Kimball City Minutes

September 20, 2021

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City of Kimball

P.O. 16

Kimball, SD 57355

Phone: 605-778-6277

The Kimball City Council met in regular session Monday September 20, 2021 at the city office. Mayor Donnie Hamiel called the meeting to order at 7:30 p.m. Council members present were Harold Bickner, Matt Dykstra, Shelly Janish, Bill Gough, Joel Reiter, and Bruce Robison. Also present were Barb Gakin, Nancy Munger, Theresa Maule, Deb Ruiz, Anita Holan, Paul Dorwart, Chris Reitsma-Lau, Deb Gillen, Kelly Flannery, Dayle Blasius, Jackie Scott, Ron Falor and Blake Harms.

Motion by Reiter, second by Janish to approve the agenda. All aye. Motion carried.

Motion by Janish, second by Reiter to approve the September 7th regular meeting minutes as written. All aye. Motion carried.

Blake Harms representing Brosz Engineering reported to the council the company doing the street chip sealing should be in Kimball by Wednesday hopefully. Harms also informed the council the sewer project is continuing to progress; Mike Coleman Construction is finishing the south end manhole installation and sewer main and will then move on to roadway shaping on Pine and Truck Streets; the last phase will be to abandon the existing sewer main running under the interstate.

Harms also explained options for the wet well which included doing the project independently which would cost approximately $130,000 or adding it to the existing project for which Harms believed could possibly save 10% to 20%. Harms stated it is hard to quote things without a design and looking at things more detailed.

Harms also suggested leaving Pine Street sit over the winter so that the surfacing would hold the best and advised the council to change the completion date and extend the contract until mid-June of 2022 to allow the city to asphalt surface under the Mike Coleman Construction contract which could save roughly $5,000.

Motion by Bickner, second by Reiter to extend the completion date on the South Main Sanitary Sewer Improvement Project to July 1, 2022 and that we proceed with replacing the wet well and hold off on the asphalt until next spring. In discussion the Council decided to have the city maintenance fix Truck Street for this winter. Roll call vote. Dykstra-aye, Janish-aye, Gough-aye, Reiter-aye, Robison-aye, Bickner-aye. Vote of 6-0 motion carried.

Harms presented a draft for a Storm Drainage Study Proposal.

During public input Ron Falor questioned what the status of signs prohibiting the use of jake brakes on Truck Street was; with council directing Maintenance Superintendent Dorwart to order signs and install them.

Jackie Scott was also present during public input to ask the council if Babcock Street was going to be designated as a truck route and if so, will the street be paved. The Council stated Babcock will

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more than likely be a designated truck route be surfaced but paving will be a big project that will need funding. Scott voiced a concern over vehicles currently not obeying the speed limit on the street.

Motion by Dykstra, second by Janish to write a check to the Kimball Economic Development Corporation for $30,000 to be used to purchase the land for the DakotaPlex project. In discussion Council Member Robison asked how long before the units will be delivered with Economic Marketing Director Holan stating two units are nearly completed, they are waiting for furnaces and air conditioners. Holan explained the S.D. Housing Authority must grant permission before the foundation can be poured. Council Member Janish asked to make certain the Kimball Fire Department is granted the amount of the property they requested. Roll call vote. Janish-aye, Gough-aye, Reiter-aye, Robison-aye, Bickner-aye, Dykstra-aye. Vote of 6-0 motion carried.

Council member Janish reported Central Electric has been hired to finish the electrical project at the water tower shed which should take approximately three days to complete.

Motion by Robison, second by Reiter to table the Maintenance and Financial Agreement with the S.D. Department of Transportation. All aye. Motion carried.

Motion by Bickner, second by Reiter to approve the second reading and approval of the 2022 Appropriation Ordinance 2021-03 and the finance officer is directed to certify the dollar amount of the tax levies made in the ordinance. Roll call vote. Gough-aye, Reiter-aye, Robison-aye, Bickner-aye, Dykstra-aye, Janish-aye. Vote of 6-0 motion carried. Ordinance printed separately.

Motion by Robison, second by Reiter to approve the second reading and approval of the 2021-02 Ordinance to Regulate Medical Cannabis Within the City of Kimball. Roll call vote. Gough-aye, Reiter-aye, Robison-aye, Bickner-aye, Dykstra-aye, Janish-aye. Vote of 6-0 motion carried. Ordinance printed separately.

Set October 4 as the first meeting in October.

Motion by Reiter, second by Janish to move to executive session for legal and personnel. All aye. Motion carried. The council moved to executive session at 8:16 p.m.

The council moved out of executive session at 8:33 p.m.

Motion by Robison, second by Reiter to adjourn. All aye. Motion carried. Meeting adjourned at 8:34 p.m.

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Mayor

Attest

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Finance Officer

**NOTICE OF ADOPTION**

**KIMBALL CITY ORDINANCE # 21-02**

**AN ORDINANCE TO REGULATE MEDICAL CANNABIS**

**WITHIN THE CITY OF KIMBALL**

**WHEREAS, t**he 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, city government may require a local registration, license, or permit for a medical cannabis establishment to operate within that city; and

**WHEREAS,** pursuant to SDCL 34-20G-58**,** city 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, city 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, city government may require a medical cannabis establishment to obtain a city license, permit, or registration prior to operating, and may charge a reasonable fee for that license, permit, or registration; and

**WHEREAS,** the City believes that regulation of medical cannabis is necessary for the health and safety of this community; then and therefore,

**BE IT ORDAINED BY THE CITY OF KIMBALL AS FOLLOWS:**

**Section 1. Definitions.**

The terms and definitions found in SDCL 34-20G-1 are specifically adopted for the purpose of this Ordinance. Specifically,

1. **“Allowable amount of cannabis,”** means:
   1. Three ounces of cannabis or less; and
   2. The quantity of cannabis products as established by rules promulgated by the department under SDCL 34-20G-72; and
   3. If the cardholder has a registry identification card allowing cultivation, three cannabis plants minimum or as prescribed by a physician; and
   4. 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. **“Bona fide practitioner-patient relationship,”** means:
   1. A practitioner and patient have a treatment or consulting relationship, during the course of which the practitioner has completed an assessment of the patient’s medical history and current medical condition, including an appropriate in-person physical examination; and
   2. The practitioner has consulted with the patient with respect to the patient’s debilitating medical condition; and
   3. The practitioner is available to or offers to provide follow-up care and treatment to the patient, including patient examinations.
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. **“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.
8. **“Debilitating medical condition,”** means**:**
   1. A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating pain; severe nausea; seizures; or severe and persistent muscle spasms, including those characteristics of multiple sclerosis; or
   2. Any other medical condition or its treatment added by the Department, as provided for in SDCL 34-20G-26.
9. **“Department,”** means the South Dakota Department of Health.
10. **“Designated caregiver,”** means a person who:
    1. Is at least twenty-one years of age; and
    2. Has agreed to assist with a qualifying patient's medical use of cannabis; and
    3. Has not been convicted of a disqualifying felony offense; and

d. Assists no more than five qualifying patients with the medical use of cannabis, unless the designated caregiver's qualifying patients each reside in or are admitted

health care facility or residential care facility where the designated caregiver is employed.

1. **“Disqualifying felony offense,”** means a violent crime that was classified as a felony in the jurisdiction where the person was convicted.
2. **“Edible cannabis products,”** means any product that:
   1. Contains or is infused with cannabis or an extract thereof; and
   2. Is intended for human consumption by oral ingestion; and
   3. Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures, or other similar products.
3. **“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.
4. **“Medical cannabis”** or **“cannabis,”** means marijuana as defined in SDCL 22-42-1 and SDCL 34-20B-1.
5. **“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.
6. **“Medical cannabis establishment,”** means a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary.
7. **“Medical cannabis establishment agent,”** means an owner, officer, board member, employee, or volunteer at a medical cannabis establishment.
8. **“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:
   1. The cultivation of cannabis by a nonresident cardholder; or
   2. 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
   3. The extraction of resin from cannabis by solvent extraction unless the extraction is done by a cannabis product manufacturing facility.
9. **“Nonresident cardholder,”** means a person who:
   1. Has been diagnosed with a debilitating medical condition, or is the parent, guardian, conservator, or other person with authority to consent to the medical treatment of a person who has been diagnosed with a debilitating medical condition; and
   2. Is not a resident of this state or who has been a resident of this state for fewer than forty-five days; and
   3. Was issued a currently valid registry identification card or its equivalent by another state, district, territory, commonwealth, insular possession of the United States, or country recognized by the United States that allows the person to use cannabis for medical purposes in the jurisdiction of issuance; and
   4. Has submitted any documentation required by the Department and has received confirmation of registration.
10. **“Practitioner,"** means a physician who is licensed with authority to prescribe drugs to humans. In relation to a nonresident cardholder, the term means a person who is licensed with authority to prescribe drugs to humans in the state of the patient's residence.
11. **“Qualifying patient,”** means a person who has been diagnosed by a practitioner as having a debilitating medical condition.
12. **“Registry identification card,”** means a document issued by the Department 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 SCDL 34-20G-42 inclusive.
13. **“Written certification,”** means a document dated and signed by a practitioner, stating that in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's debilitating medical condition or symptom associated with the debilitating medical condition. This document shall affirm that it is made in the course of a bona fide practitioner-patient relationship and shall specify the qualifying patient's debilitating medical condition.

**Section 2. Operation of Medical Cannabis Establishments in the City of Kimball.**

**Hours of Operation**

1. Medical cannabis establishments operating in the City of Kimball, SD may open between the hours of 9:00 o’clock AM and 6:00 o’clock PM, Monday through Saturday.
2. No medical cannabis establishment may operate in the City of Kimball, SD on any Sunday, Federal or State Holiday.

**Place of Operation.**

1. Pursuant to SDCL 34-20G-55, no medical cannabis establishment may operate within one thousand feet (1000 feet) of a public or private school, including in-home daycare establishments.
2. All medical cannabis establishments in the City of Kimball must be in a facility where access to cannabis can be restricted and secured.
3. All medical cannabis establishments must have written procedures detailing appropriate security measures designed to deter theft of cannabis.
4. All medical cannabis establishments must have written procedures 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 a secure facility at the address on file with the Kimball City Office and Brule County Auditor’s Office 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 a medical cannabis establishment agent.
6. A medical cannabis establishment 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.
7. A medical cannabis establishment may not share office space with a practitioner.
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.
10. The City of Kimball may inspect a medical cannabis facility during business hours to ensure compliance with this Ordinance.

**Manner of Operation.**

1. Anyone who is a board member, principal officer, agent, volunteer or employee of a medical cannabis establishment in the City of Kimball must have had a current and valid background check before working in or with the medical cannabis establishment.
2. Any medical cannabis establishment in the City of Kimball may not employ any person who has been convicted of a disqualifying felony offense.
3. All employees of a medical cannabis establishment in the City of Kimball 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.

**Section 3. Permitting of Medical Cannabis Establishment.**

1. In order to operate as a medical cannabis establishment in the City of Kimball, the prospective entity must obtain both a permit from the City of Kimball and a current State registration certificate issued by the South Dakota Department of Health.
2. The City of Kimball will not permit more than one (1) medical cannabis establishment to operate within the boundaries of the City of Kimball at any one time.
3. Permit Application Procedures:
   1. A prospective medical cannabis establishment seeking to operate in the City of Kimball must first obtain a permit to operate from the City of Kimball prior to seeking registration as a medical cannabis establishment from the South Dakota Department of Health under the provisions of SDCL 34-20G-55.
   2. All permit requests must be submitted, with the application fee, to the Kimball City Office. A permit decision will be made within 60 days of application.
   3. A permit application to operate as a medical cannabis establishment requires:
   4. The legal name of the prospective medical cannabis establishment.
   5. The location of the prospective medical cannabis establishment.
   6. A certification that the location of the prospective medical establishment is not within one thousand feet (1000 feet) of a public or private school, including in-home day care facilities.
   7. The name and date of birth of each principal officer and board member of the prospective medical cannabis establishment.
   8. A certification that at least one officer or board member of the prospective medical cannabis establishment is a resident of the City of Kimball, Brule County, South Dakota.
   9. A certification that none of the employees of the prospective medical cannabis establishment have been convicted of a disqualifying felony offense
   10. A certification that the employees of the prospective medical cannabis establishment are over the age of 21 years.
   11. A current background check for each officer, board member, agent, volunteer or employee associated with or working in the prospective medical cannabis establishment.
   12. 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.
   13. A copy of the operating documents for the prospective medical cannabis establishment that detail oversight of the establishment and procedures to ensure accurate recordkeeping.
   14. A description of appropriate security measures designed to deter and prevent theft of cannabis and unauthorized entry into any area containing cannabis.
   15. An application fee of Five Thousand and no/100’s Dollars ($5000.00).
4. Expiration of License and Renewal

(a) Each license expires one (1) year from the date of issuance and may be renewed only be making application as provided in Section 3 (a) herein. 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 and no/100’s Dollars ($5000.00). The City will reimburse ½ of the fee 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 an establishment for which it holds a license in the preceding twelve (12) months the license will not be renewed.

(5) 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.

(6) Revocation

(a) A license may be revoked if the license is suspended under Section 3 (5) and the cause of the suspension is not remedied within ten (10) days.

(b) A license may be revoked if the license is subject to suspension under Section 3 (5) because of a violation outlined in that section and the license has previously been 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; or

2. Knowingly allowed possession, use, or sale of non-cannabis controlled substances on the premises; or

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; or

4. Repeated violations of Section 5; or

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); or

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; or

7. A license holder, or an owner, principal officer, 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; or

9. The license holder allows a public nuisance to continue after notice from the City.

(7) 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 of Kimball, Chief of Police of Kimball and Brule County Director of Equalization.

(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 by the hearing panel.

(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 exercises its right to process and appeal, in which case the suspension takes effect upon the final determination of revocation by the hearing panel.

(e) The license holder who has had the license revoked may not be issued any cannabis establishment license for one (1) year from the date that the revocation became effective.

(8) 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 Kimball 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 the Kimball City Office at 140 Main Street, Kimball, SD 57355. An appeal will be considered by the Kimball City Council at a regularly scheduled meeting within one (1) month of the receipt of the appeal. Ten (10) days notice shall be given to the license holder.

(9) 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.

(10) 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 a 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.

(11) 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 a 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 provision 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 application of this ordinance which can be given effect without the invalid provision or application.

**Section 4.**

1. Nothing in this Ordinance permits any person to:
   1. Undertake any task under the influence of cannabis, when doing so would constitute negligence or unprofessional malpractice; or
   2. Possess cannabis or engage in the medical use of cannabis in any correctional facility, or
   3. Smoke cannabis on any form of public transportation or in any place open to the public, or
   4. 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 requires 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.

Dated the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021 at Kimball, South Dakota.

Donnie Hamiel

Mayor

City of Kimball

ATTEST:

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Barbara Gakin

City of Kimball Finance Officer

First Reading: September 7, 2021

Second Reading: September 20, 2021

Adopted: September 20, 2021

Publication Date: September 29, 2021

Effective Date: October 19, 2021