

ORDINANCE No. 2021-____
CITY OF POLSON

AN ORDINANCE OF THE CITY OF POLSON, MONTANA, DEFINING AND ESTABLISHING STANDARDS FOR THE USE AND SALE OF MARIJUANA WITHIN THE CITY LIMITS OF POLSON IN ACCORDANCE WITH MONTANA INITIATIVE, I-190 EFFECTIVE JANUARY 1, 2022.

WHEREAS, the City of Polson (the “City”) is authorized by the City Charter and Montana law to establish programs and laws to protect public health, safety and welfare of the citizens of Polson; 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, Chapter 5 part 1 Montana Code Annotated (M.C.A.), provides standards and procedures for adoption of local ordinances; and

WHEREAS, MCA § 76-2-301, et seq. authorizes municipalities to enact zoning to regulate the use and development of land and the activities of individuals and business 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

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 (M.C.A. § 16-12-101, et seq. (the “Act”)); and

WHEREAS, a codified purpose of the Act pursuant to Section 37 amending M.C.A. § 16-12-101(2) 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 local governments’ jurisdictions; and

WHEREAS, Section 59 of the Act pursuant to M.C.A § 16-12-301, et seq. 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 M.C.A. § 16-12-207 provides a locality may require marijuana businesses be a greater distance from schools and places of worship than 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 Polson Municipal Code; and

WHEREAS, the Polson City Manager is in the process of submitting to the City-County Planning Board text amendments to the Polson Development Code for the purpose of identifying land use zones where specific types of Marijuana Businesses may locate within the city limits; and,

WHEREAS, following public notice, a public hearing, and review of the proposed text amendments, the City-County Planning Board will forward a recommendation to the Polson City Commission as to whether the proposed text amendments are in compliance with criteria established by M.C.A. § 76-2-301, the purposes of zoning as locally adopted in the Polson Development Code Chapter 6; and

WHEREAS, the Polson City Commission found that the applicable statutes and proposed zoning and use restrictions 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 M.C.A. § 50-32-222 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 assuring adequately distanced from residential areas, public buildings and facilities, other Marijuana businesses, schools and places of worship to protect the general health, safety or welfare of the citizens of Polson.

WHEREAS, the intent of this amendment is to comply with state laws and regulation regulating the possession, recreational use, and sale of marijuana within the State of Montana;

WHEREAS, the amendments and additions to this code are underlined and deletions are struck through.

WHEREAS, The City of Polson recognizes that the use and possession of marijuana is illegal under United States federal law. Any land use permits, or business licenses, issued by the City of Polson related to the sale or manufacturing of Marijuana is not a protection against the enforcement of federal law by federally authorized agents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POLSON, MONTANA:

A new section shall be created to and numbered accordingly to incorporate the following:

Section TBD: Marijuana - Purpose; Applicability; Failure to maintain state licensure; Definitions; Locations of Marijuana Business; Special Marijuana Business License

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.

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.

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.

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.

B. 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.

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.

C. 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.

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.

D. Location of Marijuana Related Business

Any business engaged in the manufacture or sale of marijuana products shall not be located:

1. Within 300 linear feet of property zoned residential, within the city limits of Polson;
2. Within 500 linear feet of a church, synagogue, or place of worship within the city limits of Polson;
3. Within 500 linear feet of any building, facility, or park owned, or operated by the City of Polson;
4. Within 500 linear feet of another Marijuana Business;
5. Within 1,000 linear feet of all public and private schools, not including home schools, which provide instruction in the class range from kindergarten to 12th grade and which are either subject to MCA § 20-5-402 or listed as a kindergarten provider by the Lake County Superintendent of Schools; and including all private daycare facilities registered with the State of Montana.

For purposes of this section, specified distances will be measured in a straight line without regard to intervening structures from the property line of a school, church, synagogue, place of worship, city owned or operated building, facility, or park, all schools owned or operated by Polson School District #23, all private schools (excluding home schools), Marijuana Business, to the nearest public entrance of the marijuana business.

For the purposes of this section, the term private school shall include where the classes range from kindergarten to 12th grade, and which are either subject to M.C.A. § 20-5-109 or are listed as a kindergarten provider by the Lake County Superintendent of Schools.

E. Special Marijuana Business License

Operation of any marijuana business authorized by Montana Initiative I-190 or HB-701 within the city limits of Polson must comply with the following provisions:

1. Apply for a special business license;
2. Pay a \$1,500 annual license fee at the beginning of each calendar year, license is not pro-rated if new license obtained after January 1 of any given year;
3. Zoning conformance approval;
4. May not operate outside the hours of 9:00 AM to 8:00 PM;
5. No vending machines that dispense marijuana or marijuana products may be maintained or operated;
6. May not operate with a drive-thru or drive-up window;
7. May not allow any person under 21 years old to enter the marijuana business;
8. All products sold must contain all labelling, warnings, and packaging required by the State of Montana, found at ARM Notice No. 42-1033 at Rules X-XV.

F. 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.

G. 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 the Development Code contained in Chapter 6 of this code prior to conducting any marijuana business within the city.

H. 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.

I. 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.

J. 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 limited to 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.

K. Denial, Suspension, or Revocation of marijuana business licensure

1. 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 the City Manager learns a licensee's state license(s) have been suspended or revoked. A licensee's city Special marijuana Business 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.

2. An applicant may appeal any decision of the city to deny, suspend, or revoke a marijuana license provided for by this chapter to the 20th Judicial District Court of Montana. 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.

L. 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.

M. 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.

N. 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.

Section TBD: Transportation of Marijuana

The public transport of marijuana in/on all streets, sidewalks, alleys, rights-of-way, buildings and/or facilities owned, maintained, or otherwise the property of the City of Polson, must be done in opaque, child resistant containers.

The following Polson Municipal Code shall be amended as follows:

Sec. 9.07.040. - Advertising standards.

A. The subject matter of all advertisement shall be limited to speech that proposes a commercial transaction.

B. Prohibited advertising copy and graphics.

1. Advertisement that is unlawful or relates to illegal activity.

2. Advertisement that is obscene or would be in violation of M.C.A. 45-8-206 (public display or dissemination of obscene material to minors).
3. Advertising of alcohol, marijuana, or tobacco products.
4. Advertising of commercial advertisements by political candidates for public office and advertisements concerning ballot issues.
5. Advertising of contraception products or hygiene products of an intimate personal nature.
6. Advertising of products or services with sexual overtones such as escort services, or establishments featuring X-rated or pornographic movies or products.
7. Advertisement that depicts violence and/or anti-social behavior.
8. Advertisement that is false, misleading, or deceptive.
9. Advertisement using threatening, obscene, profane, vulgar, or abusive language.
10. Advertisement that holds up individuals or groups of people to public ridicule, derision, or embarrassment.
11. Advertisement that supports or opposes a candidate, issue, or cause, or which advocates or opposes a religion, denomination, religious creed, tenet, or belief.
12. Advertisements may not be placed on park or trail benches or picnic tables that currently contain "In Memoriam" plaques.
13. No advertisements shall be placed on the exterior of any city-owned structures.
14. Advertisements that portray or depict any activities, products, or services related to medical or recreational marijuana.

Section 2.

Repeal. All provisions of the ordinances of the City of Polson 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 Polson not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 3.

Savings Provision. This ordinance does not affect the rights and duties that matured penalties incurred or proceedings that were begun before the effective date of this ordinance.

Section 4.

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 Polson Municipal Code as a whole.

Section 5.

Codification Instruction. The provisions of Section 1 shall be codified as appropriate in the Polson Municipal Code.

Section 6.

Effective Date. This ordinance shall be in full force on January 20, 2022.

GIVEN FINAL ADOPTION by the City Commission of the City of Polson, Montana, on second reading at a regular session held on the _____ day of _____, 202____.

Paul Briney, Mayor

ATTEST:

Cora Pritt,
City Clerk

APPROVED AS TO FORM:

Skyler Bagley,
City Attorney