

# Memorandum

**REPORT TO:** City Commission

**FROM:** Anna Saverud, Assistant City Attorney  
Greg Sullivan, City Attorney

**SUBJECT:** Ordinance 2084 Final Adoption: Ordinance Generally Revising Laws and Regulations Related to Marijuana

**MEETING DATE:** November 9, 2021

**AGENDA ITEM TYPE:** Ordinance

**RECOMMENDATION:** I move to approve Ordinance 2084: Generally Revising Laws and Regulations Related to Marijuana and the Montana Marijuana Regulation and Taxation Act.

**STRATEGIC PLAN:** 3.1 Public Safety: Support high quality public safety programs, emergency preparedness, facilities, and leadership.

**BACKGROUND:**

In November 2020, Montanan's voted to approve Constitutional Initiative 118 and Initiative 190, legalizing recreational marijuana for those 21 years of age and older and establishing a regulatory framework for legalization. During the 2021 Montana Legislative Session, House Bill 701 became the omnibus marijuana bill which amended and replaced much of I-190 and created the Montana Marijuana Regulation and Taxation Action codified in Title 16, Chapter 12, MCA.

The sale of recreational marijuana and other marijuana businesses related to recreational use, including cultivating, manufacturing, transporting, testing, etc. are legal beginning January 1, 2022. Ordinance 2084 is proposed to bring the Bozeman Municipal Code into compliance with state law and allow the city to plan and prepare for what the future of the marijuana industry will look within in the city.

**UNRESOLVED ISSUES:**

During first read of Ordinance 2084 on October 19, 2021, the City Commission voted 3-2 to amend Section 4 of the proposed ordinance language and revise the separation requirements in 38.360.180 to mirror those in HB 701.

Similar separation requirements exist for alcohol establishments in state law and specific administrative rules for alcohol establishments have been adopted to assist the state with licensing. To date, the Department of Revenue (DOR) has not adopted administrative rules as to how the separation requirements will be measured for marijuana businesses. DOR will draw on ARM 42.12.129 (related to alcohol establishments) for guidance when issuing marijuana licenses, but issues remain concerning postsecondary schools. The postsecondary school separation requirement is unique to marijuana businesses. Under ARM 42.12.129, separation measurements rely on physical addresses and separation is only required when the addresses of the school/place of worship and alcohol establishment have physical addresses on the same street. Buildings on postsecondary campuses such as MSU campus typically do not have physical street addresses. This creates a unique issue for municipalities with postsecondary campuses and marijuana businesses as DOR has not developed rules to implement the separation requirements passed in HB 701. Staff has confirmed with DOR that rules further interpreting separation requirements are not currently being drafted and thus this gray area will not have clarification before January 1, 2022. Staff identifies this to inform the Commission of the uncertainty at the state level and the effects of the amendment.

**ALTERNATIVES:**

Amend or revise as deemed appropriate by the City Commission.

**FISCAL EFFECTS:**

Unknown. Considerable staff time will be transitioning from medical marijuana licensing to recreational licensing, and reviewing applications and separation requirements. The City Commission passed Resolution 5348 setting an annual fee of \$750.00 for a marijuana business to offset costs.

Attachments:

[ORDINANCE NO 2084 Final Adoption.pdf](#)  
[HB0701 final.pdf](#)

Report compiled on: October 27, 2021