

## **ORDINANCE NO. 2021-02**

### **AN ORDINANCE AMENDING THE HARDIN CITY CODE ZONING ORDINANCE REGARDING MEDICAL MARIJUANA, ADULT-USE MARIJUANA, AND OTHER MARIJUANA BUSINESSES**

**WHEREAS**, the City Council ("Council") of the City of Hardin ("City") previously adopted Ordinance 2010-15, which amended the City Code of the City of Hardin allowing for Medical Marijuana Dispensaries within the city limits based upon the Medical Marijuana Act of 2004;

**WHEREAS**, the laws regulating Medical Marijuana have changed many times since 2004;

**WHEREAS**, on November 3, 2020, the voters of the State of Montana approved Constitutional Initiative 190, which legalized the possession and use of marijuana for recreational use by adults;

**WHEREAS**, the Montana Legislatures has approved HB 701, entitled "An Act Generally Revising Laws Related to the Regulation and Taxation of Marijuana," and creating the Montana Marijuana Regulation and Taxation Act which alters CI-190 and numerous other laws related to medical marijuana adult-use recreational marijuana, and related marijuana businesses.

**WHEREAS**, the Council desires to repeal the previous zoning ordinances related to medical marijuana in order to craft new zoning ordinances that will comply with HB 701, and to consider medical marijuana, adult-use marijuana, and other marijuana related business zoning issues prior to the effective date of HB 701.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF HARDIN, MONTANA**, Title 11, Chapter 1, Part 2, Section 5, and all the subsections are hereby amended. Portions underlined are to be inserted, and portions with strikethrough font are to be removed, as follows:

**11-1-2-5: MEDICAL AND ADULT-USE MARIJUANA DISPENSARIES, AND OTHER MARIJUANA BUSINESSES:**

**11-1-2-5-1: FINDINGS:**

The common council of the city of Hardin, Montana, adopts this section 11-1-2-5 based upon the following findings:

- A. The voters of the state of Montana approved initiative number 148, the Montana medical marijuana act in 2004;
- B. Chapter 46, title 50, Montana Code Annotated enables persons who are in need of marijuana for specified medical purposes to obtain and use it under limited, specified circumstances;
- C. As provided by chapter 2, title 76, and chapter 12, title 16 of the Montana Code Annotated, to protect the public health, safety, and welfare, it is the desire of the common council to modify the Hardin zoning ordinance to be consistent with chapter 46, title 50, Montana Code Annotated; and
- D. The state department of public health and human services has responsibility for certifying providers ~~caregivers~~ and qualifying patients for the use of marijuana.
- E. The voters of the state of Montana approved initiative number 190, the Montana Marijuana Regulation and Taxation Act in 2020, which legalized the recreational use of marijuana for adults 21 years of age, or older;

#### 11-1-2-5-2: PURPOSE AND INTENT:

It is the purpose and intent of this section 11-1-2-5 to regulate the dispensing of medical and adult-use marijuana, and other Marijuana Businesses, in order to promote the health, safety, morals, and general welfare of the residents and businesses within the city of Hardin. It is neither the intent nor effect of this section 11-1-2-5 to prevent the use of marijuana (cannabis) or condone or legitimize its use.

#### 11-1-2-5-3: DEFINITIONS:

~~CAREGIVER: An individual eighteen (18) years of age or older who has agreed to undertake responsibility for managing the well being of a person with respect to the medical use of marijuana.~~

CULTIVATOR: A person licensed to plant, cultivate, grow, harvest, and dry marijuana and to package and relabel marijuana produced at the location for sale at a licensed dispensary.

DISPENSARY: A licensed medical marijuana dispensary, or a licensed adult-use marijuana dispensary.

LICENSED: Means to have licensing from the Montana Department of Revenue (DOR) or the Montana Department of Public Health and Human Services

(DPHHS) for the intended marijuana activities including cultivation, transportation, manufacturing, testing, and dispensing.

MANUFACTURER: Means a person licensed to convert or compound marijuana into marijuana products, marijuana concentrates, or marijuana extracts and package, repack, label, or relabel marijuana products.

MARIJUANA: Means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination. The term does not include hemp, or hemp products.

MARIJUANA BUSINESS: Means a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, combined-use marijuana licensee, testing laboratory, marijuana transporter, or any other business or function that is licensed by the DOR or the DPHHS.

PROVIDER: Means a person licensed by the DPHHS to assist a registered cardholder as allowed under this part. The term does not include a cardholder's treating physician or referral physician.

PHYSICIAN: A person who is licensed under title 37, chapter 3, Montana Code Annotated.

QUALIFYING PATIENT: A person who has been diagnosed by a physician as having a debilitating medical condition.

REGISTERED CARDHOLDER: Means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

REGISTRY IDENTIFICATION CARD: A document issued by the state department of public health and human services that identifies a person as a qualifying patient or caregiver.

TESTING LABORATORY: Means a qualified person, licensed by the DOR or DPHHS 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.

#### 11-1-2-5-4: APPLICATION:

- A. An application form for persons seeking to open and operate a ~~medical marijuana dispensary~~ Marijuana Business, in or within one mile of the municipal limits of the city of Hardin must obtain the application form from the city clerk's office. The completed application form along with the

required review fee must be submitted to the city-county planning board on or before the first day of the month at which it will appear on the planning board agenda.

- B. The planning board shall advertise and conduct a public hearing concerning the application and shall notify in writing all property owners of record within three hundred feet (300') of the location of the proposed medical marijuana dispensary.
- C. The application shall include the following information. Incomplete applications shall be grounds for denial of the application or of delay of review.
  - 1. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the ~~medical marijuana dispensary~~ Marijuana Business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches ( $\pm 6''$ );
  - 2. An accurate straight line drawing prepared within thirty (30) days prior to application depicting the building and the portion thereof to be occupied by the Marijuana Business ~~medical-cannabis dispensary~~, and: a) the property line of any other Marijuana Business ~~medical-cannabis dispensary~~; and b) the property lines of any public or private school or public park; include a list of names and addresses of all property owners of record owning property within three hundred feet (300') of the proposed location; and a copy of the geocode map of all property owners of record owning property within three hundred feet (300') of the proposed location provided by the DOR Montana department of revenue property assessment Big Horn office or another similar government source;
  - 3. Location of where the marijuana (cannabis) is grown, which must be separate from the place it is dispensed. Growing areas are only allowed in ~~industrial and~~ agricultural zoning districts;
  - 4. Such other information as may be required by the planning board or city officials consistent with the purposes of this chapter and applicable law;
  - 5. Authorization for the city, its agents, or employees to seek verification of the information contained within the application;
  - 6. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information within the application is true;

7. Acceptance of the application does not in any way indicate final approval or granting thereof by the city.

#### 11-1-2-5-5: APPLICATION REVIEW AND CITY ACTION:

- A. The city-county planning board shall make a written recommendation to the common council along with its findings. Final disposition of the application rests with the common council.
- B. Grounds for denial of application:
  1. The applicant failed to provide the information required herein;
  2. The applicant provided false, inaccurate, or otherwise misleading information;
  3. The Marijuana Business ~~medical cannabis dispensary~~ does not comply with zoning ordinances, or local standards; or
  4. The required application or renewal fees have not been paid.
- C. Zoning districts allowing Marijuana Business ~~medical marijuana dispensaries~~:

A Agricultural

~~C Commercial~~

I Industrial

- D. In those land use districts where a Marijuana Business ~~medical marijuana dispensary business~~ regulated by this section 11-1-2-5 would otherwise be a permitted use, it shall be unlawful to establish any such ~~dispensary~~ business if the location is:

Within one thousand (1,000) straight line feet of any type of school or public playground or within three hundred feet (300') of any residentially zoned area.

The distance from a school, public playground, or residentially zoned area shall be measured from the nearest point on the property line of the property for the proposed dispensary to the nearest point on the property line of the school, public playground, or residentially zoned area.

- E. The number of dispensaries permitted shall not exceed two (2) within or within one mile of the Municipal limits.



F. A Marijuana Business ~~medical marijuana dispensary business~~ is not and may not be approved as an accessory use to any other use permitted by this title nor as a home occupation.

G. Cultivation is only allowed in land use districts zoned Agricultural, except for personal cultivation for personal use, as allowed by Montana Law.

**11-1-2-5-6: OTHER REGULATIONS**

A. The application must acknowledge and grant authority for local law enforcement to inspect the premises of the Marijuana Business at any time to ensure compliance with any public health, safety, and welfare requirements established by the DOR, DPHHS, or the regulations of the local government.

B. A Dispensary, whether licensed solely as a medical or adult-use Dispensary, or as a combined use marijuana licensee, may not operate between the hours of 6 p.m., and 8 a.m.

**DATE OF EFFECT.**

The amendment to this ordinance shall take effect and be in force thirty (30) days from the date of its second reading and passage by the City Council as required by law.

**FIRST READING AND PASSAGE** By a majority vote of the members present this 7<sup>th</sup> day of September, 2021.

YEAS 4 NAYS 3

Mayor Voted YES



[Signature]  
Mayor

ATTEST:  
Andrew Lehn  
City Clerk

POSTED AND MADE AVAILABLE TO THE PUBLIC this 8<sup>th</sup> day of September, 2021.

Andrew Lehn  
City Clerk

**SECOND READING AND PASSAGE** By a majority vote of the members present this 21<sup>st</sup> day of September, 2021.

YEAS 4

NAYS 1



[Signature]  
Mayor

ATTEST:

Andrew Lehn  
City Clerk