

## **ORDINANCE #2021-06**

AN ORDINANCE OF CLAY COUNTY, SOUTH DAKOTA, AMENDING ORDINANCE NO. 2013-04, BEING THE 2013 REVISED ZONING REGULATIONS FOR CLAY COUNTY BY ADDING TO ADD AMENDMENT SECTION 3.14 MEDICAL CANNABIS ESTABLISHMENTS AND CHAPTER 2.02, DEFINITIONS, DEFINITIONS.

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

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

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

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

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

**WHEREAS**, the County believes that regulation of medical cannabis is necessary for the health and safety of this community SDCL 7-18A-8; then and therefore,

**WHEREAS**, the State of South Dakota permits the sale and consumption of cannabis pursuant to South Dakota Codified Law, medical cannabis establishments licensed under this ordinance may sell cannabis for qualifying patient's use so long as they comply with the provisions of South Dakota Codified Law and the South Dakota Department of Health.

**BE IT ORDAINED BY THE COUNTY COMMISSION OF CLAY COUNTY, SOUTH DAKOTA AS FOLLOWS:**

Section 1.

That a NEW SECTION be ADDED to the Clay County Zoning Ordinance under Article 3 – General District Regulations – to read as follows:

### **Section 3.14 Medical Cannabis Establishments**

In order to minimize the negative effects cannabis establishments have on adjacent land uses, and to promote the public health, safety, and general welfare of the County, the County Commission adopts the following regulations, recognizing that it has a great interest in the

present and future character of the County's agricultural and commercial areas.

A. Regulations Relating to Medical Cannabis Facilities No medical cannabis cultivation facility shall be owned or operated at a location within the County's zoning jurisdiction except as provided by this section:

1. A medical cannabis testing facility shall be considered a conditional use in the following districts: I-2: General Industrial
2. A medical cannabis manufacturing facility shall be considered a conditional use in the following districts: I-2: General Industrial
3. A medical cannabis dispensary shall be considered a conditional use in the following districts: C-1: Commercial & I-2: General Industrial.
4. A medical cannabis cultivation facility shall be considered a conditional use in the following districts: C-1: Commercial & I-2: General Industrial.

B. Setbacks: No medical cannabis facility shall operate within two-thousand six hundred and forty feet (2640') of a residential building, cemetery, church, daycare, or school existing before the date of the cannabis dispensary application. Setback distances shall be measured from the nearest property line of the designated cannabis facility to the residential building closest edge. Such setback distance requirements may be waived provided that the Applicant obtains waivers from all owners of property within the separation distance. Any authorized landowner that is within the separation distance may waive the separation distance through a written instrument to be filed with the Clay County Register of Deeds. This waiver shall run with the land.

1. No medical cannabis facility shall operate within one thousand feet (1,000') of another cannabis manufacturing facility. However, co-location of different types of cannabis establishments, under common ownership, shall be allowed on the same location.

C. Additional Variance and Conditional Use Factors for Cannabis Establishments:

In addition to any other factor which may be properly considered in the grant or denial of a variance or conditional use permit, the following factors shall be relevant for variance and conditional use requests relating to cannabis establishments:

1. That the proposed land use is consistent with the intent of this chapter and will not be contrary to public interest or injurious to nearby properties
2. That the proposed land use will not cause or contribute to the formation or expansion of blighted area.
3. That all applicable ordinances and regulations will be observed.
4. Co-location of different types of cannabis establishments, under common ownership, shall be allowed on the same location.

D. Prohibited Districts for Cannabis Establishments

1. All types of medical cannabis establishments are prohibited in the following districts: NRC: Natural Resource Conservation, RR: Rural Residential, and APO: Aquifer Protection Overlay.

2. All non-licensed medical cannabis establishments are prohibited in all zoning districts.
- E. County Conditional Use Permit. Any person or entity who proposes to own or operate cannabis establishments shall obtain a Conditional Use Permit in accordance with the requirements of Article 11.
1. Each individual medical cannabis establishment shall be required to obtain a conditional use permit, regardless of ownership or co-location.
  2. No medical cannabis establishment may convert from one medical cannabis establishment type to another without first obtaining a conditional use permit.
  3. The applicant will be required to submit background checks in accordance with the Clay County Licensing Regulations for Cannabis Establishments as part of the conditional use permit. The background checks will not be considered by the Planning and Zoning Commissions when reviewing a conditional use permit.
- F. A County Conditional Use Permit for Medical Cannabis Establishments may be approved conditioned on obtaining both a County and State medical cannabis establishments license.
- G. Standards for issuance of a building permit for a medical cannabis establishments:
1. No building permit shall be issued by the Zoning Administrator until the Applicant has received their County and State medical cannabis establishments license(s)
  2. Should a signed and approved County building permit be required by an agency before a County and/or State cannabis establishments license(s) are granted, a building permit may be issued by the Zoning Administrator. However, any construction of structures shall not commence until the Applicant has provided copies of their completed County and State cannabis establishments license(s) to the Zoning Administrator.

## Section 2.

The following definitions shall be added to Article 2 – Definitions, Section 2.02 Definitions.

**BLIGHTED AREA:** an area characterized by traits such as dilapidation, overcrowding, deterioration, dangerous structures, unsanitary, inadequate infrastructure, nuisance, or other factors which inhibit the growth and development of an area.

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

**MEDICAL CANNABIS OR CANNABIS.** Marijuana as defined in SDCL § 22-42-1 and SDCL 34-20G-1.

## Section 3.

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

Adopted by majority vote of the Clay County Board of Commissioners in regular session this \_\_ day of \_\_\_\_\_, 2021.

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County Commission Chairperson

Attest:

(seal)

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Carrie Crum  
County Auditor

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Adoption: \_\_\_\_\_  
Published: \_\_\_\_\_