

ORDINANCE 1-2022

MADISON COUNTY AMENDED COMMERCIAL MARIJUANA ORDINANCE

(AMENDING ORDINANCE 3-2021)

1. **Applicability and Authority.**

WHEREAS, the State of Montana has legalized recreational marijuana use for most adults, and

WHEREAS, marijuana dispensaries and grow operations are present in Madison County;

WHEREAS, multiple County residents have expressed concerns to the Commission related to aesthetics, property values, odors, sanitation, water usage, and potential for increased crime;

WHEREAS, the County's present intention is to permit marijuana-related businesses to operate in Madison County subject to certain regulations intended to mitigate the present and reasonably foreseeable future concerns which residents have expressed; and

WHEREAS, Montana law provides the Commission with the general "management of the business and concerns of the County" under § 7-5-2101, MCA; and is further specifically authorized to regulate recreational and medical marijuana providers within Madison County by §§ 16-12-301(1)(a) & 50-46-328(1), MCA;

IT IS HEREBY RESOLVED that the following Amended Ordinance is hereby adopted and shall apply to all areas of Madison County on the effective date below.

2. **Terms and Definitions.** As used herein, the following terms shall have the meanings ascribed to them below. The general definitional rules of § 1-2-105, MCA, apply to this Ordinance. All terms not specifically defined herein are to be defined according to their common usage at the time of this Ordinance's passage.

- a. "Commercial marijuana premises" means any marijuana dispensary, marijuana manufacturer, marijuana testing laboratory, or other premises at which a substantial amount of commercial activity related to the sale, production, promotion, or consumption of THC products occurs.
- b. "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, including any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not

more than three-tenths of one percent on a dry weight basis, or commodities or products manufactured with hemp, or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

- c. "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, or byproducts of the marijuana plant, including but not limited to marijuana concentrates and marijuana-infused products.
- d. "Marijuana dispensary" or "dispensary" means any premises from which THC products are available for commercial sale to general consumers and/or to medical marijuana cardholders. **A hospital, clinic, pharmacy, or doctor's office shall not be considered a marijuana dispensary merely because they may prescribe or dispense medical marijuana, unless prescribing or dispensing medical marijuana is the location's primary source of revenue.**
- e. "Marijuana-infused product" means a product that contains marijuana and is intended for use by a means other than smoking. The term includes but is not limited to edible products, ointments, and tinctures.
- f. "Marijuana manufacturer" includes any agricultural facility engaged in growing medical and/or recreational marijuana for commercial purposes, as well as any location at which THC products are manufactured for commercial purposes, regardless of whether the commercial product is intended to be available for recreational use, medical use, or both.
- g. "Marijuana provider" means a person licensed by the Department of Revenue to manufacture and provide marijuana-infused products for consumers and/or licensed by the Department of Health and Human Services to manufacture and provide medical marijuana to cardholders.
- h. "Marijuana testing laboratory" means a location which provides testing of representative samples of THC products; and/or provides information regarding the chemical composition, the potency of a sample, and the presence of molds, pesticides, or other contaminants in a sample.
- i. "Operating" or "operations,"
 - i. as applied to a marijuana dispensary, means that the dispensary is open to the general public and/or medical marijuana cardholders for the purchase of THC products for a minimum of eight hours per week;
 - ii. as applied to a marijuana manufacturer, means that active production, and/or preparation for production of marijuana or other THC products is occurring at the premises, or, in cases where seasonal weather conditions prevents the chosen method of production from being viable, that production was occurring at the last time that conditions were viable and is intended to resume; and

- iii. as applied to a marijuana testing laboratory, means that testing of marijuana or THC products is occurring and/or is available.
- j. "Public Park" includes the Madison County Fairgrounds and any playground or outdoor sports facility that is open for free to the general public, during most or all daylight hours, without an advance reservation. The term does not include fishing accesses, State or National forests, campgrounds, or BLM land.
- k. "Residence" includes any private premise where a person lives such as a private dwelling, a place of habitation, a house, a multi-dwelling unit for residential occupants, or an apartment unit, regardless of whether said premise is occupied seasonally or year-round, as well as any building which is publicly available for sale for residential purposes.
- l. "Residential subdivision" means any platted subdivision that is primarily residential in character, includes ten or more residences, and is not within a town site.
- m. "THC products" includes marijuana, marijuana concentrate, marijuana derivatives, and marijuana-infused products, and any other naturally occurring or synthetic product which contains THC and which is advertised or intended for the medicinal and/or recreational uses commonly associated with marijuana. The term does not include CBD or hemp products with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.
- n. When computing the distance between a commercial marijuana premises and a school, library, daycare facility, public park, or public pool, distance shall be computed by direct measurement in a straight line from the nearest legal parcel line of the land used for the school, library, daycare facility, public park, or public pool to the nearest external portion of the building including the commercial marijuana premises. When computing the distance between a commercial marijuana premises and a residence, distance shall be computed by direct measurement in a straight line from the nearest external portion of the residential building to the nearest external portion of the building including the commercial marijuana premises.

3. Enforcement.

- a. The Madison County Sherriff, Undersheriff, deputies, or other designated Sherriff's representatives, are hereby vested with the power and authority to enforce all portions of this Ordinance. Such authority includes, but is not limited to, the authority to investigate alleged or suspected violations of the Ordinance, to issue complaints, to issue notices of violations, to post notice of violations at a commercial marijuana premises found to be in violation, and, where necessary to obtain compliance with a

suspension under Section 10 of this Ordinance, to lock or otherwise physically block access to a commercial marijuana facility.

- b. The County Sanitarian's office and its designated representatives are also hereby vested with authority to enforce Section 7 of this Ordinance. Such authority includes, but is not limited to, the authority to investigate alleged or suspected violations of the Ordinance, to issue complaints, to issue notices of violations, and to post notice of violations at a commercial marijuana premises found to be in violation.
- c. Owners or operators of commercial marijuana premises are responsible to make the premises available for inspection by the Madison County Sanitarian and/or Madison County Sheriff's Office at any time during their regular business hours, and at other times if reasonable advance notice is given, for the purposes of confirming that they are complying with this Ordinance.
- d. Nothing in this Ordinance is intended to limit the authority of the Department of Revenue, Department of Public Health and Human Service, or any other state or federal agency to enforce relevant laws and regulations in Madison County.

4. Location Restrictions.

- a. No commercial marijuana premises may be located within 500 feet of a school or daycare facility.
- b. No commercial marijuana premises may be located within 250 feet of a library, public park, or public pool.
- c. No marijuana manufacturer may be located within 1,000 feet of a school, daycare facility, library, public park, or public pool, or within 250 feet of a residence.
- d. No commercial marijuana premises or marijuana provider may advertise or promote itself, marijuana use, or a specific marijuana product within 500 feet of a school, daycare facility, library, public park, or public pool, with the exception of signage which is at the property of the commercial marijuana premises and which is fully compliant with any applicable rules created by the Department of Revenue and/or Department of Public Health and Human Services.
- e. No commercial marijuana premises may be located within a residential subdivision.

5. Exceptions to Location Restrictions.

- a. The location restrictions of subsections (4)(a) and (4)(b) above shall not apply to any commercial marijuana premises which can show that it has been in continuous operations at the same location since November 2, 2021.
- b. The location restrictions of subsections (4)(a), (4)(b), and (4)(c) above shall not apply to any commercial marijuana premises which can show that it was already in continuous operations at its current location at the time that any school, daycare facility, library, public park, and/or public pool which would otherwise cause a violation of this Ordinance began operations. The location restrictions of subsection (4)(c) above and (6)(c) below shall not consider any residence which is constructed after the commercial marijuana premises in question began continuous operations in the same location.
- c. The Board of Commissioners may grant an exception to the location restriction in subsection (4)(e) above upon receipt of a petition signed by at least 50% of the real property owners within the subdivision stating that they wish a commercial marijuana premises to be permitted and following a public hearing. If the petition is signed by all real property owners within the subdivision, then the exception must be granted.

6. Aesthetic and Property Requirements.

- a. Commercial marijuana premises are responsible to ensure that THC products are not plainly visible from any residence, public property, or public roadway.
- b. Marijuana providers who use grow lights are required to ensure that grow lighting is not plainly visible from any residence, public property, or public roadway during night hours.
- c. Commercial marijuana premises which are located within 500 feet of any residence may not be open to the public or require employees to be present between the hours of 10:00 p.m. and 6:00 a.m., and may not have more than seven employees working at the premises at any single time.
- d. Commercial marijuana premises must ensure that they do not generate any marijuana odors which are clearly discernable within the interior of any residence, other business, or public building, or at any outdoor location more than 100 feet from their property during normal weather.

7. Sanitation Requirements.

- a. At least fifteen business days prior to beginning operations in Madison County, any marijuana manufacturer or marijuana testing laboratory must provide the County Sanitarian's office with a written plan for disposal of any chemicals, runoff, fertilizer, marijuana plant waste, or other substances which are regulated by the County

Sanitarian, State Department of Environmental Quality, or U.S. Environmental Protection Agency, or which otherwise could plausibly create a public health hazard exceeding the hazards created by ordinary household trash. The County Sanitarian shall provide the applicant with written notice of approval, or of the reasons for disapproval, in a timely manner.

- b. If the plan is approved, the marijuana provider shall comply with the approved plan, shall notify the County Sanitarian if changes to their operations require the plan to be modified, and shall file an updated plan with the Sanitarian annually, on or before the date the original plan was approved.
- c. If the plan is rejected by the Sanitarian, the applicant may submit an updated or amended plan which addresses the Sanitarian's concerns, and shall not begin operations until a plan is approved.
- d. Marijuana manufacturers which are located within 1,000 feet of any residence must install carbon or charcoal filters or similar devices sufficient to prevent marijuana or other chemical smells from being immediately discernable on any other person's property during normal weather. The Sanitarian is given discretion to resolve any disputes regarding the adequacy of a given manufacturer's filtration system.

8. Public Safety and Security Requirements.

- a. Commercial marijuana premises are responsible to ensure that any buildings containing THC products are locked at all times that employees are not immediately present. THC products may not be stored or grown outdoors, except temporarily during transportation.
- b. Commercial marijuana premises are responsible to ensure that any building which regularly stores THC products with a total market value of \$10,000 or more have security video and/or motion-activated still image cameras which cover all entrances and exits and which are operating in good repair at all times that THC products are on the premises.
- c. Commercial marijuana premises may not employ, or subcontract with, any person who is under 18 years of age, and may not knowingly permit any person who is under 18 years of age to be present on the premises unless that person is a medical marijuana cardholder and/or is in the immediate presence of a parent or guardian.
- d. Commercial marijuana premises may not sell, give, or otherwise transfer THC products to the general public between the hours of 9:00 p.m. and 7:00 a.m.

9. Monitoring of Water Usage.

- a. Agricultural marijuana manufacturers whose water usage is not monitored by a town or other government entity shall accurately monitor their water usage, shall retain records of their water usage for a period of at least three years, and shall provide the County Sanitarian with copies of any such records for each calendar year on or before March 15th for the prior year. Such records may be considered by the Commission in the event that regulation of water usage by marijuana manufacturers becomes necessary in the future.

10. Notice of Violation and Penalties.

- a. A marijuana provider or other owner or operator of a commercial marijuana premises may be held absolutely liable under this Ordinance for their own actions or omissions, or the actions of any employee, contractor, or other agent who is acting within the scope of their employment, contract, or other agency. An employee or other agent of a commercial marijuana premises who violates any provision of this Ordinance may be held individually responsible for the fine described below if they are found to have acted purposefully or knowingly.
- b. A violation of this Ordinance is punishable by a civil fine of \$250.
- c. Upon determining that a violation of this Ordinance has occurred, the Sheriff's Office, County Sanitarian, or County Attorney's Office shall provide the marijuana provider or other owner or operator of the commercial marijuana premises with written notice of the violation. Notice shall be considered sufficient if it is delivered to or posted at the location of the commercial marijuana business, mailed to the address which the marijuana provider has provided to the Department of Revenue and/or Department of Public Health and Human Services, and/or by any other means which provides the owner or operator with actual notice of a violation.
- d. If a violation of this Ordinance is not corrected within 30 days of receiving notice, the owner or operator shall be suspended from operating any commercial marijuana premises in Madison County for a period of 30 days or until the violation is remedied and the fine is paid, whichever period of time is longer.
- e. If the same commercial marijuana premises and/or the same owner or operator has been previously suspended under subsection (d) above within three years of the violation, they shall be suspended from operating for a minimum of 90 days. If the same commercial marijuana premises and/or the same owner or operator has been previously suspended under subsection (d) two or more times within three years of the violation, they shall be suspended from operating, or having any financial interest in,

any commercial marijuana premises in Madison County indefinitely. An indefinite suspension may be lifted by the Board of Commissioners following a public hearing.

- f. Purposely or knowingly operating a commercial marijuana premises in Madison County during a period of suspension shall be punishable by a civil fine of \$500, and by forfeiture of any THC products located at the commercial marijuana premises during operations. Each day that operations continue shall be considered a separate violation.
- g. A person or business who is accused of violating this Ordinance may dispute the violation in the Madison County Justice Court. The fact that a dispute exists shall not be grounds to stay any suspension under subsections 10(d) or (e) of this Ordinance, unless the Justice Court finds that the accused entity meets the qualifications for a preliminary injunction under Montana's Rules of Civil Procedure.

11. **Severability.** If any provision of this Ordinance or the application thereof to any person or situation is held to be invalid, such invalidity shall not affect any other provisions or applications of this Ordinance which can be given effect without the invalid provision.

12. **Authority of Incorporated Towns and Municipalities.** Nothing in the Ordinance shall be construed as limiting the authority of a town or municipality to regulate commercial marijuana premises within their boundaries through zoning, taxes, or other regulations which are more restrictive than those in this Ordinance. However, the fact that a commercial marijuana premises has been approved by a zoning board or other municipal government entity shall not be a defense to any alleged violation of the Ordinance.

13. **Effective Date.**

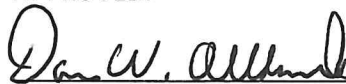
- a. The Clerk and Recorder shall post a copy of this Amended Ordinance and shall make copies available to the public upon the first Reading and Approval of this Ordinance.
- b. This Amended Ordinance shall take effect 30 days after its second Reading and Approval.

PASSED AND APPROVED AT THE FIRST READING by the Board of Madison County Commissioners this 15th day of March, 2022.

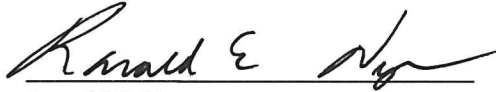
ATTEST:

Paula McKenzie
Clerk and Recorder
Madison County

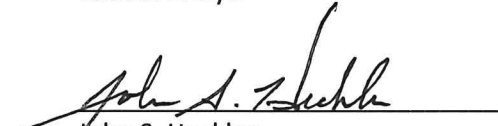
APPROVED:



Dan W. Allhands, Chairman



Ronald E. Nye



John S. Heckler
Board of Commissioners
Madison County

PASSED AND APPROVED AT THE SECOND READING by the Board of Madison County Commissioners this _____ day of _____, 2022.

ATTEST:

APPROVED:

Paula McKenzie
Clerk and Recorder
Madison County

Dan W. Allhands, Chairman

Ronald E. Nye

John S. Heckler
Board of Commissioners
Madison County

This ordinance shall take effect as of _____, 2022.