

I. **GENERAL INFORMATION ON RECENT MARIJUANA LAWS PROVIDED BY THE MONTANA DEPARTMENT OF REVENUE**

**Is adult-use marijuana possession and use legal in Montana?**

**Per Department of Revenue:** As of January 1, 2021, adults 21 and over may possess and use up to one ounce of marijuana with no criminal penalties.

However, marijuana consumption and possession (including medical marijuana) remains prohibited in public and certain other locations. It is also prohibited under federal law on all federal lands and waters.

Marijuana (except medical marijuana) is prohibited in hospitals and other health care facilities.

Operating a motor vehicle under the influence of marijuana remains illegal.

**Is it legal now to buy or sell marijuana in Montana?**

**Per Department of Revenue:** No, except that providers licensed under the Montana Medical Marijuana Program may sell marijuana and marijuana products to registered cardholders in the program. An individual cardholder may possess up to 1 ounce of marijuana (or the equivalent in concentrates or edibles), and may purchase up to 5 ounces per month, but may not distribute it to other people.

When will adult-use sales begin in Montana?

Certain medical marijuana licensees will be allowed to also sell adult-use marijuana starting on January 1, 2022.

**Will adult-use marijuana be available for sale in all Montana counties on January 1, 2022?**

**Per Department of Revenue:** No. In counties where the majority of voters supported Initiative 190 in November 2020, adult-use sales may occur starting in January 2022. In counties where the majority of voters opposed Initiative 190, adult-use marijuana sales remain will be prohibited.

**Could a county change its position on marijuana businesses operating in its locality?**

**Per Department of Revenue:** Yes. In a county where the majority of voters opposed Initiative 190, adult-use sales will be allowed if that county holds an election and a majority of the voters choose to allow marijuana businesses to operate in that jurisdiction

In a county where the majority of voters supported Initiative 190, certain marijuana businesses could be prohibited if that county holds a local election and a majority of the voters choose to prohibit that type of business from operating.

**What types of adult-use marijuana licenses will be available?**

**Per Department of Revenue:** In addition to continuing the Montana Medical Marijuana Program, the Department of Revenue will issue separate licenses for marijuana cultivators, manufacturers, dispensaries, transporters, and testing laboratories.

The Department will offer 13 different cultivation or “canopy” licenses for cultivation facilities of different sizes.

A worker permit will also be required for any employee participating in any part of a marijuana business.

**Can anyone apply for a license to grow or sell recreational marijuana, or manufacture recreational marijuana products?**

**Per Department of Revenue:** No. From January 1, 2022, until July 1, 2023, only Montana medical marijuana licensees who were licensed on November 3, 2020 (or had an application pending with DPHHS on that date) may be issued a license for cultivation, manufacture, or sale of adult-use marijuana.

**Is it legal for individuals in Montana to grow their own marijuana?**

**Per Department of Revenue:** Adults may cultivate up to two mature marijuana plants and two seedlings for private use in a private residence, subject to certain restrictions. (Medical marijuana cardholders may cultivate up to four mature plants and four seedlings). The plants may not be visible to the public.

**What will the tax be on recreational marijuana?**

Recreational marijuana will be taxed at 20% of retail sales. Local jurisdictions may add an additional tax of up to 3% only by election at the county level.

Medical marijuana will continue to be taxed at 4% of retail sales. The statute appears to permit the optional, local 3% excise tax on medical marijuana as well.

**Will medical marijuana and recreational marijuana be available at the same business?**

**Per Department of Revenue:** Yes. A licensed recreational marijuana provider and licensed medical marijuana dispensary may operate in a shared location. A single entity may also be licensed for both medical and recreational marijuana.

**Will marijuana licensees be permitted to sell their licenses the way alcohol licensees may sell their licenses to buyers approved by the Department?**

**Per Department of Revenue:** No. The marijuana licenses may not be transferred.

## II. ELECTORATE REPEAL OPTION v. REGULATION

### The voters of Billings and Yellowstone County approved the 190-initiative permitting adult use marijuana. What options are available to council to control marijuana?

The 190-initiative passed in Yellowstone County by a relatively slender margin (1,142) but passed within the Billings city limits by a much wider margin (over 4,000 votes).

The City of Billings may hold an additional election to permit city electors to decide whether to prohibit any or all of the following categories of marijuana businesses that are authorized either by the 190-initiative or by state legislation such as HB 701 or the Montana Medical Marijuana Act:

- a. Cultivator
- b. Manufacturer
- c. **Medical marijuana dispensary**
- d. Adult-use dispensary
- e. Combined-use marijuana license
- f. Testing laboratory
- g. Marijuana transporter facility

If the qualified electors of the city vote to prohibit any of the above categories, the city “**may not** allow that type of marijuana business to operate in the municipality.” MCA §16-12-301(c)(ii) (emphasis added). Staff recommends against conducting such an election, based upon the comfortable margin by which the City of Billings voters passed the 190-initiative.

#### **1. But if the Billings voters once again vote to approve any or all of the above categories, must the City authorize those businesses?**

If the voters approve marijuana adult-use dispensaries, adult-use marijuana-infused products providers, and adult-use dispensaries, those businesses must be authorized.

The legislature left the following I-190 language intact:

MCA §7-1-111(21) “A local government unit with self-government powers is prohibited from exercising the following: . . . any power to prohibit completely adult-use providers, adult-use marijuana-infused products providers, and adult-use dispensaries from being located within the jurisdiction of the local government except as allowed in Title 16, chapter 12;”

Although the council may be able to ban some marijuana businesses, the foregoing provision appears to definitively disclose an outright ban on adult-use marijuana products and dispensaries, absent a vote from the electors.

It does appear that the legislature left open the possibility that the council could ban some marijuana businesses, notwithstanding the outcome of the vote:

“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.” MCA §16-12-301( c)(i) (emphasis added).

In addition, the legislature expressly repealed the following provision from the 190-initiative:

“A local government may not adopt ordinances or regulations that are unduly burdensome.” MCA 16-12-301(2)(b).

But the legislature expressly repealed parts of MCA 50-46-328, specifically MCA 50-46-328(2) which states “A local government may adopt an ordinance or resolution prohibiting providers and marijuana-infused products providers from operating dispensaries or as storefront businesses.”

The legislature repealed, replaced and recodified MCA 50-46-328(1) which previously read:

To protect the public health, safety, or welfare, a local government may by ordinance or resolution regulate a provider or marijuana infused products provider that operates within the local government’s jurisdictional area. The regulations may include but are not limited to inspections of registered premises and testing laboratories in order to ensure compliance with any public health, safety and welfare requirements established by local government.

The comparable provision is now contained in MCA 16-12-301(2)(a) which states:

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. These 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 to ensure compliance with any public health, safety, and welfare requirements established by the department [of revenue] or the local government.

**2. Does the city have until the January 1, 2022 effective date to have the voters possibly reject adult-use dispensaries or other marijuana business categories?**

If voters reject a marijuana business category that was previously approved by the 190-initiative or otherwise, that vote is effective on the 90<sup>th</sup> day after the local election is held. MCA §16-12-301(7)(b). Depending on the date that the election was conducted, even if the

voters did reject adult-use dispensaries through an election, there may be a period of time when adult-use sales are authorized within the city.

### III. Zoning and Licensing Options

Staff recommends that the city council regulate medical marijuana businesses, through licensing and zoning ordinances.

#### Licensing

The current legislative scheme includes a state licensing process for each of the marijuana business categories. The City of Billings may implement its own licensing scheme which would permit additional oversight of the businesses to protect the public health, safety, or welfare of the community. MCA §16-12-301(2)(a). Nothing in the Montana Code Annotated prohibits the City from limiting the number of licenses issued within the City limits.

#### Zoning

The City of Billings may also impose stricter zoning than set forth in the Montana Code Annotated which provides:

#### **MCA Section 16-12-207(3)(a)**

The department [of revenue] shall deny a cultivator license, manufacturer license, adult-use dispensary license, or medical marijuana license, if the applicant's proposed licensed premises:

- (i) Is situated within a zone of a locality where an activity related to the use of marijuana conflicts with an ordinance, a certified copy of which has been filed with the department;
- (ii) Is not approved by local building, health, or fire officials as provided for in this chapter; or

(iii)(A) except as provided in subsection (3)(a)(iii)(B), is within 500 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school or postsecondary school other than a commercially operated school, unless the locality requires a greater distance. This distance must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises.

(iii)(B) Subsection (3)(a)(iii)(A) does not apply if the application is for license renewal and the licensed premises was established before the church, synagogue, or other place of worship or school or postsecondary school existed on the same street.

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By contrast, the City could adopt language similar to that in Yellowstone County's Resolution No. 11-71 which prohibits medical marijuana businesses within 1000 feet of schools, daycare centers, childcare centers, school leased property, public recreation centers or public parks, as well as churches, synagogues or other places of worship or youth centers.

## **Special Considerations**

### A. Different zoning requirements for marijuana business categories

Nothing in the current law prohibits different zoning requirements for solely medical marijuana dispensaries and adult-use dispensaries. Considering the potential secondary community effects of adult-use dispensaries, council may wish to impose stricter requirements on adult-use dispensaries. This would allow those utilizing medical marijuana have greater access to those dispensaries selling only medical marijuana. However, medical marijuana dispensaries may already deliver to registered cardholders under provisions included in HB 701 upon compliance with state regulatory provisions.

Marijuana cultivators and manufacturers raise different zoning concerns related to building and fire inspection as those businesses are more commercial in practice. The council may wish to consider more industrial zoning provisions.

### B. Capping the number of licenses for various marijuana businesses.

Council may cap the number of licenses issued. However, given the restrictions above, an unduly small number of licenses would likely result in litigation.

### C. Congregating marijuana businesses

Council may wish to zone marijuana businesses within a certain section of the City. Given that registered card holders are able to receive marijuana by delivery or through a designated agent, medical use may not be overly burdened by taking this approach. Another option would be to permit medical marijuana-only dispensaries to operate across a broader section of the City than those dispensaries selling adult-use marijuana.

### D. State regulatory structure

The state adopted comprehensive legislation that appears to adequately address the following areas of the 6 marijuana business categories:

1. Transportation of marijuana products throughout the state
2. Background reviews for issuances of state licenses
3. Requirement that onsite, day-to-day manager is Montana resident
4. Extensive statutory scheme governing the regulation of marijuana cultivation
5. Operating hours for dispensaries
6. Inspection of books and facilities of marijuana businesses
7. Requirement for video surveillance and limited entrances to dispensaries to deter theft.
8. Packaging (prohibitions on packaging attractive to children, child resistant packaging)

Although the state statutes contain some zoning requirements, those requirements are relatively loose, and do not protect areas such as parks, child care facilities and day

cares. Staff seeks direction of city council regarding zoning of the respective license categories.

**IV. FINANCIAL CONSIDERATIONS**

**What revenue benefits are available to the City from the new marijuana laws?**

HB 701 provided for a local-option marijuana excise tax not to exceed 3% on the retail value of all marijuana and marijuana products sold at an adult-use dispensary or a medical marijuana dispensary within a county. Imposition of any local excise tax requires an election at the county level.

Forty-five percent (45%) of the local excise tax is allocated to the municipalities within the taxing county, based on population proportion of the municipalities.

Based upon state sales projections, the following revenue estimates were calculated under various scenarios for the sale of both adult-use and medical marijuana and marijuana products:

		Percent of State Sales in YelCo	Excise Tax Percentage		
		15%	3%		
Fiscal Year	Total State Sales	Gross Sales in YelCo	Total Tax Revenue	45% To Municipalities	68% to Billings
2022	17,581,000	2,637,150	79,115	35,602	\$ 24,209
2023	90,039,000	13,505,850	405,176	182,329	\$ 123,984
2024	143,204,000	21,480,600	644,418	289,988	\$ 197,192
2025	192,616,000	28,892,400	866,772	390,047	\$ 265,232

		Percent of State Sales in YelCo	Excise Tax Percentage		
		20%	3%		
Fiscal Year	Total State Sales	Gross Sales in YelCo	Total Tax Revenue	45% To Municipalities	68% to Billings
2022	17,581,000	3,516,200	105,486	47,469	\$ 32,279
2023	90,039,000	18,007,800	540,234	243,105	\$ 165,312
2024	143,204,000	28,640,800	859,224	386,651	\$ 262,923
2025	192,616,000	38,523,200	1,155,696	520,063	\$ 353,643

		Percent of State Sales in YelCo	Excise Tax Percentage		
		15%	2%		
Fiscal Year	Total State Sales	Gross Sales in YelCo	Total Tax Revenue	45% To Municipalities	68% to Billings
2022	17,581,000	2,637,150	52,743	23,734	\$ 16,139
2023	90,039,000	13,505,850	270,117	121,553	\$ 82,656
2024	143,204,000	21,480,600	429,612	193,325	\$ 131,461
2025	192,616,000	28,892,400	577,848	260,032	\$ 176,821

**What expenses are projected as a result of the new marijuana laws?**

The additional costs that are anticipated, but not yet quantified, include:

Costs related to the initial issuance of licenses, and initial building and fire inspections.\*

Municipal court and city attorney costs related to time incurred in expungement and resentencing requests.

Billings Police Department, City Attorney, and Municipal Court expenses related to anticipated prosecutions related to impaired driving under the influence. For 24/7 coverage of DRE officers, 6 officers would need DRE training.

Increased code compliance costs for issues such as signage, building, and fire inspections.

**Billings currently has an ordinance prohibiting storefront medical marijuana dispensaries. Is that ordinance still valid?**

No. Effective January 1, 2022, the statutory authority under which the ordinance was passed has been repealed. A number of Billings medical marijuana dispensaries are listed with DPHHS, but do not operate as storefronts at this time. These businesses will have priority in obtaining adult-use licenses.

