

SULLY COUNTY BOARD OF COMMISSIONERS
SEPTEMBER 28, 2021

The Board of Sully County Commissioners held a special mtg on Tues, September 28, 2021. Chmn Yackley called the mtg to order at 7:30 am. Other members present: William Floyd, Caleb Shepherd, Jerry Richards & Joe Fanger. Also, present were Aud Lamb, Sheila Ring, JJ Schall, Emily Sovell, Chuck Robison, Kelli Stephens, Jon Morin, Adam Kulesa, Ryan Persoon & Kevin Hoffmann from SDGF&P.

ADOPT AGENDA: Motion by Richards, second by Yackley to adopt the agenda. Unanimous vote aye.

PUBLIC COMMENT: No one was present for public comment.

5 YEAR ROAD & BRIDGE PLAN: Hearing was held on 5 Year Road & Bridge Plan.

MINUTES: Motion by Floyd, second by Shepherd to approve minutes from the Bd of Commission mtg held on September 7th. Unanimous vote aye.

PROBATION INCREASE: ROD Deputy Kerr will receive an \$.85/hr increase on Oct 4th following her 6 mo probation.

AUTO BUDGET SUPPLEMENT: Motion by Shepherd, second by Richards to approve the following automatic budget supplement to 201-0-373.03 Insurance Proceeds Misc in the amount of \$26,958.96. Unanimous vote aye. Motion by Fanger, second by Floyd to approve the following automatic budget supplement from 201-0-373.03 Insurance Proceeds Misc to 201-311-432.00 Buildings in the amount of \$26,958.96. Unanimous vote aye.

2022 VICTIM WITNESS COORDINATOR AGREEMENT: Motion by Richards, second by Shepherd to approve the agreement. Unanimous vote aye.

2022 BUDGET RESOLUTION: Motion by Shepherd, second by Richards to approve the 2022 Budget Resolution. Unanimous vote aye.

RESOLUTION 2021-25

ADOPTION OF ANNUAL BUDGET FOR Sully County, South Dakota

Whereas, (7-21-5 thru 13), SDCL provides that the Board of County Commissioners shall each year prepare a Provisional Budget of all contemplated expenditures and revenues of the County and all its institutions and agencies for such fiscal year and,

Whereas, the Board of County Commissioners did prepare a Provisional Budget and cause same to be published by law, and

Whereas, due and legal notice has been given to the meeting of the Board of County Commissioners for the consideration of such Provisional Budget and all changes, eliminations and additions have been made thereto.

NOW THEREFORE BE IT RESOLVED, That such provisional budget as amended and all its purposes, schedules, appropriations, amounts, estimates and all matters therein set forth, SHALL BE APPROVED AND ADOPTED AS THE ANNUAL BUDGET OF THE APPROPRIATION AND EXPENDITURES FOR Sully County, South Dakota and all its institutions and agencies for calendar year beginning January 1, 2022, and ending December 31, 2022, and the same is hereby approved and adopted by the Board of County Commissioners of Sully County, South Dakota, this 28th day of September, 2021. The Annual Budget so adopted is available for public inspection during normal business hours at the office of the county auditor Sully County, South Dakota. The accompanying taxes are levied by Sully County for the year January 1, 2022, through December 31, 2022.

Tax Levy in Dollars \$'s/1,000

COUNTY TAX LEVIES WITHIN LIMITED LEVY: General County Purposes (10-12-9) 2,139,641 Levy 2.200; Secondary Road (31-12-27) 436,946 Levy 0.478; Fire Protection (34-31-3) 23,570 Levy 0.024; Total Taxes Levied By County 2,600,157 Total Levy 2.702

These amounts include the 25% to be distributed to cities

County Valuation = 972,066,856 plus utilities of 485,465=972,552,321; Secondary Road Valuation=914,800,287 plus utilities of 246,148=915,046,435;

As of September 28, 2021, these levies are not approved by the Department of Revenue

BOARD OF COUNTY COMMISSIONERS OF

Sully County, South Dakota

VOTING AYE

s:/Greg Yackley, Chairman

s:/Joe Fanger, Commissioner

s:/Caleb Shepherd, Commissioner

s:/William Floyd, Commissioner

s:/Jerry Richards, Commissioner

VOTING NAY

None

ABSENT AND NOT VOTING

None

ATTEST: (Seal)

s:/Susan B. Lamb, County Auditor

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ORDINANCE 2021-02 AMENDING SECTIONS 1-102 AND 4-203 OF THE ZONING ORDINANCE OF SULLY COUNTY, ADOPTED BY ORDINANCE 2003-02, AS AMENDED, RELATING TO REGULATIONS FOR CANNABIS ESTABLISHMENTS: Second reading was held on ordinance. Motion to approve by Shepherd, second by Yackley. Unanimous vote aye.

ORDINANCE 2021-02

AN ORDINANCE AMENDING SECTIONS 1-102 AND 4-203 OF THE ZONING ORDINANCE OF SULLY COUNTY, ADOPTED BY ORDINANCE 2003-02, AS AMENDED, RELATING TO REGULATIONS FOR CANNABIS ESTABLISHMENTS

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SULLY COUNTY, SOUTH DAKOTA:
Section 1. That Section 1-102, "Definitions," of the Zoning Ordinance of Sully County shall be amended by adding the following:

"Cannabis (or Marijuana)" means 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" is further defined, in addition to the definition in SDCL 34-20G-1, 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" is further defined, in addition to the definition in SDCL 34-20G-1, 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" means a cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary.

"Cannabis Product Manufacturing Facility" is further defined, in addition to the definition in SDCL 34-20G-1, as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary.

"Cannabis Products" means 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" is further defined, in addition to the definition in SDCL 34-20G-1, as a legally licensed entity authorized to analyze the safety and potency of cannabis.

Section 2. That Section 4-203, "Principal permitted uses" (Agriculture District B) of the Zoning Ordinance of Sully County shall be amended by insertion of the following:

10. Cannabis dispensary.

Section 3. That the provisions of Ordinance 2021-02 are severable as follows:

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 that can be given effect without the invalid provision or application.

Passed and adopted this 28th day of September, 2021.

s:/Greg Yackley, Chairperson

Sully County Board of Commissioners

ATTEST: County Seal

s:/Susan B. Lamb, Auditor

Sully County, South Dakota

First Reading: 09/07/2021 Second Reading: 09/28/2021 Published: 10/7/2021 Effective: 10/27/2021

ORDINANCE 2021-03 CREATING LICENSING PROVISION FOR CANNIBAS ESTABLISHMENTS: Second Reading was held. Motion by Floyd, second by Richards to approve ordinance. Unanimous vote aye

ORDINANCE 2021-03

AN ORDINANCE OF THE COUNTY OF SULLY, STATE OF SOUTH DAKOTA, CREATING LICENSING PROVISIONS FOR CANNABIS ESTABLISHMENTS

BE IT ORDAINED by the Board of County Commissioners of Sully County that a new ordinance creating licensing provisions for cannabis establishments is as follows:

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SECTION 01: PURPOSE AND INTENT

The Board of County Commissioners of Sully County enacts the following licensing ordinances in order to ensure that cannabis establishments within the unincorporated areas of the County 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.

SECTION 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 and associated administrative rules. For the purposes of this ordinance, cannabis and medical cannabis terms will be considered interchangeable.

SECTION 03: LICENSE REQUIRED

- (a) No cannabis establishment may be located or operate in the unincorporated area of the County without the appropriate valid and current cannabis establishment license issued by the County pursuant to this article. A violation of this provision is subject to the general penalty provision in Section 16 of this ordinance. Each day of the violation constitutes a separate offense.
- (b) No cannabis establishment may be located or operate in the unincorporated area of the County without the appropriate valid and current cannabis establishment registration certificate issued by the South Dakota Department of Health pursuant to SDCL 34-20G and any administrative rules promulgated thereunder. A violation of this provision is subject to the general penalty provision in Section 16 of this ordinance. Each day of the violation constitutes a separate offense.

SECTION 04: LICENSE APPLICATION

- (a) An application for a cannabis establishment license must be made on a form provided by the County. No other application form will be considered.
- (b) The applicant must submit the following:
 1. Application fee of \$5,000.
 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 requirements under the Zoning Ordinance of Sully County, as well as any location requirements pursuant to 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 additional information requested by the County.

SECTION 05: ISSUANCE OF LICENSE

- (a) The County will issue a license unless:
 1. The applicant has made a false statement on the application or submits false records or documentation;
 2. Any principal officer, owner, or board member of the applicant is under the age of twenty-one (21) years;
 3. Any principal officer, owner, 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 requirements under the Zoning Ordinance of Sully County;
 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;
 7. Any principal officer, owner, or board member of the applicant has had a cannabis establishment license revoked by the County or a registration certificate revoked by the State of South Dakota;
 8. An applicant, or a principal officer, owner, or board member thereof, is overdue in payment to the County of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to any cannabis establishment;
 9. The applicant will not be operating the business for which the license would be issued.
- (b) The County will reject the application if the limit on the number of cannabis establishments has been reached as established in Section 07 of this ordinance.
- (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.

SECTION 06: COUNTY NEUTRALITY AS TO APPLICANTS

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Upon request from the South Dakota Department of Health as to the County's preference of applicants, the County will neither support nor oppose any registration certificate application under consideration by the Department. Likewise, if inquiry is made by the Department, the County will abstain from endorsing any application as beneficial to the community but may provide information concerning site suitability or other factors.

SECTION 07: NUMBER OF CANNABIS DISPENSARIES

- (a) No (0) cannabis cultivation facility shall be allowed to operate in the unincorporated area of the County at any time.
- (b) No more than one (1) cannabis dispensary shall be allowed to operate in the unincorporated area of the County at any time.
- (c) No (0) cannabis product manufacturing facility shall be allowed to operate in the unincorporated area of the County at any time.
- (d) No (0) cannabis testing facility shall be allowed to operate in the unincorporated area of the County at any time.

SECTION 08: 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 04 of this ordinance. Application for renewal must be submitted at least thirty (30) days before the expiration date. The license holder must continue to meet the licensing requirements to be eligible for a renewal.
- (b) The renewal fee is \$5,000.
- (c) Failure to renew a license in accordance with this section may result in additional fees. Upon expiration of the license, the County may order closure of the cannabis establishment.
- (d) If a license holder has not operated an establishment for which it holds a license for at least ninety (90) days in the preceding twelve (12) months, the license will not be renewed.

SECTION 09: 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 South Dakota Department of Health-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.

SECTION 10: REVOCATION

- (a) A license may be revoked if the license is suspended under Section 09 of this ordinance and the cause for the suspension is not remedied.
- (b) A license may be revoked if the license is subject to suspension under Section 09 of this ordinance because of a violation outlined in that section and the license has been previously suspended in the preceding twenty-four (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 09 of this ordinance;
 - 5. 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);
 - 6. A license holder, or a principal officer, owner, or board member thereof, is delinquent in payment to the city, county, or state for any utilities, taxes, or fees related to the cannabis establishment;
 - 7. A license holder, or a principal officer, owner, 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;
 - 8. The license holder has its South Dakota Department of Health-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 County.

SECTION 11: SUSPENSION AND REVOCATION PROCESS

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- (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 County'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 County Commission Chairperson, Auditor, Sheriff, and State's Attorney.
- (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 right 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.

SECTION 12: 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 Board of County Commissioners 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 Sully County Courthouse, PO Box 265, Onida, South Dakota 57564. The appeal will be considered by the Board of County Commissioners at a regularly scheduled meeting within one month of the receipt of the appeal.

SECTION 13: 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.

SECTION 14: HOURS OF OPERATION FOR DISPENSARIES

A cannabis dispensary may only operate between the hours of 8:00 a.m. and 8:00 p.m. Monday through Thursday.

SECTION 15: 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.

SECTION 16: 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.

SECTION 17: 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.

s:/Greg Yackley, Chairman

Board of Commissioners

Attest: (SEAL)

s:/Susan B. Lamb, Auditor

First Reading:09/07/2021 Second Reading:09/28/2021 Adopted:09/28/2021 Published:10/07/2021 Effective: 10/27/2021

ROAD & BRIDGE LEVY: Bd again discussed a Road & Bridge levy.

ROADS 276TH & 190TH REPAIRS: GF&P Kevin Hoffmann reviewed with Bd one mile of 190th St that they are wanting to gravel. Bd tabled item until October mtg to give Hwy Supt time to look at road.

STATES ATTORNEY: States Attny Sovell discussed haul road agreement with Sharp Enterprise, plats, cannibas & jail.

COVID-19 MASK POLICY: Bd again discussed mask policy. Due to increase in COVID deaths motion by Richards, second by Floyd to post signage strongly recommending that all county employees & patrons wear masks & use hand sanitizer. Motion carried 4-1 with Fanger voting nay.

BRIDGE PRELIMINARY ENGINEERING GRANT AGREEMENT: Motion by Shepherd, second by Floyd to approve agreement. Unanimous vote aye.

BUSH'S LANDING ROAD: Adam Kulesa & Ryan Persoon from SDGF&P discussed cost share on Bush's Landing

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Road. GF&P has work remaining on the boat dock area so road repair will be discussed & sent out for bids next spg.

LITTLE BEND ROAD: Bd asked if SDGF&P would help cost share on the Little Bend Road which has been selected for a SDFLAP Grant. Kulesa indicated that SDGF&P would split the County match of 18% at 50/50.

BUSH'S ROAD TO BOAT DOCK: Wes Dickhut provided information on an engineering study that the Bd passed onto SDGF&P.

COURTHOUSE SPRINKLING SYSTEM: Jon Morin reviewed his estimate of \$15,396.42 with Bd. Annual winterizing would be \$165. Morin estimated that at 1"/week 43,500 gal would be used. Bd instructed Aud Lamb to research prior water expense & estimate future expense if sprinkling system is installed.

EXECUTIVE SESSION: Motion by Shepherd, second by Fanger to go into Executive Session SDCL 1-25-2(1).

Unanimous vote aye. Motion by Fanger, second by Shepherd to come out of Executive Session SDCL 1-25-2(1).

Unanimous vote aye.

HWY DEPT: Reviewed GF&P request on 190th St, discussed Bush's Landing Road, haul rode agreement & bridge ratings.

MTG DATES: The next regular meeting will be Tues, October 5th at 7:30 am.

ADJOURNMENT: There being no further business, Chairman Yackley declared the mtg adjourned at 10:50 am.

Susan B. Lamb

Susan Lamb, Sully County Auditor

OCT - 5 2021

Approved

Greg Yackley

Greg Yackley, Chairman

Seal of the County Auditor
Sully County, South Dakota
Susan Lamb, Auditor
No Commission