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# Montana Association of Counties

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## MARIJUANA AND LOCAL GOVERNMENT

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### PURPOSE

To give county elected officials general guidance House Bill 701 which made some modifications to the voter approved Initiative 190, a law to legalize, regulate and tax marijuana.

### LOCAL GOVERNMENT AUTHORITY TO REGULATE MARIJUANA BUSINESSES

- **In counties where a majority of voters supported I-190, local governments may not prohibit the establishment of adult-use marijuana businesses and said businesses are not subject to the local government approval process.**
- **In counties where a majority of voters voted against I-190, adult-use marijuana businesses are not permitted to operate until local jurisdiction has approved them.**
  - The category or categories of license that the marijuana business seeks must be approved through referendum by the local jurisdiction where the marijuana business intends to operate.
  - The marijuana business categories that must be approved are:
    - Cultivator,
    - Manufacturer,
    - Medical marijuana dispensary, except a former medical marijuana licensee that does not apply for licensure as an adult use dispensary,
    - Adult use dispensary,
    - Combined-use marijuana licensee,
    - Testing laboratory and
    - Marijuana transport facility.
  - Approval Process
    - An election regarding whether to approve any or all of the marijuana business categories may be requested by the qualified electors of a county filing a petition in accordance with 7-5-131 – 7-5-135 and 7-5-137.
    - An election must be held in accordance with Title 13, chapter 1, part 4.
    - An election may be held in conjunction with a regular election of the governing body, general election, or a regular local or special election.

- In a county that has a municipality of more than 5,000 persons, the qualified electors of the municipality do not need to file a separate petition asking for a vote on whether to prohibit a category of marijuana businesses from being in the municipality.
      - The election shall be conducted in a manner that separates the votes from the municipality from the remaining parts of the county.
- **In counties where a majority of voters voted for I-190 or that have approved marijuana business categories through referendum, a vote may be taken to disallow the previously approved or allowed operations within the jurisdiction.**
  - A vote overturning previously approved or allowed operations is effective 90 days from passage.
- **Regulations in All Counties**
  - Regardless of the vote on I-190, all local governments may, by ordinance or otherwise, regulate a marijuana business that operates in its jurisdiction, including inspections to ensure compliance with any public health, safety, and welfare requirements established by the Department of Revenue or the county.
  - A former medical marijuana licensee that does not apply for licensure as an adult use dispensary is exempt from complying with any local regulations adopted after July 1, 2021 until after January 1, 2022, or the expiration of any grace period granted by locality, whichever is later.
  - A local government may not prohibit the transportation of marijuana within or through its jurisdiction by any person licensed to do so.
- **Medical Marijuana**
  - A former medical marijuana licensee that does not apply for licensure as an adult use dispensary may continue to operate unless and until a petition is filed, an election is held, and a majority of voters vote to prohibit this type of business.
  - A former medical marijuana licensee that intends to apply for licensure as a cultivator, manufacturer, adult-use dispensary, or testing laboratory may continue to operate in compliance with rules adopted by the Department of Revenue, provided they have remained in good standing with the Departments of Revenue and Public Health unless and until a petition is filed, an election is held, and a majority of voters vote to prohibit this type of business.

## TAX

**Local governments may impose an additional tax of up to 3% on the sale price of marijuana products, in addition to the 20% tax imposed at the point of sale of marijuana products to adult consumers.**

- A majority of the qualified electors of a county may authorize the county to impose a local-option marijuana excise tax that may not exceed 3%.
  - The local-option tax may be presented to the qualified electors by a petition of electors or by a resolution of the governing body. The petition or resolution must state:
    - Rate of tax, not to exceed 3%,
    - Effective date, no earlier than 90 days after election, and
    - Purposes that may be funded by the revenue.
  - The county must provide notice of goods subject to the tax prior to submitting the question to the voters.

- Notice must be given 2 times, with at least 6 days separating. The first notice must be no more than 45 days before the election and the last notice must be at least 30 days prior to the election.
- The question of the local-option tax may only be voted on once per fiscal year.
- 50% of tax revenue is retained by the county, 45% is apportioned to the municipalities on the basis of the ratio of the population of the municipality to the total population of the county, and 5% goes to the Department of Revenue.
  - The county may use the revenue for any activity or service the county is authorized by law to perform.

## APPLICABILITY OF ZONING

- Local government may by ordinance or “otherwise regulate” a marijuana business that operates within the local government’s jurisdiction area to protect the public health, safety, or welfare.
- Part 2 (County Imposed) Zoning would fall under “otherwise regulate”. Part 2 (County Imposed) Zoning requires an adopted Growth Policy. Existing Part 2 zoning could be amended or new zoning could be adopted for all or part of the local government’s jurisdiction in accordance with state law.
- Part 1 (Citizen Initiated) Zoning could also regulate a marijuana business and a Growth Policy is not required. However, the citizens of the zoning district would have to submit a petition in accordance with state law to initiate new zoning or a petition to amend existing citizen initiated zoning and the processes for Part 1 zoning would need to be followed.
- Zoning 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 in order to ensure compliance with any public health, safety and welfare requirements established by the local government.
- Zoning regulations could regulate locations, hours of operations, etc. of the particular marijuana business if the requirements of state law are met for zoning, specifically looking at the requirements of 76-2-104 (Part 1 Zoning) and 76-2-203 (Part 2 Zoning).
- All zoning regulations adopted should only be adopted after public hearings in accordance with state statutes.
- The adoption or amendment zoning regulations should be supported by findings of fact that demonstrate that there was not abuse of discretion in adopting or amending the zoning regulations. An abuse of discretion may be found by a court if the record lacks facts to support the decision and the decision is clearly unreasonable.

## REGULATING BY ORDINANCE

- As mentioned, local governments may regulate by ordinance a marijuana business that operates within the local government’s jurisdiction area to protect the public health, safety, or welfare.
- Newly passed HB 257 changed local government ordinance requirements. In general, ordinances cannot be enforced if they interfere with a business. Any ordinance regulating a marijuana business cannot do the following:
  - Deny customers access to the premises or goods or services;

- Deny customers access to goods or services;
  - Require a fee or fine;
  - Revoke a license;
  - Fine a private business owner guilty of a misdemeanor; or
  - Bring any other retributive action against a private business.
- Any ordinance adopted must be done according to 7-5-103, which requires the ordinance be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies must be made available to the public.
  - As with zoning, the ordinance should be supported by findings of fact that demonstrate that there was not an abuse of discretion in adopting the ordinance.

### **OTHER MARIJUANA ISSUES APPLICABLE TO LOCAL GOVERNMENT**

- **Marijuana, as defined in 16-12-102, may not be considered a noxious weed under 7-22-2101.**
- **Employment Issues:**
  - Employers are not required to permit or accommodate marijuana at the workplace.
  - Employers may discipline an employee for violation of a workplace drug policy or for working while intoxicated by marijuana or marijuana products.
  - Employers may decline to hire, discipline, discharge or otherwise take an adverse action against an individual because of the individual's violation of a workplace drug policy or intoxication by marijuana or marijuana products while working.
  - Employers may prohibit the use of medical marijuana for a debilitating medical condition while working.
  - The Act does not allow a cause of action against an employer for wrongful discharge or discrimination related to the above. However, an employer may not refuse to employ or discriminate against an individual with regards to terms or conditions of employment because the individual legally uses a lawful product off the employer's premises during nonworking hours.