status of the fence. Mayor Lehman explained that a court date has been set for the city to defend the ordinance. There is nothing more the city can do, it all in the hands of the judge at this time.

Members of the Colton Country Days Committee were on hand to discuss the weekends events as well as the free swim that was held on Saturday and what they felt were discrepancies. After some discussion Sehr made a motion to accept \$900 from the donor to cover the admission for Saturday. The motion was seconded by Amundson. Sehr called for a roll call vote, the motion passed with 4 aye and 1 abstain.

A motion was made by Amundson and seconded by Bunde to approve the minutes for the regular meeting held on July 12, 2021, and the special meeting held on July 19, 2021. Motion passed with all members voting aye.

Department Reports:

Fire Department – Assistant Chief Koopman gave the Fire/EMT report for the month of July.

Park and Recreation – There was discussion on how to make the pool flow better for the 2022 season. Madison was asked to investigate what a POS system might cost and if it would even be cost effective for the 10 weeks the pool is open.

Foster would like to have the wire and the polls removed from in front of the baseball field due to a tripping hazard. In the discussion it was decided that they are better off left alone and the wire pulled tight. This will still give a barrier between the parking lot and the fence. This way cars will not park on top of the fence and people will still have a designated walking space.

Public Works – NA

City Administrator/Municipal Finance Officer – City finances were discussed.

Madison presented the latest information reading the American Recover Plan Funds. Madison will continue to update the council as new information becomes available.

A motion was made by Nesheim to approve all claims in the amount of \$57,913.54. The motion was seconded by Sehr and carried with 4 ayes and 1 abstain. The claims list is as follows: 941 \$3,246.91 July deposit; A-1 PORTABLE TOILETS \$912 rental; ACCESS SYSTEM \$111.19 copier maintenance; BADGER METER \$49.20 fees; BANNER \$566.40 engineering fees; CITY OF SIOUX FALLS \$65.50 lab tests; CLASSIC CORNER \$354.85 fuel; CORTRUST \$2731.82 credit card payment; DAKOTA PUMP \$2219.48 lift

station supplies; GILLESPIE \$97.93 parts; GOLDEN WEST \$275.10 phone; MADISON, HEATHER reimbursement; MID-AMERICAN ENERGY \$32 natural gas; MCWC \$5199.24 rural water purchase; NEW CENTURY PRESS \$66.19 publications; RURAL DEVELOPMENT \$1437 loan payment; SCHOENFISH & CO INC \$1750 annual report; SD ONE CALL \$46.20 locates; SDRS 767.42 SDRS deposit; SIGN DESIGN & LABELING \$496 shirts/banner; SIOUX FALLS HUMANE SOCIETY \$143.12 outside services; SIOUX VALLY ENERGY \$2735.43 electric; SUTTLE, GRACE \$155.92 lifeguard certification reimbursement; U DRIVE TECHNOLOGY \$51.962 monthly text usage; US BANK \$33459.42 loan payments; VALLEY CENTRAL COOP \$422.50 chemicals; VERIZON WIRELESS \$35.63 cell phone.

Ordinance #4-2021 – Supplemental Appropriation was presented to the council for its 2nd reading. Sehr made a motion to move the ordinance for its passage and adoption. Nesheim seconded the motion and with a roll call vote the motion passed with all members voting aye.

Resolution #4-2021 – Water and Sewer rates was presented to the council. MCWC has increased the rates by \$.15 per 1000 gallons. That increase will need to be passed onto the consumer. Bunde made a motion for the passage of the resolution, it was seconded by Jensen. With a roll call vote all motion passed with all members voting aye.

Madison presented a quote to update the meter receiver. As of December 31st, our will no longer be supported by our provider. Amundson made a motion replace the receiver. The motion was seconded by Nesheim and passed with all members voting aye.

Ordinance #5-2021 – FY22 was presented to the council for its first reading.

Sehr informed the council that this meeting would be her last. They have sold their home and are moving out of the area. The mayor along with the council thanked her for her time and dedication to the city over the last 3 years.

The meeting was adjourned at 8:00 pm on a motion and a second.

Heather Madison

City Administrator

Published 1 time at the total approximate cost of _____

Contract for Fire Protection for the City of Colton

In accordance with SDCL 34-31-4, this contract is entered into the 1st day of January 2022, by and between the City of Colton and the Colton Fire Department Inc., a non-profit fire protection association legally organized under the laws of the State of South Dakota, for the expressed purpose of providing firefighting and EMS equipment and protection within the City of Colton. The term of this contract will be for a period of one year beginning on the 1st day of January 2022.

The parties hereto mutually agree as follows:

1. Said Fire Department will provide firefighting and first responder EMS equipment and protection, on a twenty-four (24) hour day basis, within the limits and ability of its equipment and personnel available to said City, as well as the citizens within the city limits, specifically agreed to by both the City Council and the Fire Department. In the event the Fire Department is unable to furnish sufficient equipment, vehicles, and personnel to respond to a fire or medical emergency within the city limits of Colton, other firefighting aid from surrounding communities may be requested and utilized by the fire department.
2. In consideration of said Fire Department providing fire protection and EMS service, the City of Colton agrees to budget and appropriate \$28,650 per year to the Colton Fire Department Inc. The Fire Department will receive 2 payments in the amount of \$14,325 from the City of Colton. The first payment will be received no later than the 15th of January and the second payment of \$14,325 no later than the 15th June during the term of the contract.
3. At any time after the signing of this contract, the City and Colton Fire Department may by amendment mutually agree, increase or decrease the amount to be paid by the City for the fire protection and service. In the absence of such amendment or notice of cancellation of this contract as hereinafter provided the terms and conditions hereof, including the payment +5% annual increase by the City to be made to the Colton Fire Department, shall continue a year-to-year basis.
4. Either party hereto may cancel and terminate the agreement at the end of any calendar year, provided notice of such intention to so terminate and cancel the agreement shall be given no later than October 1st of said year, otherwise, it shall remain in force for the ensuing year.

Dated this 13th day of September 2021.

City of Colton, Minnehaha County, South Dakota

By: _____
Mayor

By: _____
City of Colton Council President

By: _____
City of Colton Finance Officer

(seal)

Colton Fire Department Inc.

By: _____
Fire Chief

Colton Patrol Hours

August 2021

Patrol Hours

Blue Days

| | |
|----------------|-------|
| CAVE, JUSTIN | 9.77 |
| ESCHEN, ADAM | 3.75 |
| SCHUSTER, PAUL | 14.29 |

Blue Nights

| | |
|-------------------|------|
| PATTERSON, JOSHUA | 4.36 |
|-------------------|------|

Yellow Days

| | |
|--------------|------|
| BURNS, JASON | 9.15 |
|--------------|------|

Yellow Nights

| | |
|---------------------------|------|
| BERTSCH, TYRELL | 3.10 |
| EARLEY STONEARROW, SKYLER | 0.45 |
| FEDDERSEN, WAYNE | 2.41 |
| TIRREL, CHASE | 3.02 |

Rover

| | |
|----------------------|------|
| BARTSCHER, JOSHUA | 2.07 |
| DANIELSEN, RILEY | 7.16 |
| HODGES, SETH | 0.41 |
| LARSON, MATTHEW | 2.03 |
| MATSON, SPENCER | 4.60 |
| MCGLOTHLEN, NICHOLAS | 2.94 |
| WESTERBUR, DYLAN | 3.08 |

RECEIVED
SEP 07 2021

| | |
|-------------------------------|-------|
| Contracted Hours | 65.00 |
| Total Hours for August | 72.59 |
| Over/Under | 7.59 |

Aug-21

Bank Rec.

| | | |
|-------------------------------|----|--------------|
| Beginning Balance | \$ | 1,750,344.56 |
| Deposits/Other Credits | \$ | 86,548.86 |
| Other Deposits | | |
| Outstanding Deposits | \$ | - |
| Checks/Debits | \$ | (64,902.86) |
| Bank Fees | \$ | (11.75) |
| Other | \$ | - |
| Return Check | \$ | - |
| Ending Balance | \$ | 1,771,978.81 |

| | | |
|----------------------|----|--------------|
| Petty Cash | \$ | 200.00 |
| Pool Start Up | \$ | 100.00 |
| Total | \$ | 1,772,278.81 |

Total City Funding \$ **1,771,978.81**

ORDINANCE NO. 5-2021

AN ORDINANCE PROVIDING FOR THE ANNUAL APPROPRIATION FOR THE CITY OF COLTON, SOUTH DAKOTA, AND LEVYING THE ANNUAL TAX ON THE TAXABLE PROPERTY IN THE CITY OF COLTON, SOUTH DAKOTA, FOR THE PURPOSE OF DEFRAYING THE EXPENSES AND LIABILITIES OF THE CITY OF COLTON, SOUTH DAKOTA, FOR THE FISCAL YEAR ENDING DECEMBER 31, 2022.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLTON, SOUTH DAKOTA:

Section 1. That thereby and hereby is appropriated by the City Council of the City of Colton, South Dakota, for the year commencing the 1st day of January, 2022 the following sums of money for the following purpose, which is necessary to defray all necessary expenses and liabilities of the City of Colton, South Dakota.

| EXPENDITURES | FUND | AMOUNT |
|------------------------------|---------|-----------|
| 410 General Government | | |
| 411 Mayor & Council | General | \$ 20,850 |
| 411 Ordinances & Resolutions | General | \$ 1,400 |
| 411 Contingency | General | \$ 5,000 |
| 413 Elections | General | \$ 850 |
| 414 Attorney | General | \$ 2,500 |
| 414 Finance Officer | General | \$ 80,650 |
| 419 Government Buildings | General | \$ 15,370 |
| 420 Public Safety | | |
| 421 Law Enforcement | General | \$ 29,000 |
| 422 Fire Protection | General | \$ 28,650 |
| 429 Public Safety | General | \$ 1,200 |
| 430 Public Works | | |
| 430 Public Works | General | \$ 16,875 |
| 431 Streets | General | \$ 43,700 |

| | | | |
|----------------------------------|----------------------|---------|------------|
| 431 | Snow Removal | General | \$ 14,600 |
| 431 | Maintain Waterways | General | \$ 2,150 |
| 431 | Street Lighting | General | \$ 15,000 |
| 432 | Landfill | General | \$ 3,700 |
| 440 | Health & Welfare | | |
| 441 | Public Nuisances | General | \$ |
| 441 | Animal Control | General | \$ 1,670 |
| 441 | West Nile | General | \$ 3,800 |
| 450 | Culture & Recreation | | |
| 451 | Recreation | General | \$ 60,300 |
| 451 | Colton Country Days | General | \$ 4,000 |
| 452 | Parks | General | \$ 66,455 |
| 455 | Library | General | \$ 2,000 |
| 460 | Development | | |
| 465 | Planning & Zoning | General | \$ 700 |
| 465 | Website | General | \$ 1,000 |
| <u>TOTAL GENERAL FUND BUDGET</u> | | | \$ 421,420 |

| | | | |
|------------------------------------|---------------------------------|--|-----------|
| 500 | Long Term Debt | | |
| 501 | 5 th Street Prin/Int | | \$ 20,000 |
| <u>TOTAL SUPPORTED FUND BUDGET</u> | | | \$ 20,000 |

Self-Supporting Funds

| | | | |
|--|------------------|-------|------------|
| 600 | Enterprise Funds | | |
| 602 | Water | Water | \$ 110,610 |
| 602 | Water Prin/Int | Water | \$ 62,310 |
| <u>TOTAL SELF-SUPPORTING FUND BUDGET</u> | | | \$ 172,920 |

TOTAL 2022 APPROPRIATION BUDGET \$ 614,340

Section 2. That there is hereby levied upon all taxable property within the said City of Colton, South Dakota, for the purpose of funds to meet the lawful expenses and liabilities of the City of Colton, South Dakota, as here-in-fore set forth for the fiscal year of 2022, a tax sufficient to raise the following amounts, which as received by the Municipal Finance Officer shall be credited to the following funds, to-wit:

| REVENUES | FUND | AMOUNT |
|-----------|---------|------------|
| 310 Taxes | General | \$ 308,215 |

| | | | |
|-----------------------------------|-----------------------|---------|------------|
| 320 | Licenses & Permits | General | \$ 5,135 |
| 330 | Intergovernmental | General | \$ 56,600 |
| 340 | Goods & Services | General | \$ 16,500 |
| 350 | Fines & Forfeits | General | \$ 150 |
| 360 | Miscellaneous Revenue | General | \$ 35,000 |
| 370 | Enterprise Funds | General | \$ NA |
| 390 | Other Sources | General | \$ NA |
| <u>TOTAL GENERAL FUND REVENUE</u> | | | \$ 421,600 |

| | | | |
|-----|-----------------|-----------|-----------|
| 211 | Special Revenue | Sales Tax | \$ 6,000 |
| 212 | Special Revenue | Sales Tax | \$ 80,000 |

TOTAL SPECIAL REVENUE \$ 86,000

| | | | |
|-----|-------|-------|------------|
| 602 | Water | Water | \$ 214,750 |
| 604 | Sewer | Sewer | \$ 80,000 |

TOTAL SELF-SUPPORTING REVENUE \$ 294,750

TOTAL 2022 MEANS OF FINANCE \$ 724,950

Section 3. The Municipal Finance Officer of the City of Colton, South Dakota is hereby authorized and directed to certify the said tax levy to the County Auditor of the County of Minnehaha, State of South Dakota, to the end that the same may be spread and assessed as provided by law.

Section 4. That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

The foregoing ordinance was introduced by --- who moved for its passage and adoption: --- seconded the motion. A roll call vote was taken ---.

Whereupon Mayor Lehman declared the ordinance passed and adopted and instructed the Municipal Finance Officer to publish this ordinance in the official newspaper of the city and to comply otherwise with all applicable notice requirements of the law.

Adopted this 13th day of September, 2021

Rick Lehman
Mayor

ATTEST:

Heather Madison
Municipal Finance Officer

| | |
|---------------------------|--------------------|
| First Reading | August 9, 2021 |
| Second Reading & Adoption | September 13, 2021 |
| Publication Date | September 17, 2021 |
| Effective Date | October 6, 2021 |

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 _____ day of _____ 2021.

CITY OF COLTON, SOUTH DAKOTA

ATTEST:

Rick Lehman
Mayor

Heather Madison
Municipal Finance Officer

(SEAL)

First Reading: _____
Second Reading: _____
Adoption: _____
Published: _____

ORDINANCE # 7-2021

AN ORDINANCE ADDING CHAPTER 4.04 TO THE MUNICIPAL ORDINANCES OF THE CITY OF COLTON, CREATING LICENSING PROVISIONS FOR MEDICAL CANNABIS DISPENSARY BUSINESSES

BE IT ORDAINED by the City Council of the City of Colton, that Title 4 of the Municipal Ordinances of the City of Colton is hereby amended by adding new Chapter 4.04 as follows:

Section 1.

That a NEW CHAPTER be ADDED to the Municipal Ordinances of the City of Colton under Title 4 – Licenses – to read as follows:

CHAPTER 4.04 – CANNABIS

4.0401 Purpose and Intent. The City Council of the City of Colton enacts the following licensing ordinances in order to ensure that Cannabis Establishments within the municipal boundaries of the City operate in a manner which complies with state laws and regulations, protects the health, safety, and welfare of the general public, prevents potential conflicts and issues arising from ownership and employees, recognizes certain safety and security considerations, and minimizes risk of unauthorized use or access of cannabis by the general public.

4.0402 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.

Applicant: Shall mean any person or entity who has submitted an application for a license or renewal of a license issued pursuant to this District. If the applicant is an entity and not a natural person, applicant shall include all persons who are the members, managers, officers, directors and shareholders of such entity.

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: in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment.

Cannabis Dispensary: in addition to the definition in SDCL 34-20G-1, this term is further defined as 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 Establishment: cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

Cannabis Product Manufacturing Facility: in addition to the definition in SDCL 34-20G-1, this term is further defined as 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, ointments, oils, and tinctures

Cannabis Testing Facility: in addition to the definition in SDCL 34-20G-1, this term is further defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis.

Cardholder: Shall mean any person who has been issued and possesses a valid registry identification card pursuant SDCL Chapter 34-20G

City: Shall mean the City of Colton, South Dakota

Department: the South Dakota Department of Health

Disqualifying Felony Offense: Shall mean a crime that was classified as a felony in the jurisdiction where the person was convicted.

Licensee: Shall mean any person or business entity that has been issued and hold a valid current license pursuant to this Division. If the licensee is an entity and not a natural person, licensee shall include all persons who are the members, managers, officers, directors, and shareholders of such entity.

Registry Identification Card: Shall mean a document issued by South Dakota Department of Health 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 34-20G-42, inclusive.

4.0403

Cannabis Establishment License Required.

- A. Subject to the limitations in Section 4.0407 below, no Cannabis Establishment may be located or operate in the City without the appropriate valid and current Cannabis Establishment license issued by the City pursuant to this article. A violation of this

provision is subject to the general penalty provision in Section 4.0416. Each day of the violation constitutes a separate offense.

- B. Subject to the limitations in Section 4.0407 below, no Cannabis Establishment may be located or operate in the City without the appropriate valid and current Cannabis Establishment registration certificate issued by the Department pursuant to rules promulgated under SDCL 34-20G. A violation of this provision is subject to the general penalty provision in Section 4.0416. Each day of the violation constitutes a separate offense.

4.0404: License Application.

- A. An application for a cannabis establishment license must be made on a form provided by the city. No other application form will be considered.
- B. The applicant must submit the following:
 - 1. Application fee of Five Thousand Dollars (\$5,000.00). The City will reimburse Two Thousand Five Hundred Dollars (\$2,500.00) for applicants who fail to obtain a registration certificate from the Department.
 - 2. An application that will include, but is not limited to, the following:
 - i. The legal name of the prospective Cannabis Establishment;
 - ii. The physical address of the prospective Cannabis Establishment that meets the zoning requirements in Article 19 of the 2013 Revised Zoning Ordinance of the City of Colton, as well as any location requirements pursuant SDCL 34-20G and the administrative rules promulgated thereunder.
 - iii. The name, address, and birth date of each principal officer, owner, and board member of the proposed Cannabis Establishment.
 - iv. A sworn statement that no principal officer, owner, or board member has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction.
 - v. Any other requirements set by the City.

4.0405 Issuance of License.

- A. The City will issue a license unless:
 - 1. The applicant has made a false statement on the application or submits false records or documentation; or

2. Any owners, principal officer, or board member of the applicant is under the age of twenty-one (21) years; or
3. Any owner, principal officer, or board member of the applicant has been convicted of a violent felony offense in the previous ten (10) years in any jurisdiction;
4. The proposed location does not meet the applicable zoning requirements under Article 19 of the 2013 Revised Zoning Ordinance of the City of Colton;
5. The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder;
6. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
7. Any owner, principal officer, or board member of the applicant has had a Cannabis Establishment license revoked by the City or a registration certificate revoked by the state; or
8. An applicant, or an owner, principal officer, or board member thereof, is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any Cannabis Establishment; or
9. The applicant will not be operating the business for which the license would be issued.

- B. In the case of an application for a Cannabis Dispensary license, the City will reject the application if the limit on the number of Cannabis Dispensaries has been reached.
- C. The license must be posted in a conspicuous place at or near the entrance to the Cannabis Establishment so that it may be easily read at any time.

4.0406 City Neutrality as to Applicants. Upon request from the Department as to the City's preference of applicants, the City will neither support nor oppose any registration certificate application under consideration by the Department. Likewise, if inquiry is made by the Department, the City will abstain from endorsing any application as beneficial to the community.

4.0407 Number of Cannabis Establishment Permitted.

- A. No more than one (1) Cannabis Dispensary shall be allowed to operate in the City at any time.
- B. No Cannabis Cultivation Facility shall be allowed to operate in the City at any time.

- C. No Cannabis Testing Facility shall be allowed to operation in the City at any time.
- D. No Cannabis Product Manufacturing Facility shall be allowed to operate in the City at any time.
- E. In the event the numerical cap is lowered to an amount less than the number of the existing licenses in that class, no existing licensee shall be prevented from continuing operation during the license term, requesting modifications to application information, from renewing such license for consecutive, subsequent years, or from transferring such license, on the basis that the numerical limit would otherwise prohibit the issuance of a license to a new applicant. However, this exception shall not prevent a license from being suspended or revoked, nor shall it prevent a license from not being renewed or a transfer approved, based upon grounds other than the numerical limit being exceeded.

4.0408

Expiration of License and Renewal.

- A. Each license expires one year from the date of issuance and may be renewed only by making application as provided in Section 4.0404. Application for renewal must be submitted at least thirty (30) days before the expiration date. The license holder must continue to meet the license requirements to be eligible for a renewal.
- B. The renewal fee is Five Thousand Dollars (\$5,000.00). The City will reimburse \$0 for applicants who fail to obtain a renewal of their registration certificate from the Department.
- C. Failure to renew a license in accordance with this Section may result in additional fees. Upon expiration of the license, the City may order closure of the Cannabis Establishment.
- D. If a license holder has not operated a Cannabis Establishment for which it holds a license in the preceding twelve (12) months, the license will not be renewed.

4.0409

Suspension.

- A. A license may be suspended if the license holder or an employee or agent of the license holder:
 - 1. Violates or is otherwise not in compliance with any section of this article.
 - 2. Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment.
 - 3. Knowingly dispenses or provides cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.
- B. A license may be suspended if the license holder has its Department-issued

registration certificate suspended, revoked, or not renewed by the Department or if the registration certificate is expired.

- C. A license may be suspended if the license holder creates or allows to be created a public nuisance at the cannabis establishment.

4.0410

Revocation.

- A. A license may be revoked if the license is suspended under Section 04.0410 and the cause for the suspension is not remedied.
- B. A license may be revoked if the license is subject to suspension under Section 4.0410 because of a violation outlined in that section and the license has been previously suspended in the preceding 24 months.
- C. A license is subject to revocation if a license holder or employee of a license holder:
 1. Gave false or misleading information in the material submitted during the application process;
 2. Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises;
 3. Operated the Cannabis Establishment or the business of the Cannabis Establishment for which a license is required under this article while the license was suspended;
 4. Repeated violations of Section 4.0411;
 5. Operated a function of a Cannabis Establishment for which the license holder was not licensed (e.g., a licensed cannabis dispensary conducting cannabis cultivation without a cannabis cultivation establishment license);
 6. A license holder, or an owner, principal officer, or board member thereof, is delinquent in payment to the city, county, or state for any taxes or fees related to the Cannabis Establishment;
 7. A license holder, or an owner, principal officers, or board member thereof, has been convicted of, or continues to employ an employee who has been convicted of, a disqualifying felony offense as defined by SDCL 34-20G; or
 8. The license holder has its Department-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired.
 9. The license holder allows a public nuisance to continue after notice from the City.

4.0411 Suspension and Revocation Process.

- A. The license holder will receive a notice of intent to suspend or notice of intent to revoke informing the license holder of the violation and the City's intention to suspend or revoke the license. The notice will be hand delivered to the license holder or an employee or agent of the license holder or sent by certified mail, return receipt requested to the physical address of the Cannabis Establishment.
- B. If the license holder disputes the suspension or revocation, the license holder has ten (10) days from the postmark date on the notice or the date the notice was hand delivered to request a hearing before a hearing panel, which will consist of the Mayor, Finance Officer, and City Council.
- C. A suspension will be for thirty (30) days and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder exercises its rights to process and appeal, in which case the suspension takes effect upon the final determination of suspension.
- D. A revocation will be for one (1) year and begins ten (10) days after the postmark date on the notice or the date the notice is hand delivered unless the license holder appeals the revocation, in which case the revocation takes effect upon the final determination of revocation.
- E. The license holder who has had the license revoked may not be issued any Cannabis Establishment license for one year from the date the revocation became effective.

4.0412 Appeal. An applicant or license holder who has been denied a license or renewal of a license or who has had a license suspended or revoked under this article may appeal to the City Council by submitting a written appeal within ten (10) days of the postmark on the notice of denial, nonrenewal, suspension, or revocation. The written appeal must be submitted to City Hall, 309 E. 4th Street, PO Box 66, Colton, South Dakota 57018. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt of the appeal.

4.0413 Licenses not Transferable. No Cannabis Establishment license holder may transfer the license to any other person or entity either with or without consideration, nor may a license holder operate a Cannabis Establishment at any place other than the address designated in the application.

4.0414 Hours of Operation for Cannabis Dispensary. No Cannabis Dispensary may operate between the hours of 8 p.m. and 8 a.m. any day of the week. Cannabis Dispensaries are not allowed to be open Sundays, and Christmas Day.

4.0415 Liability for Violations. Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee or agent of a Cannabis Establishment that constitutes grounds for suspension or revocation will be imputed to the Cannabis Establishment license holder for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director or general partner or a person who managed, supervised or controlled the operation of the Cannabis Establishment, knowingly allowed such act to occur on the premises.

4.0416 Penalties. Any person who operates or causes to be operated a Cannabis Establishment without a valid license or in violation of this article is subject to a suit for injunction as well as prosecution for ordinance violations. Such violations are punishable by a maximum fine of five hundred dollars (\$500.00). Each day a cannabis establishment so operates is a separate offense or violation.

4.0417 Severability. The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.

PASSED AND APPROVED this _____ day of _____ 2021.

CITY OF COLTON, SOUTH DAKOTA

ATTEST

Rick Lehman
Mayor

Heather Madison
Municipal Finance Officer

(SEAL)

First Reading:
Second Reading:
Adoption:
Published:

DRAFT