

**First Reading:** \_\_\_\_\_

**Second Reading:** \_\_\_\_\_

**Adopted:** \_\_\_\_\_

**Publication Date:** \_\_\_\_\_

**Effective Date:** \_\_\_\_\_

**BUTTE COUNTY ORDINANCE #2024-\_\_\_\_**

**REVISED 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, as amended, a county government may enact ordinances or regulations that do not conflict with State statutes that restrict medical cannabis establishments by governing the time, place, manner, and number of licensees operating within its jurisdiction; and

**WHEREAS**, also pursuant to SDCL 34-20G-58, as amended, a

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. This Revised Ordinance Supersedes Prior Ordinances**

The provisions of this Revised Ordinance to Regulate Medical Cannabis supersedes all requirements and provisions of any Ordinance or Amended Ordinance issued prior to the effective date of this Revised Ordinance. All pending or future applications for Butte County medical cannabis permits must comply with this Revised Ordinance.

## **Section 2. Applicability**

This ordinance applies only to the regulation of medical cannabis and medical cannabis facilities in Butte County. It no way does this ordinance apply to recreational cannabis or marijuana, or to illegal activities involving cannabis or marijuana.

## **Section 3. 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, two flowering cannabis plants and two cannabis plants that are not flowering; 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) **“Cannabis 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.

(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) **“Department,”** means the South Dakota Department of Health.
- (8) **“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 (5) 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, an accredited prevention or treatment facility, a mental health center, a child welfare agency, or a community support provider or community services provider where the designated caregiver is employed. .
- (9) **“Disqualifying felony offense,”** means a violent crime that was classified as a felony in the jurisdiction where the person was convicted;
- (10) **“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;
- (11) **“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;
- (12) **“In home daycare,”** means any childcare program located in a family home, whether registered with the State of South Dakota or not;
- (13) **“Licensed foster home,”** means a home licensed by the State of South Dakota or a Tribal government that provides a safe place where children are cared for and live;

- (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) **“Practitioner,”** means a physician who is licensed with authority to prescribe drugs to humans.
- (20) **“Qualifying patient,”** means a person who has been diagnosed by a practitioner as having a debilitating medical condition;
- (21) **“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

## **Section 4. 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 Saturday.

- (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) Pursuant to SDCL 34-20G-58(3) and (4), as amended, the County may impose reasonable set back requirements and limitations on proximity for medical cannabis establishments. Butte County establishes the following reasonable set back and proximity requirements:
  - a. No medical cannabis establishment may operate within one thousand feet (1,000 feet) of:
    - i. a religious institution or facility,
    - ii. a recreation facility,
    - iii. a public service facility, such as a public park, hospital, or library
    - iv. a residence, or a licensed foster home
    - iv. a public or private school, including day care facilities, registered in-home daycare establishments, or
  - b. The personal residence of an owner/operator of a medical cannabis establishment may be within the one-thousand-foot (1,000 foot) setback from a planned or 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 an enclosed, locked, and 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 or with another medical cannabis establishment.
- (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) A medical cannabis dispensary may not dispense more than three (3) ounces of cannabis or a cannabis product to a registered qualifying patient or nonresident card holder, directly or through a designated care giver in any 14-day period.
  - a. Before dispensing medical cannabis, a dispensary must verify:
    - i. that the registry identification card or registration presented to the dispensary is valid;
    - ii. the identity of the person holding the identification card through a valid photographic identification document issued by the State, Tribe, another State, or the Federal Government.
    - iii. That the person has not exceeded the allowable amount of cannabis or cannabis product in a 14-day period.

### **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. Background checks must be conducted and verified each year.
- (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 5. 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. However, current medical cannabis dispensary permit holders will be permitted to maintain their permit if the facility and the permit holder remains in compliance with all State laws and regulations and with this Ordinance.
  - b. Cannabis Cultivation Facilities. Butte County will not issue cannabis cultivation facility permits. However, current medical cannabis cultivation facility permit holders will be permitted to maintain their permit if the facility and the permit holder remains in compliance with all State laws and regulations and with this Ordinance.
  - c. Cannabis Production Facilities. Butte County will not issue cannabis production facility permits. However, current medical cannabis production facility permit holders will be permitted to maintain their permit if the facility and the permit holder remains in compliance with all State laws and regulations and with this Ordinance.
  - d. Cannabis Testing Facilities. Butte County will not issue cannabis testing facility permits.

(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. All background checks must be accomplished within 45 days prior to the date of the application.
  - 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 ADSC 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 6. 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) All permit renewals require background checks of all current officers, owners and employees of the facility to be permitted. Background checks must be valid within 45 days prior to the application for renewal.
- (6) All permit renewals will include a copy of the most recent State inspection results and any remedial measures taken in response to that inspection (if any).

(7) 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, a recreational facility, a public service facility such as a public park, hospital or library; a residence, residence or licensed foster home, or public or private school including a day care, or a registered in-home day care.
- b. That at least one officer or board member of the prospective medical cannabis establishment is a resident of Butte County, South Dakota. Residency is determined by voting records, homeowner records, or leaseholder records.
- 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 the medical cannabis establishment has not been subject to a fine or probation and has not had their license to operate suspended or revoked under the provisions of SDCL 34-20G-80.
- h. 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 by the State of South Dakota or any other State or licensing body
- i. That the employees of the prospective medical cannabis establishment are over the age of 21 years.
- j. 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.

(8) 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."

## **Section 6. 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, if a permit is available and the County Commission determines it is appropriate to issue a new permit.
  - b. If a permit is available, it 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 always fully compliant with all State statutes and regulations. Failure to remain compliance will result in revocation of the County Permit to Operate, and/or refusal of a Permit renewal.

## **Section 7. 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 8. Cultivation of Cannabis**

- (1) Cultivation of cannabis in any place other than a licensed and permitted medical cannabis facility is prohibited, except for 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 9. Civil Penalties for Violation of this Ordinance.**

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 \_\_\_\_\_, 2024 at Belle Fourche, South Dakota.

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James Ager  
Chair, Butte County Commission

Attest: \_\_\_\_\_

Annie Capp  
Butte County Auditor