

## TITLE 4

### COMMERCIAL REGULATION

- Chapter 4-1: Alcoholic Beverages
- Chapter 4-2: Local Taxation
- Chapter 4-3: Franchises & Municipal Tax Rebates
- Chapter 4-4: Cannabis Regulations

#### **CHAPTER 4-1: ALCOHOLIC BEVERAGES**

##### **4-1-1: License Required.**

No person shall blend, bottle, distill, exchange, keep for sale, manufacture, offer for sale, produce or sell any alcoholic beverage as defined by statute within the City or within one mile of its territorial limits without having a license therefore as required by state statute.

##### **4-1-2: Non-Intoxicating Liquor - Restrictions.**

Every licensee authorized to keep for sale, or offer or sell non-intoxicating beer or wine within the City shall keep the premises upon which such business is conducted in such condition that view through the windows of such premises shall be completely unobstructed either by advertising, curtains, window glazing or any other obstruction whatsoever. No non-intoxicating beer or wine shall be served in any booth on such premises wherein all of the occupants are not within view of every other occupant in the room and observable from any and all points within the room. Additionally, such premises shall be adequately lighted at all times with sufficient bright lights so that the occupants of such room may be easily observable from any and all points within the room, and no licensee shall allow any game of chance or skill or athletic contest on said premises or permit any slot machine or other like device in or about the licensed premises.

##### **4-1-3: Sale of Alcoholic Beverages.**

Any party intending to operate a business selling alcoholic beverages either off-sale or on-sale shall enter into an annual alcoholic beverages operating agreement with the City in the manner and method provided by law. All alcoholic beverages, including malt beverages, must be purchased by an operator directly from a wholesaler, and subsequently delivered by the wholesaler directly to the operator provided each operator maintains a complete and detailed record of all beverages purchased, and submits a copy of all invoices from the wholesaler which reflects the actual cost, brand, date, quantity and transportation charges, and each such invoice shall reflect the signature of operator or an authorized representative. The purchase price of all malt beverages shall include a minimum markup percentage of 4% (of actual cost) which shall be paid by the operator unto the City. All alcoholic beverages may be sold only on those dates

and during such time of the day as is permitted by state statute.

*Updated 11.6.18 Ord. No. 565*

**4-1-4: Fee for License.**

The City shall charge and collect from each licensee such amount or sums as it believes necessary and reasonable under the circumstances and is permitted by state statute. In the event such amount or sum is not timely satisfied in full, then the failure to do so shall be grounds for revocation of a license.

**4-1-5: Procedure for Revocation of License.**

A licensee shall be given ten days advance notice of a hearing before any license granted earlier is revoked by the council. A majority vote of all the city council is required for the revocation of a license.

**4-1-6: Dances and Spiking Permit.**

A “spiking permit” to blend or consume alcoholic beverages as provided by state statute may only be issued by the City Council prior to any event on property which is publicly owned or owned by a nonprofit corporation. The fee for a “spiking permit” shall be \$100.00 and the permit shall specify the hours for which it is valid. Before a spiking permit will be issued, the City requires proof of “Special Events” insurance with liquor liability coverage to be purchased by the host(s) of the event, which needs to name the City as an additional named insured. The applicant must be at least twenty-one (21) years of age and provide an acceptable form of identification. Per SDCL 35-1-5.5, the permit may not exceed twenty-four (24) hours and the hours of authorized consumption may not exceed those permitted for on-sale licensees.

*Updated 7.6.21 – Ord. No. 602*

**4-1-7: Temporary License.**

A temporary license is available for Clear Lake establishments that sell alcohol for a fee of \$10.00 per event. If the applicant is outside Clear Lake City limits, but still in Deuel County, a fee of \$100.00 per event is required to receive a temporary license. No temporary licenses will be available for establishments outside of Deuel County, South Dakota. An applicant may not receive more than 100 temporary licenses in any calendar year.

A public hearing is not required for a temporary license provided the applicant for the temporary license is the holder of an on-sale alcoholic beverage license or a malt beverage license, including applicants with an operating agreement, and the temporary license is to be used in a publicly-owned facility or on public property, or property owned by a nonprofit corporation during a special event.

*Updated 05.18.21 Ord. No. 601*

## **CHAPTER 4-2: LOCAL TAXATION**

### **4-2-1: Municipal Retail Sales & Use Tax**

Section 1. PURPOSE. The purpose of this ordinance is to provide additional needed revenue for the Municipality of Clear Lake, Deuel County, South Dakota, by imposing a municipal retail sales and use tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL Chapter 10-52 entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.

Section 2. EFFECTIVE DATE AND ENACTMENT OF TAX. From and after the 1<sup>st</sup> day of January, 2004, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by two percent (2%) on the gross receipts of all persons engaged in business within the jurisdiction of the Municipality of Clear Lake, Deuel County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL Chapter 10-45 and acts amendatory thereto. Tax will not be applied to items specifically exempt under SDCL Chapter 10-52-2.6, 10-52-11 and 10-52-12. Items exempted from municipal tax include: Farm Machinery and Irrigation Equipment, Parts or Repairs for Farm Machinery, Agricultural Animal Health Products and Medicine, Transportation Service, Collection and Disposal of Solid Waste, Veterinarian and Animal Specialty Services and Air Transportation.

Section 3. USE TAX. In addition, there is hereby imposed an excise tax on the privilege of use, storage and consumption within the jurisdiction of the municipality of tangible personal property or services purchased from and after the 1<sup>st</sup> day of January, 2004, at the same rate as the municipal sales and service tax upon all transactions or use, storage and consumption which are subject to the South Dakota Use Tax Act, SDCL Chapter 10-46, and acts amendatory thereto.

Section 4. COLLECTION. Such tax is levied pursuant to authorization granted by SDCL Chapter 10-52 and acts amendatory thereto, and shall be collected by the South Dakota Department of Revenue and Regulation in accordance with the same rules and regulations applicable to the State Sales Tax and under such additional rules and regulations as the Secretary of Revenue and Regulation of the State of South Dakota shall lawfully prescribe.

Section 5. INTERPRETATION. It is declared to be the intention of this ordinance and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Act, SDCL Chapter 10-45 and acts amendatory thereto and the South Dakota Use Tax, SDCL Chapter 10-46 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

Section 6. PENALTY. Any person failing or refusing to make reports or payments prescribed by this ordinance and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$500 or imprisoned for thirty (30) days or both such fine and imprisonment. In addition, all such collection remedies authorized by SDCL Chapter 10-45, and acts amendatory thereto, and SDCL Chapter 10-46, and acts amendatory thereto are hereby authorized for the collection of these excise taxes by the Department of Revenue and Regulation.

Section 7. SEPARABILITY. If any provision of this ordinance is declared unconstitutional or the application thereof to any person or circumstances held invalid the

constitutionality of the remainder of the ordinance and applicability thereof to other persons or circumstances shall not be affected thereby. *Updated 1.26.21 – Ord. No. 591*

#### **4-2-2: Liquor Lodge & Dining**

Section 1. PURPOSE. The purpose of this ordinance is to provide additional needed revenue for the Municipality of Clear Lake, Deuel County, South Dakota, by imposing a municipal gross receipts tax pursuant to the powers granted to the municipality by the State of South Dakota, by SDCL Chapter 10-52A, and acts amendatory thereto.

Section 2. EFFECTIVE DATE AND ENACTMENT OF TAX. From and after the first day of January, 2008, there is hereby imposed as a municipal gross receipts tax of One Percent (1%) upon the gross receipts from the sale of leases or rentals of hotel, motel, campsites or other lodging accommodations within the municipality for periods of less than twenty-eight (28) consecutive days, the sale of alcoholic beverages as defined in SDCL 35-1-1, establishments where the public is invited to eat, dine or purchase and carry out prepared food for immediate consumption, and ticket sales or admissions to places of amusement, athletic and cultural events. The tax applies to the gross receipts of all persons engaged in business within the jurisdiction of the municipality of Clear Lake, Deuel County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL 10-45 and acts amendatory thereto.

Section 3. COLLECTION. Such tax is levied pursuant to authorization granted by SDCL Chapter 10-52A and acts amendatory thereto, and shall be collected by the South Dakota Department of Revenue and Regulation in accordance with the same rules and regulations applicable to the State Sales Tax and under such additional rules and regulations as the Secretary of Revenue of the State of South Dakota shall lawfully prescribe.

Section 4. INTERPRETATION. It is declared to be the intention of this ordinance and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Act, SDCL 10-45 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

Section 5. USE OF REVENUE. Any revenues received under this ordinance may be used only for the purpose of land acquisition, architectural fees, construction costs, payment for civic center, auditoriums or athletic facility buildings, including the maintenance, staffing and operations of such facilities, and the promotion and advertising of the municipality, its facilities, attractions and activities.

Section 6. PENALTY. Any person failing or refusing to make reports or payments prescribed by this ordinance and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$200 or imprisoned in the municipal jail for thirty (30) days or both such fine and imprisonment. In addition, all such collection remedies authorized by SDCL 10-45, and acts amendatory thereto, are hereby authorized for the collection of these excise taxes by the Department of Revenue.

Section 7. SEPARABILITY. If any provision of this ordinance is declared unconstitutional or the application thereof to any person or circumstances held invalid the constitutionality of the remainder of the ordinance and applicability thereof to other persons or circumstances shall not be affected thereby.

## CHAPTER 4-3: FRANCHISES

### 4-3-1: Northwestern Public Service Company Franchise.

**Section 1.** The right is hereby granted to NorthWestern Corporation, its successors and assigns, to occupy any of the streets, alleys, or public places of the City of Clear Lake, South Dakota, for the purpose of transmitting or distributing natural gas for a period of 20 years from the 1<sup>st</sup> day of August, 2012, provided, however, that the right herein granted will not be exclusive.

**Section 2.** NorthWestern Corporation will be liable for all damages due to its negligence in constructing, operating, or maintaining its natural gas system within the City of Clear Lake, and shall at all times hold the City of Clear Lake harmless from any and all liability arising out of NorthWestern Corporation's negligence.

**Section 3.** This ordinance shall not be effective unless NorthWestern Corporation files its unconditional acceptance of this ordinance with the Finance Officer of the City of Clear Lake within 45 days after the publication of this ordinance.

### 4-3-2A: Interstate Telecommunications Cooperative, Inc. Franchise.

#### SECTION I - TITLE

This Ordinance shall be known and may be cited as the "ITC Cable Television Ordinance."

#### SECTION II - DEFINITIONS

For the purposes of this Ordinance, the following phrases, terms and words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, and words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. "Basic Cable Service" means the service tier which includes the retransmission of local television broadcast signals.
2. "Cable Television Reception Service" means the delivery by the Grantee to television receivers or any other suitable type of electronic receiver or terminal of the electronic signals and other communications services carried over said system.
3. "Cable Television System" or "Cable System" is a system utilizing certain electronic and other components which deliver to subscribing members of the public various communications services.
4. "City" is the City of Clear Lake, South Dakota.
5. "Council" is the City Council of Clear Lake, South Dakota.

6. "FCC" shall mean the Federal Communications Commission.
7. "Grantee" is Interstate Telecommunications Cooperative, Inc., in accordance with the provisions of this Ordinance.
8. "ITC" is Interstate Telecommunications Cooperative, Inc.
9. "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
10. "Subscribers" are those persons contracting to receive cable television reception services furnished under this ordinance by Grantee.

### SECTION III - GRANT OF NON-EXCLUSIVE AUTHORITY

There is hereby granted by the City to the Grantee, and to its assigns, or designees or successors, the non-exclusive right to erect, maintain and operate across, along, in, over, under and upon the present and future alleys, avenues, bridges, highways, lanes, sidewalks, streets, easements dedicated for compatible uses and other public places in the City of Clear Lake, South Dakota, and subsequent additions thereto, cables, lines, manholes, poles, towers, wires, and all other equipment and fixtures necessary for the maintenance and operation in the City of a cable television system, for the purpose of distribution and transmission of audio, visual electric and electronic impulses in order to furnish digital audio, radio and television programs and various other communications services to the public for a period of five (5) years, commencing from and after the 1<sup>st</sup> day of October, 2002.

### SECTION IV - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Grantee shall be subject to all lawful exercise of the police and regulating powers of the City during the term hereof except in those areas which have been preempted by the federal Cable Communications Policy Act of 1984, as amended or which are regulated by the FCC.

### SECTION V - TERRITORIAL AREA INVOLVED

1. This Ordinance relates to the present territorial limits of the City and to any area annexed thereto during the term of this Ordinance. Grantee shall not be required to service residents of newly annexed areas of the City or to extend service to new subscribers in areas within the City limits unless the area has a population density of fifty (50) or more homes per linear mile of cable system except upon payment by such residents of the capital costs incurred by the Grantee in bringing service to such areas or individual homes adjoining, but outside the City limits, that may be served from its existing facilities. Grantee may negotiate directly with such subscribers the amount to be charged for the bringing of the service to the subscriber.

### SECTION VI - LIABILITY AND INDEMNIFICATION

Grantee shall keep in effect the following types of insurance coverage at all times:

(a) Worker's Compensation upon its employees engaged in any manner in the installation or servicing of its equipment and plant within the City of Clear Lake, South Dakota.

(b) Property Damage Liability insurance to the extent of Five Hundred Thousand (\$500,000.00) Dollars as to any person and Five Hundred Thousand (\$500,000.00) Dollars as to any one accident and personal injury liability insurance to the extent of Five Hundred Thousand (\$500,000.00) Dollars as to any one person and Five Hundred Thousand (\$500,000.00) Dollars as to any one accident.

Grantee shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Worker's Compensation law which may arise out of their erection, maintenance, removal or use of any of their attachments, poles or other undertakings within the City, or by any other act of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all actions, claims, costs, demands, expenses, judgments and liabilities which may arise or result, directly or indirectly, from or by reason of such damage, injury or loss. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Worker's Compensation laws in effect that may be applicable to Grantee. The City shall give the Grantee prompt written notice of any such actions, claims, costs, demands, expenses, judgments, liabilities or suits. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder. Insurance certificates evidencing such insurance coverage shall be approved by the City Attorney and deposited with and kept on file by the City.

## SECTION VII - GENERAL SYSTEM SPECIFICATIONS

The facilities used by the Grantee shall have a minimum capacity of 115 video channels and 45 digital audio channels which will be offered to the public via various packages at various costs.

## SECTION VIII - TECHNICAL STANDARDS

Grantee shall be governed by technical standards established by the FCC.

## SECTION IX - MAINTENANCE AND OPERATION OF SYSTEM

1. The Grantee shall render efficient and safe service, and make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions shall be preceded by notice insofar as possible and shall occur during periods of minimum use of the system.

2. The Grantee shall maintain a force of sufficient personnel to provide an adequate, prompt and safe service for the facilities.

## SECTION X - SERVICE TO SCHOOLS AND CITY

The Grantee shall provide basic cable service at no cost to public schools within the City at one terminal junction for educational purposes upon request of the school system subject to the line extension provisions of Section V.

Grantee shall also provide one junction terminal without charge to one City owned building other than an apartment, or building at the airport, or hospital or nursing home, to be selected by the Council of Clear Lake, and Grantee shall also furnish the basic service to all sets connected within such building to the terminal junction without charge.

#### SECTION XI - EMERGENCY USE OF FACILITIES

In the case of any disaster or emergency the Grantee shall make available its facilities to the City for emergency use during the disaster or emergency upon request of the City Council.

#### SECTION XII - SAFETY REQUIREMENTS

The Grantee shall employ ordinary care and shall maintain and use commonly accepted devices and methods for preventing accidents and failures which are likely to cause damages, injuries or nuisances to the public at all times.

#### SECTION XIII - NEW DEVELOPMENTS

It shall be the policy of the City to liberally amend this franchise upon application of the Grantee when necessary to enable the Grantee to take advantage of any developments in the field of transmission of digital audio, radio and television signals which will afford it an opportunity to more economically, effectively or efficiently serve its subscribers. However, this section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

#### SECTION XIV - LIMITATIONS ON RIGHTS GRANTED

1. All distribution and transmission equipment, lines and structures erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of alleys, streets and other public places and ways, and to cause minimum interference with the reasonable convenience and rights of property owners who adjoin any of the said alleys, streets or other public places and ways, and said poles or towers shall be removed by Grantee whenever the City Maintenance Supervisor reasonably finds that the same obstructs or restricts the location or operation of any future streets or public places in the City.

2. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code prepared by the National Bureau of Standards, and the National Electrical Code of the National Board of Fire Underwriters, and such applicable Ordinances and regulations of the City affecting electrical installation which may be presently in effect or changed by future Ordinances.



3. In case of disturbance of any alley, paved areas, public way, sidewalk or street, the Grantee shall barricade, replace and restore such alley, paved areas, public way, sidewalk, street in as good a condition as before the work involving such disturbance was done at its own cost and expense and in a manner approved by the City Maintenance Supervisor. Grantee shall not be required to pay a fee for street openings.

4. All work in any way necessitated by the business of Grantee which may involve the breaking up or opening of a portion of a sidewalk, street or other part of any City-owned or City-controlled property shall at the option of the City be done by the City at the expense of the Grantee. In such instances the Grantee shall save the City harmless against all damage or loss to any person or property in accordance with the provisions of Section VI of this Ordinance. In the event the City does not exercise its option, then the Grantee shall, at its own expense and in a manner approved by the City Maintenance Supervisor, replace and restore such alley, paved area, public walk, sidewalk or street in as good as condition as before the work involving such disturbance was done.

5. If at any time during the period of this Ordinance the City shall lawfully elect to alter or change the grade of any alley, sidewalk, street or other public way, then the Grantee shall relay, relocate and remove its cables, manholes, underground conduits, wires and other fixtures at its own expense upon reasonable notice by the City.

6. All installations of equipment shall be of a permanent nature, durable and installed in accordance with good engineering practices, and comply with all existing City ordinances, regulations and state laws so as not to interfere in any manner with the right of the individual property owner or public, and any equipment installed in a public place or public way shall not interfere with the usual travel on such public way or usual use of such public place by the public and during the construction, removal or repair thereof shall not unduly impede or obstruct traffic.

7. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same alley, or public place, or street, or remove from the alley, public place, or street any property of Grantee when required by the City by reason of traffic conditions, public safety, street construction or vacated, or change or establishment of street grade, installation of drains, power lines, signal lines, sewers, water pipes and tracks or any other types of improvements or structures by governmental agencies when acting in a governmental or proprietary capacity; provided however, that Grantee shall in all cases have the privilege to abandon any property of Grantee in place as hereinafter provided.

8. The Grantee shall place its cables and wires underground on the same conditions and time schedule that are applicable to the providers of other ground services in those sections of the City where the City designates an area where all presently above ground services are to be placed underground.

9. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such property or system has been installed in any public place or street without complying with the requirements of this Ordinance,

or the rights granted hereunder have been canceled, expired or terminated, then Grantee shall promptly remove all above ground facilities, wires, etc. from the public places and streets other than any which the City may permit to be abandoned in place, subject to the rights of the City to acquire or transfer the system as specified in Section XVIII. In the event of such removal, then Grantee shall promptly restore the other area or street from which such property has been removed to a condition satisfactory to the City.

10. Grantee shall submit to the City an instrument to be approved by the City which transfers the ownership of any such permanently abandoned property in place to the City.

#### SECTION XV - OWNERSHIP AND REMOVAL OF FACILITIES

All cable and passive equipment for cable television reception service installed by the Grantee at a subscriber's location shall remain the property of the Grantee and Grantee shall have the right to remove said cable and equipment except as otherwise agreed in writing at the time of installation. Grantee shall have the right, at anytime, to disclaim any further ownership rights to the interior wiring and specified equipment and fittings at a subscriber's residence or other building by giving written notice to the subscriber. The interior wiring and any equipment or fitting specified in the notice shall become the property of the subscriber upon such a notice being given without any payment obligations on the part of the subscriber. However, the Grantee shall have the right to use said interior wiring and specified equipment without charge when it is providing service to the premises. The Grantee shall promptly remove all its above ground equipment and facilities from the premises of such subscriber upon the subscriber's request to terminate service, and all of which is subject to FCC regulations.

#### SECTION XVI - ASSIGNMENT OF ORDINANCE

The Grantee shall not assign this Ordinance to another person without prior approval of the City Council and which approval shall not be unreasonably withheld.

#### SECTION XVII – CITY’S COMPENSATION

Grantee shall pay three (3%) percent of the annual “gross subscriber revenues” as defined hereinafter annually unto the City as compensation for the said franchise as long as the Grantee operates its cable system for audio and video services within the City. “Gross subscriber revenues” shall include those revenues derived from the monthly service charge paid by subscribers unto Grantee. “Gross subscriber revenues” shall not include any federal or state taxes relating to services provided by or fees charged by the Grantee, nor revenues received as installation charges and fees for reconnections, inspections, modifications or repairs of any installations.

The annual payments by the Grantee unto the City shall be in lieu of any license tax, occupation tax, or similar levy. However, nothing contained herein shall in anyway relieve Grantee from the obligation of paying property taxes unto the City of Clear Lake or any other governmental subdivision of the State of South Dakota or any other taxes lawfully levied by the State of South Dakota on Grantee's cable system. Furthermore, such payments do not affect the

responsibility of the Grantee to collect state and local sales tax on the services provided.

Grantee shall file a statement prepared by a Certified Public Accountant with the City showing the "gross subscriber revenues" as defined herein within ninety (90) days after the expiration of Grantee's fiscal year during the term set forth hereinbefore. It shall be the Grantee's duty to pay the amount due for the fiscal year covered by such statement unto the City within fifteen (15) days after the time for filing such statement. No such payments shall be due and payable by the Grantee unto the Grantor until the Grantee's system is providing services to subscribers.

#### SECTION XVIII - ANNUAL FINANCIAL REPORT AND BOND

Grantee shall file an annual financial report with the City within ninety (90) days after the expiration of its fiscal year. Grantee shall not be required to post a bond or cashier's check for the faithful performance of its obligations under this Ordinance.

#### SECTION XIX - DURATION AND RENEWAL OF ORDINANCE

The rights granted to Grantee herein shall terminate on the 30<sup>th</sup> day of September, 2007, subject to the provisions of this section. This Ordinance shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984, as amended, applicable to new ordinances that are in the nature of a franchise. The Ordinance shall remain in effect even if the original five (5) year term has expired pending final completion of renewal proceedings. If this Ordinance is not renewed or if it is revoked for cause by the City, then the transfer of Grantee's system shall be governed by Section 627 of the Cable Communications Policy Act of 1984, as amended.

#### SECTION XX - ERECTION, REMOVAL AND COMMON USE OF POLES

1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City Maintenance Supervisor with regard to height, locations or type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be modified or removed by the Grantee at its own expense whenever the City Maintenance Supervisor determines that the public convenience would be enhanced thereby.

2. Where there are poles or other wire-holding structures already existing in use in serving the City available for use by Grantee, but Grantee does not make arrangements for such use, then the City Council may require Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

3. Grantee shall grant joint use of any and all poles owned by it to the City free of expense for any proper municipal purpose acceptable to Grantee insofar as it may be done without interfering with the enjoyment and free use of Grantee's own fixtures and wires, and the

City shall hold Grantee harmless from any and all actions, causes of actions or damages caused by the placing of the City's appurtenances or wires upon the poles of the Grantee. Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction. If, in accommodating the City's joint use of their poles, Grantee is required to change or replace poles or install new poles, then the City shall compensate Grantee for such additional expense.

4. Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee, but an agreement therefore with the Grantee cannot be reached, then the Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

#### SECTION XXI - RATES

1. Grantee shall at all times maintain on file with the City Finance Officer a schedule setting forth all charges and rates to be made to subscribers for basic cable service, including installation charges. Grantee shall file in writing with the City Finance Officer any changes in the rates or charges for basic service unless exempted by FCC regulations at least thirty (30) days in advance of the effective date of the rate change.

2. Grantee shall comply with the rate regulation rules of the FCC during the term hereof.

3. The monthly rate set forth in the schedule filed pursuant to subsection (1) above shall be payable in advance.

4. The Grantee shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984, as amended and FCC regulations.

#### SECTION XXII - MISCELLANEOUS

Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's office (312 Fourth Street West, Clear Lake, South Dakota 57226), or call 611 or 1-800-417-8667 or 605-874-2181 for resolution.

#### SECTION XXIII - MODIFICATION OF OBLIGATIONS

In addition to any other remedies provided by law or regulation, Grantee's obligations under this ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists or as hereafter amended.

#### SECTION XXIV - SEVERABILITY

If any clause, phrase, portion, section, sentence or subsection of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or is preempted or

superceded by FCC regulation, then such portion shall be deemed a distinct, independent and separate provision and such holding shall not affect the validity of the remaining portions thereof.

#### SECTION XXV - PUBLICATION

Grantee shall pay to the City a sum of money sufficient to reimburse it for all expenses incurred by it in connection with the publication of this Ordinance. Such payment to be made to the City by Grantee within thirty (30) days after the City shall furnish Grantee with a written statement of such expense.

#### SECTION XXVI - ORDINANCE REPEAL

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

#### **4-3-2B: Amended ITC Ordinance.**

##### SECTION I.

This Ordinance amends Ordinance No. 419 and grants Interstate Telecommunications Cooperative, Inc., its nonexclusive right set forth in Ordinance No. 419 to continue for five (5) additional years commencing 10/1/2007. Furthermore, the rights granted herein shall continue indefinitely to renew for additional five (5) year periods hereafter upon the expiration of each five (5) year period unless either party notifies the other party to the contrary in writing at least ninety (90) days prior to the expiration date.

##### SECTION II.(replaces Section XVII)

Grantee shall pay three (3%) percent of the annual “gross subscriber revenues” as defined hereinafter annually unto the City as compensation for the said franchise as long as the Grantee operates its cable system for audio and video services within the City. “Gross subscriber revenues” shall include those revenues derived from the monthly service charge paid by subscribers unto Grantee. “Gross subscriber revenues” shall not include any federal or state taxes relating to services provided by or fees charged by the Grantee, nor revenues received as installation charges and fees for reconnections, inspections, modifications or repairs of any installations. Grantee shall pay the amount due for the past calendar year unto the City within ninety (90) days after the conclusion of the calendar year.

The annual payments by the Grantee unto the City shall be in lieu of any license tax, occupation tax, or similar levy. However, nothing contained herein shall in anyway relieve Grantee from the obligation of paying property taxes unto the City of Clear Lake or any other governmental subdivision of the State of South Dakota or any other taxes lawfully levied by the State of South Dakota on Grantee’s cable system. Furthermore, such payments do not affect the responsibility of the Grantee to collect state and local sales tax on the services provided.

##### SECTION III. (replaces Section XVIII)

Grantee shall provide a copy of its latest audited annual financial report to the City upon request by the City. Grantee shall not be required to post a bond or a cashier’s check for the faithful performance of its obligations under this Ordinance.

##### SECTION IV.

All Ordinances or parts of any Ordinance in conflict herewith are hereby repealed.

### **4-3-3: Franchises.**

The City Council is granted the authority to authorize the franchise to any entity or individual for services deemed necessary for the residents of the municipality.

### **4-3-4: Municipal Property Tax Rebates**

#### **Section 1: Definitions.**

The following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CAPITAL ASSETS.** Tangible and intangible personal property which is subject to depreciation or amortization under §§ 167 and 168 of the Internal Revenue Code of 1986, as amended to the date of adoption of this ordinance.

**CONSTRUCTION COMMENCEMENT.** The date earth is first excavated for the purpose of constructing a new business facility.

**NEW BUSINESS FACILITY.** A new building or structure that is part of a project that satisfies the requirements of this ordinance and is not ineligible.

**PERSON.** Any individual, firm, partnership, joint venture, association, limited liability company, limited liability partnership, corporation, trust or any group or combination thereof acting as a unit.

**PROJECT.** The construction, equipping and furnishing of a new business facility at a single site, and for which the commencement of construction or the ordering of equipment to be used in a new business facility.

**PROPERTY TAX.** The property taxes imposed by the City pursuant to City Ordinance Chapter 4-2-1.

#### **Section 2: Refund of Municipal Property Taxes**

As provided in this ordinance, any person may apply for and obtain a refund for municipal property taxes paid by the person for a new business facility or new addition that satisfies all requirements of this ordinance. Except as provided in the last sentence of this division, the refund allowed under this section pertains only to project costs incurred and paid within five (5) years of the approval of the application required. There will be no refund if the person fails to make application with the City prior to construction commencement.

A. Any new industrial structure, including a power generation facility, or an addition to an existing structure pursuant to SDCL § 10-6-137(2).

B. Any new commercial structure, or any addition to an existing structure, as described in SDCL § 10-6-137(5) pursuant to SDCL § 10-6-137(4).

C. Any new affordable housing structure containing four or more units with a monthly rental rate of the units at or below the annually calculated rent for the state's sixty percent area median income being used by the South Dakota Housing Development Authority, for a

minimum of ten years following the date of first occupancy, if the structure has a full and true value of seventy-five thousand dollars or more.

### **Section 3: Eligible Projects.**

No refund may be made unless:

- The project includes new construction or a new addition to a business that adds at least Seventy-Five Thousand Dollars (\$75,000) in taxable value to the city's property tax base, or an investment in non-realty capital assets of not less than Seventy-Five Thousand Dollars (\$75,000), or if the combination of new construction and non-realty capital assets exceeds Seventy-Five Thousand Dollars (\$75,000);
- The facility is used directly in:
  - A. The manufacture or processing or fabricating or compounding of personal property which is intended to be sold or leased for final use consumption;
  - B. Research and development in the:
    1. Social sciences;
    2. Humanities; and
    3. Physical, engineering and life sciences as those terms are defined by 2002 NAICS.
- The person makes application for the refund from the City of Clear Lake.
- The project is not ineligible under the next section.

### **Section 4: Ineligible Projects.**

A project shall not be eligible for tax refunds under this ordinance if it is:

- (a) Used predominantly for single family residential housing or transient lodging;
- (b) Used predominantly to provide health care services; or
- (c) Not subject to ad valorem real property taxation or equivalent taxes measured by gross receipts.

### **Section 5: Application for Refund.**

Any person desiring to claim a refund pursuant to this subchapter shall make application to the City prior to the earlier of the construction commencement or the ordering of equipment to be used in a new business facility. Should extenuating circumstances exist, the City Council may waive this requirement. The application shall be submitted on a form prescribed by the City. A separate application shall be submitted for each project. A receipt showing that the property taxes have been paid must be submitted along with the application for the refund. Upon the City's approval of the application by the City Council, the City Finance Officer or his/her designee shall notify the applicant that they are eligible to submit refund claims and to receive refunds as provided in this subchapter. Refund claims are not assignable or transferable except as collateral or security pursuant to SDCL 57A-9.

**Section 6: Amount of Refund.**

The refund of the property taxes paid by the City with respect to the project shall be determined by the City Council. The person receiving a refund shall be entitled to retain the amount approved by the City Council if the project remains in operation in the City for at least five years.

- For the first tax year following construction, 100% of municipality tax shall be rebated back;
- For the second tax year following construction, 80% of municipality tax returned;
- For the third tax year following construction, 60% of municipality tax returned;
- For the fourth tax year following construction, 40% of municipality tax returned;
- For the fifth tax year following construction, 20% of municipality tax returned.

If the project ceases operation in the City before the end of the five-year period, the City shall be entitled to repayment of all or a portion of the amount refunded, the refund being prorated based upon the time remaining in the five-year minimum term. Any amount the City is entitled to recover under this section shall constitute a debt to the City and a lien in favor of the City upon all property and rights to property whether real or personal belonging to the claimant and may be recovered in an action of the debt.

**Section 7: Submission of Returns and Payment.**

Any person who is eligible for a refund pursuant to this subchapter shall submit a written request to the City prior to the end of the calendar year. No interest shall be paid on the refund amount.

**Section 8: Payment of Amount Withheld.**

The amounts withheld by the City shall be retained until the project has been completed and the claimant has met all the conditions of this ordinance, at which time all sums retained shall be paid to claimant.

**Section 9: Improper Claims.**

If any claim has been fraudulently presented or supported as to any item in the claim, or if the claimant fails to meet all the conditions of this subchapter, then the claim may be rejected in its entirety and all sums previously refunded to the claimant shall constitute a debt to the City and a lien in favor of the City upon all property and rights to property whether real or personal belonging to the claimant and may be recovered in an action of debt.

*Adopted September 17, 2021 – Ord. #604*



## CHAPTER 4-4: CANNABIS DISPENSARIES

### 4-4-1: Definitions:

**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) 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:** 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.

### 4-4-2: Prohibition of Uses

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.

### 4-4-3: Permitted Use:

The permitted use or special permitted use where a Cannabis Dispensary is allowed would be in a "C-1" General Commercial Zoning District.

#### **4-4-4: Cannabis Dispensary Regulations:**

##### **A. Maximum Number of Cannabis Dispensaries.**

1. 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.
2. The City of Clear Lake shall allow up to one (1) cannabis dispensary provided the time, place, and manner of said dispensaries comply with this ordinance.

##### **B. Required Separation Distances**

1. A cannabis dispensary shall be located not less than one thousand (1,000) feet from a public or private school existing before the date of the cannabis dispensary application;
2. A cannabis dispensary shall be located not less than five hundred (500) feet from a church, public park, library or daycare facility, existing before the date of the cannabis dispensary application;
3. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed.

##### **C. 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.

##### **D. Controlled Access - No cannabis establishment shall share premises with or permit access directly from another cannabis establishment, business that sells alcohol or tobacco, or, if allowed by law, other cannabis establishment.**

##### **E. Hours of operation:**

1. Cannabis dispensaries are allowed to be open between the hours of 9:00 AM and 5:00 PM on Monday through Friday.

F. Documentation of State Licensure.

1. 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.

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

1. Submission of a site plan containing the following:
  - a. Any information required for applicable building permit,
  - b. Ingress and egress plan
  - c. Parking plan
  - d. Lighting plan (including security lighting)
  - e. Screening/security fencing plan,
  - f. Refuse plan;
  - g. Hours of Operation;
  - h. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance
2. Documentation of ability to meet setback/separation requirements.
3. Documentation of State Licensure:

H. All Cannabis Establishments are required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.

*Adopted October 5, 2021 – Ord No. 609*

## **CHAPTER 4-5: CANNABIS LICENSING**

### **4-5-1: Purpose and Intent:**

The City Council of the City of Clear Lake 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.

### **4-5-2: 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.

**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. 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:** 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

#### **4-5-3: License Required**

- (a) 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 Chapter 4-5-16. Each day of the violation constitutes a separate offense.
- (b) 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 Chapter 4-5-16. Each day of the violation constitutes a separate offense.

#### **4-5-4: License Application:**

- (a) An application for a cannabis establishment license must be made on a form provided by the city. No other application form will be considered.
- (b) The applicant must submit the following:
  - 1. A minimum application fee of \$5,000, with the highest bidder being granted a license. The City of Clear Lake will reimburse \$0 for applicants who fail to obtain a registration certificate from the South Dakota Department of Health.
  - 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 zoning ordinance requirements in Chapter 2.10, as well as any location requirements pursuant 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 city.

#### **4-5-5: Issuance of License:**

- (a) The city will issue a license unless:
  - 1. The applicant has made a false statement on the application or submits false records or documentation; or
  - 2. Any owners, principal officer, or board member of the applicant is under the age of twenty-one (21) years; or
  - 3. 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;
  - 4. The proposed location does not meet the applicable zoning requirements under Chapter 2.10;
  - 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; or

7. 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
  8. 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
  9. The applicant will not be operating the business for which the license would be issued.
- (b) 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.
- (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.

**4-5-6: City Neutrality as to Applicants:**

- (a) 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 of Clear Lake will abstain from endorsing any application as beneficial to the community.

**4-5-7: Number of Cannabis Dispensaries:**

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

**4-5-8: 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 4-5-4. 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 \$5,000. The City will reimburse \$0 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.

#### **4-5-9: 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.

#### **4-5-10: Revocation**

- (a) A license may be revoked if the license is suspended under Section 4-5-9 and the cause for the suspension is not remedied.
- (b) A license may be revoked if the license is subject to suspension under Section 4-5-9 because of a violation outlined in that section and the license has been previously suspended in the preceding 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 4-5-11;
  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 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;

7. 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
8. The license holder has its Department-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 City.

#### **4-5-11. 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, Finance Officer, and the full council. License holder will be responsible for paying the council fees for a special meeting.
- (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 rights 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.

#### **4-5-12: 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 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 City Finance Office, 125 3<sup>rd</sup> Ave S., PO BOX 107, Clear Lake, South Dakota, 57226. The appeal will be considered by the City Council at a regularly scheduled meeting within one month of the receipt



of the appeal.

#### **4-5-13: 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.

#### **4-5-14: Hours of Operations for Dispensaries**

No cannabis dispensary may operate between the hours of 5:01 PM and 8:59 AM, Monday through Friday. Cannabis dispensary must be closed Saturday and Sunday, along with all Federal holidays.

#### **4-5-15: 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.

#### **4-5-16: 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.

**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.

*Adopted October 5, 2021 – Ord. No. 610*