

Montana Code Annotated 2021

TITLE 76. LAND RESOURCES AND USE CHAPTER 2. PLANNING AND ZONING

Part 3. Municipal Zoning

Criteria And Guidelines For Zoning Regulations

76-2-304. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) made in accordance with a growth policy; and
- (b) designed to:
 - (i) secure safety from fire and other dangers;
 - (ii) promote public health, public safety, and the general welfare; and
 - (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
- (2) In the adoption of zoning regulations, the municipal governing body shall consider:
 - (a) reasonable provision of adequate light and air;
 - (b) the effect on motorized and nonmotorized transportation systems;
 - (c) promotion of compatible urban growth;
 - (d) the character of the district and its peculiar suitability for particular uses; and
 - (e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

History: En. Sec. 3, Ch. 136, L. 1929; re-en. Sec. 5305.3, R.C.M. 1935; R.C.M. 1947, 11-2703; amd. Sec. 17, Ch. 582, L. 1999; amd. Sec. 6, Ch. 87, L. 2003; amd. Sec. 11, Ch. 446, L. 2009.

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TITLE 16. ALCOHOL, TOBACCO, AND MARIJUANA

CHAPTER 12. MARIJUANA REGULATION AND TAXATION

Part 3. Local Government and Law Enforcement Authority

Sec pg. 2
Section (2)(a)

Local Government Authority To Regulate -- Opt-In Requirement In Certain Counties -- Exemption For Existing Licensees

16-12-301. Local government authority to regulate -- opt-in requirement in certain counties -- exemption for existing licensees. (1) (a) Except as provided in subsection (1)(b), a marijuana business may not operate in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election until:

(i) the category or categories of license that the marijuana business seeks has or have been approved by the local jurisdiction where the marijuana business intends to operate as provided in subsection (3) or (4); and

(ii) the business is licensed by the department pursuant to this chapter.

(b) A former medical marijuana licensee that does not apply for licensure as an adult-use dispensary may operate in its existing premises in compliance with rules adopted by the department pursuant to **16-12-201(2)** notwithstanding a local jurisdiction's failure to take action pursuant to subsections (3) through (6).

(c) A former medical marijuana licensee that intends to apply for licensure as a cultivator, manufacturer, adult-use dispensary, or testing laboratory may operate in compliance with rules adopted by the department pursuant to **16-12-201(2)** notwithstanding a local jurisdiction's failure to take action pursuant to subsections (3) through (6), provided that the former marijuana licensee has remained in good standing with the department of public health and human services and the department.

(d) For the purpose of this section, the marijuana business categories that must be approved by a local jurisdiction under subsections (3) through (6) in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election before a business may operate are:

(i) cultivator;

(ii) manufacturer;

(iii) medical marijuana dispensary, except as provided in subsection (1)(b);

(iv) adult-use dispensary;

(v) combined-use marijuana licensee;

(vi) testing laboratory; and

(vii) marijuana transporter facility.

(e) Marijuana businesses located in counties in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election are not subject to the local government approval process under subsections (3) through (6).

(2) (a) To protect the public health, safety, or welfare, a local government may by ordinance or otherwise regulate a marijuana business that operates within the local government's jurisdictional area. The regulations may include but are not limited to inspections of licensed premises, including but not limited to indoor cultivation facilities, dispensaries, manufacturing facilities, and testing laboratories in order to ensure compliance with any public health, safety, and welfare requirements established by the department or the local government.

(b) A former medical marijuana licensee that does not apply for licensure as an adult-use dispensary is exempt from complying with any local governmental regulations that are adopted under this subsection after July 1, 2021, until its first license renewal date occurring after January 1, 2022, or the expiration of any grace period granted by the locality, whichever is later.

(3) An election regarding whether to approve any or all of the marijuana business categories listed in subsection (1)(d) to be located within a local jurisdiction may be requested by filing a petition in accordance with 7-5-131 through 7-5-135 and 7-5-137 by:

- (a) the qualified electors of a county; or
- (b) the qualified electors of a municipality.

(4) (a) An election held pursuant to this section must be called, conducted, counted, and canvassed in accordance with Title 13, chapter 1, part 4.

(b) An election pursuant to this section may be held in conjunction with a regular election of the governing body, general election, or a regular local or special election.

(5) If the qualified electors of a county vote to approve a type of marijuana business to be located in the jurisdiction, the governing body shall enter the approval into the records of the local government and notify the department of the election results.

(6) (a) If an election is held pursuant to this section in a county that contains within its limits a municipality of more than 5,000 persons according to the most recent federal decennial census:

(i) it is not necessary for the registered qualified electors in the municipality to file a separate petition asking for a separate or different vote on the question of whether to prohibit a category of marijuana business from being located in the municipality; and

(ii) the county shall conduct the election in a manner that separates the votes in the municipality from those in the remaining parts of the county.

(b) If a majority of the qualified electors in the county, including the qualified electors in the municipality, vote to approve a category of marijuana business to be located in the county, the county may allow that category of marijuana business to operate in the county.

(c) (i) If a majority of the qualified electors in the municipality vote to approve a category of marijuana business to be located in the municipality, the municipality may allow that type of marijuana business to operate in the municipality.

(ii) If a majority of the qualified electors in the municipality vote to prohibit a category of marijuana business from being located in the municipality, the municipality may not allow that type of marijuana business to operate in the municipality.

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TITLE 16. ALCOHOL, TOBACCO, AND MARIJUANA

CHAPTER 12. MARIJUANA REGULATION AND TAXATION

Part 1. General Provisions

Limitations Of Act

16-12-108. Limitations of act. (1) This chapter does not permit:

- (a) any individual to operate, navigate, or be in actual physical control of a motor vehicle, train, aircraft motorboat, or other motorized form of transport while under the influence of marijuana or marijuana products;
- (b) consumption of marijuana or marijuana products while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being operated;
- (c) smoking or consuming marijuana while riding in the passenger seat within an enclosed compartment of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being operated;
- (d) delivery or distribution of marijuana or marijuana products, with or without consideration, to a person under 21 years of age;
- (e) purchase, consumption, or use of marijuana or marijuana products by a person under 21 years of age;
- (f) possession or transport of marijuana or marijuana products by a person under 21 years of age unless the underage person is at least 18 years of age and is an employee of a marijuana business licensed under this chapter and engaged in work activities;
- (g) possession or consumption of marijuana or marijuana products or possession of marijuana paraphernalia:
 - (i) on the grounds of any property owned or leased by a school district, a public or private preschool, school, or postsecondary school as defined in **20-5-402**;
 - (ii) in a school bus or other form of public transportation;
 - (iii) in a health care facility as defined in **50-5-101**;
 - (iv) on the grounds of any correctional facility; or
 - (v) in a hotel or motel room;
- (h) using marijuana or marijuana products in a location where smoking tobacco is prohibited;
- (i) consumption of marijuana or marijuana products in a public place, except as allowed by the department;
- (j) **conduct that endangers others**;
- (k) undertaking any task while under the influence of marijuana or marijuana products if doing so would constitute negligence or professional malpractice; or
- (l) performing solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food-grade ethanol unless licensed for this activity by the department.

Code of Ordinances

A. The City Commission makes the following findings:

1. Pursuant to Mont. Code Ann. § 76-1-601, the Great Falls Planning Advisory Board recommended the adoption of a Growth Policy by the City Commission;
 2. Pursuant to Mont. Code Ann. § 76-1-604, the City Commission adopted the growth policy;
 3. The City Commission has adopted a River Corridor Plan;
 4. This Title is consistent with and furthers the intent of the Growth Policy and River Corridor Plan; and
 5. The legislative, administrative, and enforcement bodies may not permit or otherwise allow any development to occur that is not in compliance with this Title.
- B. Specific findings are included in the various chapters, articles, and sections of this Title as appropriate.

(Ord. 3194, 2019).

17.4.050 - Purpose.

- A. This Title is established to promote the public health, safety, and welfare and is intended to accomplish the following general purposes:
1. Implement the goals, objectives, and policies of the Growth Policy;
 2. Ensure that all development is guided by, and gives consideration to, the Growth Policy;
 3. Establish a comprehensive compendium of regulations that controls the use or development of land within the City;
 4. Provide for clear, consistent standards, regulations, and procedures for the review and approval of all proposed development within the City;
 5. Address the substantive findings as contained in this Title; and
 6. Safeguard the public health, safety, and general welfare by establishing minimum standards for design and development.
- B. Specific purposes are included in the various chapters, articles, and sections as appropriate.

(Ord. 3194, 2019).

17.4.060 - Compliance.

- A. Except as specifically provided, or otherwise in conflict with State or Federal laws or regulations, the provisions of this Title shall apply to all development within the incorporated City limits, and no development shall be undertaken without the prior authorizations required by this Title.
- B.

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TITLE 16. ALCOHOL, TOBACCO, AND MARIJUANA

CHAPTER 12. MARIJUANA REGULATION AND TAXATION

Part 1. General Provisions

Short Title -- Purpose

16-12-101. (Effective January 1, 2022) **Short title -- purpose.** (1) This chapter may be cited as the "Montana Marijuana Regulation and Taxation Act".

(2) The purpose of this chapter is to:

- (a) provide for legal possession and use of limited amounts of marijuana legal for adults 21 years of age or older;
 - (b) provide for the licensure and regulation of the cultivation, manufacture, production, distribution, transportation, and sale of marijuana and marijuana products;
 - (c) eliminate the illicit market for marijuana and marijuana products;
 - (d) prevent the distribution of marijuana sold under this chapter to persons under 21 years of age;
 - (e) ensure the safety of marijuana and marijuana products;
 - (f) ensure the security of licensed premises;
 - (g) establish reporting requirements for licensees;
 - (h) establish inspection requirements for licensees, including data collection on energy use, chemical use, water use, and packaging waste to ensure a clean and healthy environment;
 - (i) provide for the testing of marijuana and marijuana products by licensed testing laboratories;
 - (j) give local governments authority to allow for the operation of marijuana businesses in their community and establishing standards for the cultivation, manufacture, and sale of marijuana that protect the public health, safety, and welfare of residents within their jurisdictions;
 - (k) tax the sale of marijuana and marijuana products to provide compensation for the economic and social costs of marijuana;
 - (l) authorize courts to resentence persons who are currently serving sentences for acts that are permitted under this chapter or for which the penalty is reduced by this chapter and to redesignate or expunge those offenses from the criminal records of persons who have completed their sentences as set forth in this chapter; and
 - (m) preserve and protect Montana's well-established hemp industry by drawing a clear distinction between those participants and programs and the participants and programs associated with the marijuana industry.
- (3) Marijuana and marijuana products are not agricultural products, and the cultivation, processing, manufacturing or selling of marijuana or marijuana products is not considered agriculture subject to regulation by the department of agriculture unless expressly provided.