



ORDINANCE 2084

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA GENERALLY REVISING LAWS AND REGULATIONS RELATED TO MARIJUANA AND THE MONTANA MARIJUANA REGULATION AND TAXATION ACT.

WHEREAS, the City of Bozeman (the “City”) is authorized by the City Charter and Montana law to establish programs and laws to protect public the health, safety and welfare of the citizens of Bozeman; and

WHEREAS, pursuant to its [Charter](#), the Montana Constitution, and state law, the City may exercise any power not prohibited by the constitution, law or charter and neither the Montana Constitution, state law, or the City Charter prohibits the City Commission from adopting this Ordinance; and

WHEREAS, Title 7, Chpt. 5, Part 1, Montana Code Annotated (MCA), provides standards and procedures for adoption of local ordinances; and

WHEREAS, Title 76, Chpt. 2, Part 3, MCA, authorizes municipalities to enact zoning to regulate the use and development of land and the activities of individuals and businesses within its boundaries subject to certain standards of procedure; and

WHEREAS, the citizens of the State of Montana voted to approve Constitutional Initiative 118 and Initiative No. 190 (I-190) in November 2020, which became effective January 1, 2021 and legalized recreational marijuana use and limited possession for adults over the age of 21 and provided a framework for commercial licensing, taxation, decriminalization and expungement of criminal convictions related to marijuana amongst other provisions; and

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WHEREAS, the Montana Legislature passed, and Governor Gianforte signed into law, House Bill 701 (“HB 701”) which revised, amended and supplemented the text of I-190 and established the Montana Regulation and Taxation Act (16-12-101, MCA et seq. (the “Act”)); and

WHEREAS, a codified purpose of the Act pursuant to Section 37 amending Section 16-12-101(2)(j), MCA is to provide local governments authority to allow for the operation of marijuana businesses in their community and establish standards for the cultivation, manufacture, and sale of marijuana that protect the public health, safety, and welfare of residents within their jurisdictions; and

WHEREAS, Section 59 of the Act pursuant to Section 16-12-301, MCA, provides that 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; and

WHEREAS, Section 54 of the Act pursuant to Section 16-12-207, MCA, provides a locality may require marijuana businesses be a greater distance from schools and places of worship then required by state law; and

WHEREAS, the City Commission understands the need to create specific provisions related to the licensing of marijuana businesses to ensure those businesses and their employees are in full conformance with the Act and the Bozeman Municipal Code; and

WHEREAS, the City Commission reviewed and considered the relevant Unified Development (UDC) text amendment criteria established by Title 76, Chpt. 2, Part 3, MCA and found the proposed UDC text amendments to be in compliance with the purposes of zoning as locally adopted in Section 38.100.040, BMC; and

WHEREAS, at its public hearing, the City Commission found that the proposed UDC text amendments would be in compliance with Bozeman’s adopted growth policy and applicable statutes and would be in the public interest; and

WHEREAS, marijuana continues to be classified as a Schedule I narcotic under the federal Controlled Substances Act and under Sec. 50-32-222, MCA, such that the cultivation, distribution, and possession of marijuana, except as provided for in the Act, constitutes criminal activity; and

WHEREAS, the City Commission finds a legitimate governmental interest in regulating the locations where a marijuana business may be located and in licensing marijuana businesses and in doing so confirming such locations are in compatible zoning districts and adequately distanced from schools and places of worship to protect the general health, safety or welfare of the citizens of Bozeman.

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NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:

Section 1

That the entirety of current Chapter 16, Article 8 of the Bozeman Municipal Code shall repealed and replaced with the following:

Article 8: Marijuana

Division 1. Generally

Sec. 16.08.150. – Purpose; Applicability; failure to maintain state licensure

- A. The purpose of this article is to implement the provisions of the Montana Marijuana Regulation and Taxation Act (MCA 16-12-101 et seq. (the “Act”)). The provisions of this article shall apply to all marijuana business within the city, including both medical and recreational marijuana cultivation, manufacturing, transporting, testing and dispensaries, unless otherwise stated herein.
- B. Any individual or entity licensed under this article to conduct any marijuana business, in addition to the requirements of this article, is subject to all other requirements of this code, the Act, and any applicable administrative rules established by the state or city. Should such rules or laws change, any person or entity licensed under this article shall immediately come into compliance with any newly adopted rules.
- C. Notwithstanding the above, nothing in this code shall be construed to authorize any individual or entity to perform any act or conduct any enterprise not in conformance with state law.
- D. Compliance with this code does not shield any person, corporation, or other legal entity from the requirements of, or enforcement by, other governing entities, or from civil liabilities.
- E. Each individual or entity issued a license under this article shall at all times maintain authorization from the state to acquire, possess, cultivate, manufacture, deliver, transfer, test, transport, dispense or sell marijuana. Failure to maintain applicable licensure(s) with the state is cause for immediate suspension of a license issued under this article, may be cause for revocation resulting in a moratorium on an individual or entity’s ability to engage in marijuana business, and may be cause for criminal prosecution as provided by law.

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Sec. 16.08.160. - Incorporation of state law

For the purposes of this article, words, phrases and expressions, not otherwise defined below, are subject to the definitions set forth in 16-12-102, MCA. The provisions of state code and any rules or regulations promulgated thereunder are incorporated herein by reference except to the extent that more restrictive or additional regulations are set forth in this article.

Sec. 16.08.170. – Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section.

- A. “Adult-use dispensary” means a premises licensed by the state from which marijuana or marijuana products may be sold and obtained by registered cardholders, persons 21 years of age or older, or both.
- B. “Cultivator” means a person licensed by the state to plant, cultivate, grow, harvest, and dry marijuana; or a person licensed by the state to package and relabel marijuana produced at the location in a natural or naturally dried form that has not been converted, concentrated, or compounded for sale through a licensed dispensary.
- C. “Dispensary” means both an adult-use dispensary and/or a medical marijuana dispensary.
- D. “Licensee” means a person holding a state license issued pursuant to state law and a city marijuana license.
- E. “Manufacturer” means a person licensed by the state to convert or compound marijuana into marijuana products, marijuana concentrates, or marijuana extracts and package, repack, label, or relabel marijuana products as allowed under state law and this article.
- F. “Marijuana” means all plant material from the genus *Cannabis* containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination. This term does not include hemp and its derivatives as specified in §16-12-102(20)(b) or (c), MCA.
- G. “Marijuana business” means a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, combined-use marijuana licensee, testing laboratory, marijuana transporter, or any other marijuana business or function that is licensed by the state and city.

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H. “Marijuana product” means a product that contains marijuana and is intended for use by a consumer by a means other than smoking. The term includes but is not limited to edible products, ointments, tinctures, marijuana derivatives, and marijuana concentrates.

I. “Medical marijuana” means marijuana or marijuana products that are for sale solely to a cardholder who is registered with the state.

J. “Medical marijuana dispensary” means the location from which a registered cardholder may obtain marijuana or marijuana products.

K. “Registered cardholder” or “cardholder” means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card issued by the state.

L. “Testing laboratory” means the qualified person licensed by the state that provides testing of representative samples of marijuana and marijuana products; and provides information regarding the chemical composition and potency of a sample, as well as the presence of molds, pesticides, or other contaminants in a sample.

Division 2. Licensing and Sales

Sec. 16.08.180. – License, Fees, Regulations and Procedures

A. Marijuana License required. Any individual or entity desiring to operate a marijuana business within the city must first obtain, and at all times while operating have, a marijuana license issued by the city. No separate business license is required by the city; all requirements are contained in this article. Applications should be submitted for approval to the Director of Community Development.

A person or entity desiring to engage in a marijuana business within the city must, along with an application for a city marijuana license, submit a copy of their state license(s) for the marijuana business. If an applicant does not yet have a state license, conditional approval that the proposed marijuana business meets the requirements of chapter 38 of this code may be issued by the city. A marijuana business may not begin growing, manufacturing, testing, transporting, dispensing or otherwise selling marijuana or marijuana products without a state license and final marijuana license approved by the city.

B. Types of marijuana businesses permitted in the city. Marijuana licenses are available for the following types of marijuana businesses permitted by the state within the city: canopy, manufacturing, transporting, dispensary, and testing. All marijuana businesses are subject to state

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law, the provisions set forth below, and applicable zoning provisions in chapter 38 of this code, including but not limited to, the provisions set forth in 38.360.180.

1. **Marijuana Canopy License:** Any cultivator licensed by the state must have a city issued canopy license. Only indoor cultivation is permitted within the city. Marijuana plants may not be visible by normal, unaided vision from a public place. All marijuana plants must be housed in a secured and locked space.
2. **Marijuana Manufacturing License:** Any manufacturer licensed by the state must have a city marijuana manufacturing license.
3. **Marijuana Dispensary License:** A marijuana dispensary license is required for all dispensaries. No on premise consumption or smoking of marijuana or marijuana products is permitted at a dispensary located within the city.
4. **Marijuana Testing License:** Any testing laboratory licensed by the state and located within the city is required to obtain a city marijuana testing license. Testing laboratories located outside the city but obtaining samples and testing marijuana and marijuana products obtained within the city limits are not required to obtain a marijuana testing license.
5. **Transporting Marijuana License:** Any individual or entity licensed by the state that as a business, provides any logistics, distribution, delivery, or storage of marijuana and marijuana products with the city limits must obtain a city marijuana transporters license. No marijuana or marijuana products may be stored at the transporters residence where commercial activity is prohibited by applicable zoning and or prohibited by home based business requirements. A marijuana transporter who obtains a licensed premises in which to temporarily store marijuana or marijuana products must disclose so on the application to the city, and ensure the location meets all state and location regulations. No separate license is needed for the storage premises. Delivery of marijuana and marijuana products is permitted between one or more legally licensed marijuana businesses or to registered medical marijuana cardholders.

C. *Fee.* Marijuana license fees and allocation of fees shall be established by resolution of the city commission.

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Sec. 16.08.190 – Administrative procedures; Application requirements.

The Director of Community Development may adopt and from time to time amend, administrative procedures to implement this article. Administrative procedures may include, but are not limited to, determining necessary information required for applications, determining an orderly transition for medical marijuana businesses currently licensed by the city prior to the [effective date of ordinance], and any application revisions or administrative procedures necessary in order effectuate the provisions of this article.

Sec. 16.08.200. – Renewal, multiple establishments, multiple types of marijuana businesses, transfer.

A. *Annual Renewal.* Licenses issued under this article must be renewed annually.

B. *Separate license for multiple establishments.* A license must be obtained in the manner prescribed herein for each branch establishment or location of a marijuana business, as if each such branch establishment or location were a separate business.

C. *Single license required for multiple marijuana business activities occurring at same location with same owner.* A separate city marijuana license is not required for each type of marijuana business occurring at the same location, so long as the operations belong to and are controlled by the same legal entity for each marijuana businesses. Applicants seeking a city marijuana license who engage in two or more marijuana businesses at the same location must disclose the various marijuana businesses that will occur at the location, and must provide proof of applicable state licensures for each marijuana business and ensure compliance with chapter 38 of this code prior to conducting any marijuana business within the city.

D. *Change of location.* A licensed marijuana business may change the location of the licensed business provided that the licensee shall comply with zoning, building, engineering, and fire regulations. A change in location requires a new marijuana license application and fee be submitted for approval.

E. *No transfer of license.* City marijuana licenses may not be transferred. Any change in ownership requires a new city license be obtained in the manner prescribed herein.

F. *No license required.* No marijuana license is required for individuals or businesses engaged in professional activities related to marijuana businesses whose work occurs in premises where marijuana or marijuana products are not physically present or handled, including but not limit a duly licensed medical doctor who reviews a person's medical condition for purposes of recommending medical marijuana and who does not provide marijuana to a registered cardholder. No marijuana license is required for those who pass through or enter into the city

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within the scope and course of their employment related to marijuana business but who do not conduct their operations or business in the city.

Sec. 16.08.210. – Denial, Suspension, or Revocation of marijuana business licensure

A. The city may deny, suspend, or revoke a license for a marijuana business if the city has reasonable cause to believe the licensee has, or the issuance of the city license to the licensee would, violate a provision of this code or state law. The City Manager may suspend or revoke any marijuana license if it learns a licensee's state license(s) have been suspended or revoked. A licensee's city marijuana license shall remain suspended until a final adjudication on the state license, including any penalty imposed by the state has been satisfied and the state license is reinstated. While a license is suspended or revoked, a marijuana business is prohibited from engaging in marijuana business within the city. A marijuana business operating without a license may result in criminal prosecution under Title 45, MCA.

B. An applicant may appeal any decision of the city to deny, suspend, or revoke a marijuana license provided for by this chapter to the 18th Judicial District Court. An appeal must be made by filing a complaint setting forth the grounds for relief and the nature of relief demanded with the district court within 30 days following receipt of notice of the city's final decision.

Sec. 16.08.220. – Inspection.

As a condition of receiving a marijuana license under this article, a city employee, including but not limited to all police, fire, building inspectors, city engineers, zoning officials, and other employees or officials designated by the city manager, may without notice during normal business hours inspect any premises under license pursuant to this article to determine compliance with the Act and any other state or local regulations. All persons authorized herein to inspect licensees and businesses shall have the authority to enter, with or without search warrant, during normal business hours, premises which require a marijuana license, premises holding a marijuana license, and premises for which the marijuana license has been suspended or revoked.

Sec. 16.08.230. State law superseded and applicable.

The provisions of this article shall supersede the Act in so far as this division expands the limitations on the use of marijuana authorized under by the Act. All other provisions of state law related to marijuana shall be applicable.

Sec. 16.08.240. No private right of action.

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Nothing in this article shall be construed to create a private right of action regarding the acquisition, possession, cultivation, manufacture, delivery, transfer, transport, sale or dispensing of marijuana.

Section 2

That Chapter 12 of the Bozeman Municipal Code shall be amended as follows and any sections not amended herein shall remain in effect:

Sec. 12.01.010. – Definitions.

A. The following words, terms and phrases, when used in this chapter and other related regulations in this Code, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

7. ~~"Marijuana" and "usable marijuana" have the meanings as defined in the Montana Marijuana Act (MCA 50-46-301 et seq.).~~

8. ~~"Marijuana" means the uses of marijuana as authorized pursuant to and defined in the Montana Marijuana Act (MCA 50-46-301 et seq.).~~

Sec. 12.02.040. Exemptions.

~~F. The exemptions listed in subsections A, B, C, D and E of this section do not apply to a transaction, use, or business involving marijuana.~~

Section 3

That Chapter 34 of the Bozeman Municipal Code shall be amended as follows and any sections not amended herein shall remain in effect:

Section 34.07.040. Advertising standard.

14. Advertisements that portray or depict any activities, products, or services related to marijuana ~~as authorized pursuant to and defined in the Montana Marijuana Act (MCA 50-46-301 et seq.).~~

Section 4

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That Chapter 38 of the Bozeman Municipal Code shall be amended as follows and any sections not amended herein shall remain in effect:

Section 38.360.180 ~~Medical-marijuana~~ Marijuana.

- A. Any activity involving a marijuana business ~~a medical-marijuana~~ as defined in chapter 16 of this code must meet all requirements of state law including, but not limited to, the standards of title 16, chapter 12, title 50, chapter 46 Montana Code Annotated (MCA 16-12-101 et seq.), ~~and limits on possession, clean air, etc.,~~ and any applicable administrative rules established by the state. Should such rules or laws change, any ~~medical~~ marijuana business facility must immediately begin any required process to come into compliance with the new rules. This includes submittal for review of applications to the city as they may relate to zoning, ~~business~~ licensing, or other municipal requirements programs. Compliance with city zoning regulations does not shield any person, corporation, or other legal entity from the requirements of, or enforcement by, other governing entities, or from civil liabilities.
1. Unless specifically exempted, any person or existing or proposed entity intending to conduct activities which meet the definitions of "agriculture," "manufacturing," "office" or "retail" as established in division 38.700 of this chapter which is for the purpose of cultivation growing, manufacturing, processing, transporting, testing, distribution, sale ~~and/or any other activity related to medical marijuana business~~ must, in addition to this section, comply with all other provisions of this ~~c~~Code, and must not be located within 400 500 linear feet of the exterior property line of and on the same street as:
 - a. All schools or facilities, where students are regularly present, owned or operated by Bozeman School District 7 whether located inside or outside the city limits; or
 - b. All private schools, not including home schools, where students are regularly present, whether located inside or outside the city limits, which provide instruction in the class range from kindergarten to 12th grade and which are either subject to MCA 20-5-109, or listed as a kindergarten provider by the county superintendent of schools.
 - c. Any postsecondary school defined by 20-5-402, MCA, where students are regularly present.
 - d. A building used exclusively as a church, synagogue, or other place of worship as defined for the purposes of this section by the state.

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- e. For purposes of this section, ~~specified~~ distances will be measured pursuant to state law and rules promulgated by the state. ~~in a straight line, without regard to intervening structures from the property line of a school as stated in subsections 1.a and b of this section, regardless of whether those schools are located within the jurisdictional limits of the city, to the property line of the business providing medical marijuana.~~
2. All medical marijuana businesses within the city limits that were duly licensed and authorized to conduct medical marijuana business by the city on or before [effective date of ordinance] are exempt from the above requirements in 38.360.180 A(1)(a-e) and may continue to operate, including conducting businesses related to non-medical marijuana, in the established location at the size and capacity originally licensed. Any marijuana business that is duly licensed by the state and city to operate in a location and is operational prior to a school, postsecondary school, church, synagogue, or other place of worship establishing a location that would have precluded the marijuana business from being licensed based on the restrictions in a-e, may continue to operate in the established location at the size and capacity originally licensed.
- 3 2. Any activities meeting the definitions of "agriculture," "manufacturing," "office" or "retail" as established in article 7 of this chapter which is for the purpose of cultivating, growing, processing, manufacturing, testing, transporting, distribution, and/or any other activity related to medical marijuana business where marijuana or marijuana product is physically present may not be located in the R-4 and R-5 districts, or on properties adjacent to Main Street within the core area of the B-3 district as defined in ~~section~~ 38.300.110.D.
- 4 3. The requirements of subsections 1 and 2 of this section do not apply to personal use or personal growing of marijuana plants permitted by state law.
- a. ~~An individual registered qualifying patient who possesses marijuana in accordance with the limits and requirements of title 50, chapter 46, Montana Code Annotated (MCA 50-46-101 et seq.) solely for that qualifying patient's own use; or~~
- b. ~~To a caregiver providing care to not more than two qualifying patients who reside within the same dwelling as the caregiver. The caregiver and qualifying patients must maintain appropriate state agency qualification at all times when medical marijuana is present.~~
- 5 4. Establishing a ~~medical marijuana facility~~ business may result in a change in the designation of building code occupancy type. A change in use or occupancy type may

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require physical modifications to the structure, which must be approved by the building division prior to any construction as required by ~~section~~ 38.200.100.

~~6~~ 5. Air discharge control. Any ~~medical~~ marijuana cultivation, growing, manufacturing or processing operation ~~that contains 24 or more marijuana plants at any one time~~ must provide a forced air vent discharge point that is:

- ~~a~~ Located no closer than 30 feet from an adjacent property line or a residence; or
- ~~b~~ pProvides a mechanical filtration system to control discharges of particulates and odors. The ventilation filtration system must be designed by a mechanical engineer licensed to practice in the state such that odors and particulates may not be detected by unaided human observation at the property boundary, and noise produced by the system must be controlled and minimized.

~~7~~ 6. Any person applying for ~~making application for~~ a zoning approval for a ~~medical~~ marijuana business must provide evidence of DPHHS state licensure approval ~~approval as a caregiver at the time of application~~ and must maintain such DPHHS state licensure approval at all times. Failure to maintain approval ~~any and all state licensing requirements may~~ immediately suspends zoning approval to operate a ~~medical~~ marijuana business in the city.

~~8~~ 7. These regulations are for review of applications to the city and do not restrict property owners from establishing more stringent standards for their properties.

Section 5

Repealer.

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of the City of Bozeman not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 6

Savings Provision.

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this ordinance shall remain in full force and effect.

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Section 7

Severability.

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

Section 8

Codification Instruction.

The provisions of Section 1 shall be codified as appropriate in Chapter 16 of the Bozeman Municipal Code. The provisions of Section 2 shall be codified as appropriate in Chapter 12 of the Bozeman Municipal Code. The provisions of Section 3 shall be codified as appropriate in Chapter 34 of the Bozeman Municipal Code. The provisions of Section 4 shall be codified as appropriate in Chapter 38 of the Bozeman Municipal Code.

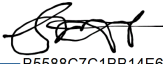
Section 9

Effective Date.


This ordinance shall be in full force and effect thirty (30) days after final adoption.


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PROVISIONALLY ADOPTED by the City Commission of the City of Bozeman, Montana, on first reading at a regular session held on the 19th day of October, 2021.

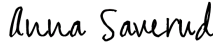
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CYNTHIA L. ANDRUS
Mayor

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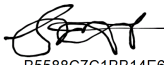
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City Clerk


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City Attorney

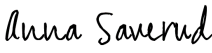
FINALLY PASSED, ADOPTED, AND APPROVED by the City Commission of the City of Bozeman, Montana, on second reading at a regular session therefor held on the 9th day of November, 2021.

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CYNTHIA L. ANDRUS
Mayor

ATTEST:
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MIKE MAAS
City Clerk

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APPROVED AS TO FORM:

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GREG SULLIVAN
City Attorney