

**AGENDA
CITY OF MILLER
MONDAY, AUGUST 30, 2021
7:00 P.M.**

The City of Miller is an equal opportunity employer.

**Call to Order
Pledge of Allegiance
Approval of Agenda**

Public Input

7:00 p.m. Joint Public Hearing - City Common Council and Board of Adjustments

1. Ordinance #720 – Cannabis Zoning..... pgs. 1 - 4

**Adjourn as Board of Adjustments
Reconvene as Common Council**

2. Ordinance #719 – Cannabis Licensing..... pgs. 5 - 11
3. Ordinance #721 – Fee Schedule.....pg. 12

Unfinished Business

1. Quoin Bank Water Issues

Adjourn

Public comments are welcomed during public input, but no action can be taken by the Council on comments received at this meeting. Anyone wishing to have the Council vote on an item should call the Finance Office at 853-2705 by 5:00 p.m. on the Wednesday preceding the next scheduled meeting to be placed on the agenda.

ORDINANCE #720

The City of Miller is an equal opportunity employer.

AN ORDINANCE AMENDING CHAPTER 40 TO THE REVISED ORDINANCES OF THE CITY OF MILLER CREATING ZONING PROVISIONS FOR CANNABIS ESTABLISHMENTS

BE IT ORDAINED by the City Council of the City of Miller, South Dakota: that CHAPTER 40 "ZONING", be amended by adding the following Sections in bold and underline font:

BE IT FURTHER ORDAINED by the City Council of the City of Miller, South Dakota: That the Sec. 40-1 be amended to read:

Sec. 40-1 Purpose

These regulations shall be for the purpose of implementing city comprehensive plan permitting development, construction, use and occupancy of land and buildings in prescribed districts in accordance with adopted standards. **All uses and structures not specifically listed as a permitted use, special permitted use, or as a conditional use in a particular zoning district shall be prohibited in said district.**

Sec. 40-3. Definitions

BE IT FURTHER ORDAINED by the City Council of the City of Miller, South Dakota: That the following definitions be added to Sec. 40-3.

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. (hemp) or 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: a 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.

BE IT FURTHER ORDAINED by the City Council of the City of Miller, South Dakota: that **ARTICLE VII, C COMMERCIAL DISTRICT** be amended by adding the following:

(10) Cannabis Dispensary

BE IT FURTHER ORDAINED by the City Council of the City of Miller, South Dakota: that **ARTICLE IX, I INDUSTRIAL DISTRICT** be amended by adding the following use:

(9) Cannabis Dispensary

BE IT FURTHER ORDAINED by the City Council of the City of Miller, South Dakota: that **ARTICLE XIII, "CANNABIS"** be added:

Secs. 40-301-349. Reserved.

ARTICLE XIII. CANNABIS

Sec. 40-350. Maximum Number of Cannabis Dispensaries.

- a. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.
- b. The City of Miller shall allow up to one cannabis dispensary provided the time, place, and manner of said dispensary complies with this ordinance.

Sec. 40-351. Required Separation Distances.

- a. A cannabis dispensary shall be located not less than 1500 feet from a public or private school existing before the date of the cannabis dispensary application;
- b. A cannabis dispensary shall be accessed from Broadway Ave, in a commercial or industrial district.
- c. 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.
- d. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed

Sec. 40-352. Other Locational Requirements.

- a. Permanent or temporary dispensaries are prohibited in all other zoning districts and not eligible for a home occupation use.
- b. It shall be unlawful to operate a dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.

Sec. 40-353. Controlled Access.

No cannabis establishment shall share premises with or permit access directly from another medical cannabis establishment, business that sells alcohol or tobacco, or, if allowed by law, other cannabis establishment.

Sec. 40-354 Hours of operation.

- a. Cannabis dispensaries are allowed to be open between the hours of 8:00 a.m. and 5:00 p.m. Monday through Saturday.

Sec. 40-355. Documentation of State Licensure.

- a. No cannabis dispensary shall acquire, possess, store, deliver transfer, transport, supply or dispense cannabis, cannabis products, paraphernalia without providing documentation of licensure from the State of South Dakota.

Sec. 356. Permits.

The zoning official is authorized to issue permits (building/use) for cannabis dispensaries subject to following:

- a. 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
- b. Documentation of ability to meet setback/separation requirements.
- c. Documentation of State Licensure.

Sec. 357. Conformance.

All Cannabis Establishments are required to be constructed in conformance with the 2012 Edition of the International Building Code and International Fire Code.

Dated this 7th day of September 2021.

Ronald Blachford, Mayor

(SEAL)

ATTEST:

Sheila Coss, Finance Officer

Record of votes:

Alderman Swartz -
Alderman Zeller -
Alderman Odegaard -
Alderman Rangel -
Alderwoman Lichty -
Alderman Steers -

1st Reading -- August 30, 2021
2nd Reading -- September 7, 2021
Adoption -- September 7, 2021
Publication -- September 20, 2021

ORDINANCE #719

The City of Miller is an equal opportunity employer.

AN ORDINANCE AMENDING CHAPTER 8 TO THE REVISED ORDINANCES OF THE CITY OF MILLER CREATING LICENSING PROVISIONS FOR CANNABIS ESTABLISHMENTS

BE IT ORDAINED by the City Council of the City of Miller that Chapter 8 of the Revised Ordinances of the City of Miller is hereby amended by adding Article VI as follows:

Sec. 8-137 – 150 Reserved

ARTICLE VI. CANNABIS

Sec. 8-151: PURPOSE AND INTENT

The City Council of the City of Miller 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.

Sec. 8-152: DEFINITIONS

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. or 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.

Department: the South Dakota Department of Health

Sec. 8-153: LICENSE REQUIRED

- (1) 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 Sec. 8-156. Each day of the violation constitutes a separate offense.
- (2) 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 XX.16. Each day of the violation constitutes a separate offense.

Sec. 8-154: LICENSE APPLICATION

- (1) An application for a cannabis establishment license must be made on a form provided by the city. No other application form will be considered.
- (2) The applicant must submit the following:
 - a. Application fees and charges required under this chapter shall be in the amount provided in the city fee schedule. Failure to obtain a registration certificate from the South Dakota Department of Health will result in a reimbursement per the city fee schedule.
 - b. An application that will include, but is not limited to, the following:
 1. The legal name of the prospective cannabis establishment;
 2. The physical address of the prospective cannabis establishment that meets the zoning requirements in Chapter 40 - Zoning as well as any location requirements pursuant SDCL 34-20G and the administrative rules promulgated thereunder.

3. The name, address, and birth date of each principal officer, owner, and board member of the proposed cannabis establishment.
4. A sworn statement that no principal officer, owner, or board member has been convicted of a felony offense in the previous ten (10) years in any jurisdiction.
5. Any additional information requested by the city.

Sec. 8-155: ISSUANCE OF LICENSE

(1) The city will issue a license unless:

- a. The applicant has made a false statement on the application or submits false records or documentation; or
- b. Any owners, principal officer, or board member of the applicant is under the age of twenty-one (21) years; or
- c. 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;
- d. The proposed location does not meet the applicable zoning requirements under Chapter 40 - Zoning.
- e. The proposed location does not meet all location requirements under SDCL 34-20G and the administrative rules promulgated thereunder;
- f. The license is to be used for a business prohibited by state or local law, statute, rule, ordinance, or regulation; or
- g. 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
- h. 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
- i. The applicant will not be operating the business for which the license would be issued.

(2) 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.

(3) 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.

Sec. 8-156: CITY NEUTRALITY AS TO APPLICANTS

- (1) 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.

Sec. 8-157: NUMBER OF CANNABIS DISPENSARIES

- (1) No more than one (1) cannabis dispensary shall be allowed to operate in the City at any time.

Sec. 8-158: EXPIRATION OF LICENSE AND RENEWAL

- (1) Each license expires one year from the date of issuance and may be renewed only by making application as provided in Sec. 8-158. 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.
- (2) Renewal fees required under this chapter shall be in the amount provided in the city fee schedule. Failure to obtain a registration certificate from the South Dakota Department of Health will result in a reimbursement per the city fee schedule.
- (3) 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.
- (4) If a license holder has not operated an establishment for which it holds a license in the preceding twelve (12) months, the license will not be renewed.

Sec. 8-159: SUSPENSION

- (1) A license may be suspended if the license holder or an employee or agent of the license holder:
 - a. Violates or is otherwise not in compliance with any section of this article.
 - b. Consumes or smokes or allows any person to consume or smoke cannabis on the premises of the cannabis establishment.
 - c. Knowingly dispenses or provides cannabis or cannabis products to an individual or business to whom it is unlawful to provide cannabis or cannabis products.
- (2) 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.
- (3) A license may be suspended if the license holder creates or allows to be created a public nuisance at the cannabis establishment.

Sec. 8-160: REVOCATION

- (1) A license may be revoked if the license is suspended under Section 8-159 and the cause for the suspension is not remedied.
- (2) A license may be revoked if the license is subject to suspension under Section 8-159 because of a violation outlined in that section and the license has been previously suspended in the preceding 24 months.
- (3) A license is subject to revocation if a license holder or employee of a license holder:
 - a. Gave false or misleading information in the material submitted during the application process;
 - b. Knowingly allowed possession, use, or sale of non-cannabis-controlled substances on the premises;
 - c. 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;
 - d. Repeated violations of Sec. 8-159;
 - e. Operated a function of a cannabis establishment for which the license holder was not licensed (e.g., a licensed cannabis cultivation facility conducting cannabis testing functions without a cannabis testing establishment license);
 - f. 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;
 - g. 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
 - h. The license holder has its Department-issued registration certificate suspended, revoked, or not renewed or the registration certificate is expired.
 - i. The license holder allows a public nuisance to continue after notice from the City.

Sec. 8-161 SUSPENSION AND REVOCATION PROCESS

- (1) 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.

- (2) 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 the Public Safety Committee.
- (3) 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.
- (4) 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.
- (5) 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.

Sec. 8-162: 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 120 W 2nd Street, Miller, South Dakota, 57362. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt of the appeal.

Sec. 8-163: LICENSES NOT TRANSFERRABLE

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.

Sec. 8-164: HOURS OF OPERATION FOR DISPENSARIES

No cannabis dispensary may operate between the hours of 5:01 p.m. and 7:59 a.m. any day of the week.

Sec. 8-165: 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.

Sec. 8-166: 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.

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.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF MILLER, SD:

That a medical cannabis establishment desiring to operate in the Municipality shall be required to apply for a permit and/or license from the Municipality. Applications for a local permit and/or license to operate a medical cannabis establishment, as defined by SDCL 34-20G-1, will be reviewed by the City.

Dated this 7th day of September 2021.

Ronald Blachford, Mayor

(SEAL)

ATTEST:

Sheila Coss, Finance Officer

Record of Votes:

Alderman Swartz --
Alderman Zeller --
Alderman Odegaard --
Alderman Rangel --
Alderman Lichty --
Alderman Steers --

1st Reading -- August 30, 2021
2nd Reading -- September 7, 2021
Adoption -- September 7, 2021
Publication -- September 11, 2021

ORDINANCE #721

The City of Miller is an equal opportunity employer.

AN ORDINANCE AMENDING APPENDIX A - CITY FEE SCHEDULE OF THE ORDINANCES OF THE CITY OF MILLER, SOUTH DAKOTA.

BE IT ORDAINED by the City of Miller, South Dakota, Appendix A – City Fee Schedule be hereby amended to charge the following fees:

Businesses and Business Regulations			
	Cannabis Licenses:		
		Dispensary (\$5,000 reimbursable per Sec. 8-154)	10,000.00
		Renewal Fee (\$2,500 reimbursable per Sec. 8-158)	5,000.00

Ronald Blachford, Mayor

(SEAL)

ATTEST:

Sheila Coss, Finance Officer

Record of votes:

Alderman Swartz –
Alderman Zeller –
Alderman Odegaard –
Alderman Rangel –
Alderwoman Lichty –
Alderman Steers –

1st Reading – August 30, 2021
2nd Reading – September 7, 2021
Adoption – September 7, 2021
Publication – September 11, 2021