

ARTICLE 8. MARIJUANA¹

DIVISION 1. GENERALLY²

Sec. 16.08.010. 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.

(Ord. No. 2084 , § 1, 11-9-2021)

Sec. 16.08.020. 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 MCA 16-12-102. The provisions of state code and any rules or regulations promulgated

¹Editor's note(s)—Ord. No. 2084 , §§ 1, 2, adopted Nov. 9, 2021, repealed the former Art. 8, §§ 16.08.150—16.08.180 and 16.08.300—16.08.350, and enacted a new Art. 8 as set out herein. The former Art. 8 pertained to medical marijuana and derived from Ord. No. 1786, §§ 4(5.06.010—5.06.5.06.040), 5(8.52.010—8.52.060), adopted July 26, 2010; Ord. No. 1811, § 1, adopted July 11, 2011; Ord. No. 1834, § 1, adopted July 23, 2012; and Ord. No. 1869 , §§ 1, 2, adopted July 22, 2013.

State law reference(s)—Montana Medical Marijuana Act, MCA 50-46-301 et seq.

²Editor's note(s)—Ord. No. 2084 , § 1, adopted Nov. 9, 2021, amended the Code by the addition of Div. 1, §§ 16.08.150—16.08.170; however, said provisions have been redesignated as § 16.08.010—16.08.030, at the editor's discretion, for purposes of maintaining Code format and allowing future expansion of the Code.

thereunder are incorporated herein by reference except to the extent that more restrictive or additional regulations are set forth in this article.

(Ord. No. 2084 , § 1, 11-9-2021)

Sec. 16.08.030. 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 though 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, repackage, 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 MCA 16-12-102(20)(b) or (c).
- 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.
- 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.

(Ord. No. 2084 , § 1, 11-9-2021)

Secs. 16.08.040—16.08.140. Reserved.

DIVISION 2. LICENSING AND SALES³

Sec. 16.08.150. 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 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 section 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 premises 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

³Editor's note(s)—Ord. No. 2084 , § 1, adopted Nov. 9, 2021, amended the Code by the addition of Div. 2, §§ 16.08.180—16.08.240; however, said provisions have been redesignated as § 16.08.150—16.08.210, at the editor's discretion, for purposes of maintaining Code format and allowing future expansion of the Code.

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.
(Ord. No. 2084 , § 1, 11-9-2021)

Sec. 16.08.160. 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 the ordinance from which this section derives], and any application revisions or administrative procedures necessary in order effectuate the provisions of this article.

(Ord. No. 2084 , § 1, 11-9-2021)

Sec. 16.08.170. 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 within the scope and course of their employment related to marijuana business but who do not conduct their operations or business in the city.

(Ord. No. 2084 , § 1, 11-9-2021)

Sec. 16.08.180. 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 MCA Title 45.
- 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.

(Ord. No. 2084 , § 1, 11-9-2021)

Sec. 16.08.190. 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.

(Ord. No. 2084 , § 1, 11-9-2021)

Sec. 16.08.200. 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.

(Ord. No. 2084 , § 1, 11-9-2021)

Sec. 16.08.210. No private right of action.

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.

(Ord. No. 2084 , § 1, 11-9-2021)

Montana Code Annotated 2021

TITLE 16. ALCOHOL, TOBACCO, AND MARIJUANA

CHAPTER 12. MARIJUANA REGULATION AND TAXATION

Part 2. Licensing and Regulation

Licensing Of Cultivators, Manufacturers, And Dispensaries

16-12-201. Licensing of cultivators, manufacturers, and dispensaries. (1) (a) Between January 1, 2022, and June 30, 2023, the department may only accept applications from and issue licenses to former medical marijuana licensees that were licensed by or had an application pending with the department of public health and human services on November 3, 2020, and are in good standing with the department and in compliance with this chapter, rules adopted by the department, and any applicable local regulations or ordinances as of January 1, 2022.

(b) The department shall begin accepting applications for and issuing licenses to cultivate, manufacture, or sell marijuana or marijuana products to applicants who are not former medical marijuana licensees under subsection (1)(a) on or after July 1, 2023.

(2) (a) The department shall adopt rules to govern the operation of former medical marijuana licensees and facilitate the process of transitioning former medical marijuana licensees to the appropriate license under this chapter with a minimum of disruption to business operations.

(b) Beginning January 1, 2022, a former medical marijuana licensee may sell marijuana and marijuana products to registered cardholders at the medical tax rate set forth in **15-64-102** and to consumers at the adult-use marijuana tax rate set forth in **15-64-102** under the licensee's existing license in a jurisdiction that allows for the operation of marijuana businesses pursuant to **16-12-301** until the former medical marijuana licensee's next license renewal date, by which time the former medical licensee must have applied for and obtained the appropriate licensure under this chapter to continue operations, unless an extension of time is granted by the department.

(c) (i) Except as provided in subsection (2)(c)(ii), for the purpose of this subsection (2), "appropriate licensure" means a cultivator license, medical marijuana dispensary license, adult-use dispensary license, and, if applicable, a manufacturer license.

(ii) A former medical marijuana licensee who sells marijuana and marijuana products exclusively to registered cardholders is not required to obtain an adult-use dispensary license.

(3) The department may amend or issue licenses to provide for staggered expiration dates. The department may provide for initial license terms of greater than 12 months but no more than 23 months in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license term implementing staggered license terms may be prorated by the department.

History: En. Sec. 5, I.M. No. 190, approved Nov. 3, 2020; amd. Sec. 49, Ch. 576, L. 2021.

ORDINANCE 3689

A City of Missoula initiated ordinance generally amending Title 20, Missoula Municipal Code, the City Zoning Ordinance, to incorporate revisions in the following chapters: 20.10 Business and Commercial Districts, 20.15 Industrial and Manufacturing Districts, 20.40 Use- and Building-Specific Standards, 20.45 Accessory Uses and Structures, 20.100 Terminology, and 20.105 Use Classifications to incorporate regulations concerning legislative changes in the cannabis industry.

Be it ordained that Section 20.10.020 Table 20.10-1, Section 20.15.020 Table 20.15-1, Section 20.45.050E.11., Section 20.100.010, Section 20.105.040W, and Section 20.105.050D be amended as follows, and creation of Section 20.40.083.

20.10 – Business and Commercial Districts
20.10.020 – Allowed Uses

Table 20.10-1 Uses Allowed in Business and Commercial Districts

Use Category ^L specific use type	B1	B2	B3	C1	C2	CBD	Standards
COMMERCIAL							
...Table continues	P	P	P	P	P	P	20.40.170
Research Service	-	P	P	P	P	P	20.40.170
Retail Sales	P	P	P	P	P	P	20.40.170
<u>^LCannabis Dispensary</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>20.40.083</u>
Sports and Recreation, Participant (except as noted below)	-	-	-	P	P	P	
^L Casino	-	-	-	C	C	C	20.40.040 20.40.170
Table continues....							

20.15 – Industrial and Manufacturing Districts

20.15.020 – Allowed Uses

Table 20.15-1 Uses Allowed in Industrial Districts

Use Category ^L specific use type	M1R	M1	M2	Standards
COMMERCIAL				
...Table continues	P	P	P	20.40.170
Research Service	P	P	P	20.40.170
Retail Sales	P	P	P	20.40.170
<u>^LCannabis dispensary</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>20.40.083</u>
Sports and Recreation, Participant (except as noted below)	P	P	P	
^L Casino	C	C	C	20.40.040 20.40.170
Table continues....				

20.40 – Use- and Building-Specific Standards

20.40.083 – Cannabis

A. Applicability

These regulations apply to any cannabis use (medical or recreational), new or existing unless specifically exempted.

B. Dispensary

1. Location

Cannabis dispensaries shall be located a minimum distance of 500' from other cannabis dispensaries. Distances shall be measured from parcel line to parcel line and apply to ground floor dispensary businesses only.

2. Glazing

Glazed area requirements shall apply to that area of the ground floor building façade facing a public street, up to the finished ceiling height of the ground floor building façade. This section does not apply to parcels with a Design Excellence Overlay.

- a. Incorporate glazing including; windows, doors and other transparencies to encompass at least 30% of the ground floor building façade.
- b. Window and door glass meeting the following transparency standards counts as glazed area :
 - i. Visible light transmittance of 60% or more.
 - ii. External reflectance of 20% or less.
- c. Display windows that do not provide views into the interior of the building may be counted towards satisfying up to 50% of the minimum glazed area requirements, provided that they are internally illuminated and are at least two feet in depth.
- d. Security gates may obstruct a maximum of 25% of window area for any individual window counting toward glazed area.
- e. Darkly tinted, mirrored or highly reflective glazing or doors with less than 50% glass may not be counted toward minimum glazed area requirements.
- f. Interior walls and other interior visual obstructions are prohibited within six feet of any facade area counting toward glazed area. This distance is measured perpendicularly from the exterior face of the glazed area.
- g. In the event that an existing structure does not meet the 30% glazing requirements, any existing glazing must be maintained.
- h. In the event that these minimum glazed area requirements conflict with city building (energy) code requirements, the building (energy) code governs.

3. Exemptions

Ordinary maintenance and repair of existing structures shall be exempt from the requirements of this section. Ordinary maintenance does not include the replacement, modification, or addition of glazing.

20.45 – Accessory Uses and Structures

20.45.050 – Home Occupations

E. Standards

11. The following uses are expressly prohibited as home occupations :

- f. Restaurants;
- g. Funeral or interment services; ~~and~~
- h. Animal boarding businesses; ~~and~~
- i. Commercial cannabis cultivation or manufacturing.

20.100 – Terminology

20.100.010 – General Terms

Cannabis

A term used in this zoning code replacing the term “marijuana” used in state statutes and defined by the State of Montana (MCA §16-12-102). The term does not include hemp as defined in state law (MCA § 16-12-102).

Cannabis, Canopy

The total amount of square footage dedicated to live plant production at a registered premise consisting of the area of the floor, platform, or means of support or suspension of the plant.

Cannabis, Cultivation

The growing, harvesting, and curing of cannabis.

Cannabis, Dispensary

A retail facility where cannabis, and cannabis products are sold.

Cannabis, Manufacturing

The converting or compounding of cannabis into cannabis products, cannabis concentrates, or cannabis extracts.

Cannabis, Products

Products containing THC, derived from cannabis, for consumption. The term does not include hemp as defined in State law (MCA § 16-12-102).

Cannabis, recreational

A term used in this zoning code replacing the term “adult-use” used in state statutes and defined by the State of Montana (MCA §16-12-102).

Cannabis, Tier

The canopy square footage allotted by the State of Montana based on state guidelines found in MCA § 50-46-305.

20.105 – Use Classifications

20.105.040 – Commercial Use Group

W. Retail Sales

Businesses involved in the sale, lease or rent of new or used products, merchandise to consumers. Typical uses include drug stores, grocery stores, department stores, apparel stores, and cannabis dispensaries.

20.105.050 – Industrial Use Group

D. Manufacturing, Production and Industrial Services

1. Artisan

On-site production of goods by hand manufacturing, involving the use of hand tools and small-scale, light mechanical equipment in a completely enclosed building with no outdoor operations or storage, and occupying no more than 3,500 square feet of gross floor area. Typical uses include woodworking and cabinet shops, cannabis cultivation (With a canopy area up to Tier 1, MCA § 50-46-305), ceramic studios, jewelry manufacturing, food manufacturing, and similar types of arts and crafts or very small-scale manufacturing uses that have no negative external impacts on surrounding properties.

2. Limited

Manufacturing of finished parts or products, primarily from previously prepared materials. Typical uses include: catering establishments, printing and related support activities; machinery manufacturing; food manufacturing; computer and electronic product manufacturing/assembly; electrical equipment, appliance, component manufacturing/assembly; furniture and related product manufacturing/assembly; manufacturing of cannabis products that do not utilize flammable solvents and other manufacturing and production establishments that typically have very few, if any, negative external impacts on surrounding properties. Also includes cannabis cultivation (With a canopy area up to Tier 2, MCA § 50-46-305) and "artisan manufacturing/production" type uses that do not comply with the enclosed building, floor area and/or outside operations/storage criteria that apply to artisan manufacturing/production uses.

Commentary: Businesses with approved State Cannabis licenses will be allowed to split grow areas between multiple locations as long as the combined canopy area square footage of all locations does not exceed the maximum canopy area permitted in the applicable state licensing tier. Locally, the canopy square footage can be distributed on the ground to any number of parcels so long as the canopy area on a single parcel does not exceed the square footage maximum allowed by the zoning district, and does not exceed the State license requirements.

3. General

- a. Manufacturing of finished or unfinished products, primarily from extracted or raw materials, or recycled or secondary materials, or bulk storage and handling of such products and materials. Typical uses include: textile mills; textile product mills;

apparel manufacturing; leather and allied product manufacturing; wood product manufacturing; paper manufacturing; chemical manufacturing; plastics and rubber products manufacturing; nonmetallic mineral product manufacturing; transportation equipment manufacturing; primary metal manufacturing; and fabricated metal product manufacturing; and manufacturing of cannabis products. Also includes cannabis cultivation, medical, scientific or technology-related research establishments that produce odors, dust, noise, vibration or other external impacts that are detectable beyond the property lines of the subject property.

Effective date. The provisions of this ordinance shall be effective on January 1st, 2022 at 12:01 am.

Severability. If any selection, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

PASSED by a vote of:


AYES: (6): Alderperson Anderson, Alderperson Becerra, Alderperson Jones, Alderperson Merritt, Alderperson Sherrill, and Alderperson West

NAYS: (4): Alderperson Contos, Alderperson Harp, Alderperson Ramos, and Alderperson Vasecka

ABSENT: (2): Alderperson Hess, and Alderperson von Lossberg

APPROVED by the Mayor this 29th day of November, 2021.

ATTEST:



Martha L. Rehbein
City Clerk

APPROVED:



John Engen
Mayor

(SEAL)

