



## COMMUNITY PLANNING, DEVELOPMENT & INNOVATION

Development Services Division

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### EXECUTIVE SUMMARY

**Agenda Item:** Ordinance generally amending Title 5, City Business Licenses and Regulations in order to reorganize definitions, update outdated process language, and incorporate cannabis business licensing requirements as a result of legislative changes in the cannabis industry.

**Report Date:** July 6, 2022

**Project Lead:** Madson Matthias and Spencer Starke, Associate Planners

**Reviewed and Approved by:** Cassie Tripard, Planning Supervisor

**Public Meetings & Hearings:**

- Land Use and Planning Committee: July 13, 2022 (time TBD)
- City Council Consent Agenda: July 11, 2022 at 6:00 pm
- City Council Public Hearing: July 25, 2022 at 6:00 pm
- City Council Final Consideration: August 8, 2022 at 6:00 pm

**Applicant:** This is a City Council initiated request.

**Notification:**

- Legal Ad: Published in the Missoulian on June 26 and July 3, 2022
- Sent agency and interested party memo (attached) via email to interested parties and City agencies for review on July 2, 2022.
- Posted on Engage Missoula

### RECOMMENDED MOTION(S)

**LUP 7/13/2022:** [First reading and preliminary adoption] Set a public hearing on July 25, 2022 and preliminarily adopt an ordinance generally amending Title 5, Missoula Municipal Code, the City Business Licenses and Regulations Ordinance, to incorporate additional provisions within Chapters 5.04 Definitions and 5.08 Licensing Provisions Generally and creation of a new Chapter 5.120 entitled "Cannabis" to incorporate regulations concerning legislative changes in the cannabis industry, reorganize definitions, and update outdated process language. See Attachment A – Proposed Ordinance Amendments (July 2022).

**CC 8/8/2022:** City Council adopt an ordinance generally amending Title 5, Missoula Municipal Code, the City Business Licenses and Regulations Ordinance, to incorporate additional provisions within Chapters 5.04 Definitions and 5.08 Licensing Provisions Generally and creation of a new Chapter 5.120 entitled "Cannabis" to incorporate regulations concerning legislative changes in the cannabis industry, reorganize definitions, and update outdated process language. See Attachment A – Proposed Ordinance Amendments (July 2022).

### I. PROPOSAL SUMMARY

Community Planning, Development, and Innovation (CPDI) planning staff have drafted amendments to Title 5 City Business Licenses and Regulations Ordinance in response to necessary maintenance

items and the legalization of recreational (adult-use) cannabis in 2021. In order to accommodate the resulting increase in the number of cannabis businesses and their unique nature, staff are proposing a new business license category for cannabis. The new business license type requires the addition of new definitions, general licensing provisions, application and issuance procedures, and license content requirements. Additionally, staff are proposing air quality mitigation requirements in order to protect the public health, safety and welfare of the community. The proposed ordinance reorganizes all Title 5 definitions for improved legibility and updates outdated process language.

## II. REGULATORY BACKGROUND

### Legislative History

1. In 2020, ballot Initiative 190 passed and followed by the approval of House Bill 701 in November of 2020 which legalized the cultivation, transport, retail, and possession of recreational (adult-use) cannabis and cannabis products within Montana. This permitted recreational cannabis businesses to operate in counties where the majority of voters supported Initiative 190, including Missoula County.
2. On January 1<sup>st</sup>, 2022 the Montana State Department of Revenue permitted medical cannabis business licensed on or prior to November 3<sup>rd</sup>, 2020 to begin operating as recreational cannabis businesses. While the Department of Revenue will continue accepting new medical cannabis licenses applications, new businesses established after November 3<sup>rd</sup>, 2020 may not obtain a recreational license until July 1<sup>st</sup>, 2023.

### City of Missoula Regulatory Timeline

3. In response to the State's legalization of recreational cannabis use, CPDI staff proposed amendments to Title 20, Missoula Municipal Code, the City Zoning Ordinance, to accommodate new definitions and impacts of recreational cannabis use within the City.
4. On November 2, 2021, Planning Board recommended to City Council that zoning amendments should include a requirement for lighting power density for indoor cannabis cultivation facilities to be limited at a maximum of thirty-six (36) watts per square foot.
5. On November 29, 2021, City Council voted to approve the changes to the Title 20 Zoning Ordinance and directed CPDI staff to amend Title 5, Missoula Municipal Code, the City Business Licenses and Regulations Ordinance, to incorporate revisions regarding energy consumption for cannabis cultivation facilities. City Council did not approve the amendment proposed by Planning Board and directed staff to research energy consumption and amend Title 5 instead.
6. Staff researched the energy impacts of cannabis cultivation and how other communities have regulated energy consumption. This research was compiled in an issued White Paper and presented to Land Use and Planning Committee on February 9<sup>th</sup>, 2022 (see Attachment E). During the process for drafting the White Paper staff were made aware that Montana State Law may prohibit mandatory energy-efficiency requirements that exceed those in the state law.
7. Staff prepared a draft ordinance aligning with the White Paper recommendations. The draft ordinance was then sent to the Montana State Building and Commercial Measurements Bureau for review. Staff met with Eric Copeland of the bureau on April 12<sup>th</sup>, 2022. The State's review of the draft ordinance confirmed the energy requirements for cannabis cultivation do not comply with state law because they both exceed the state's energy-efficiency standards and would be made mandatory. The Montana Code Annotated Section 50-60-102(6) requires local energy conservation standards that exceed the energy conservation standards contained in the state building code to be **voluntary and incentive-based only**.

8. This requirement has prevented City Staff from moving forward with any energy-conservation regulations at this time because the initial proposal would have required energy provisions rather than incentivized them. A memo detailing options for voluntary incentive-based energy regulations has been included with this report. Refer to the memo in Attachment D for additional information.
9. Despite not moving forward with energy requirements at this time, revisions to Title 5 are still necessary in order to create a new business license category and include new cannabis related definitions. The current proposed ordinance generally amends Title 5 in order to allow for the new license category.
10. The proposed carbon filter requirement for cannabis cultivation and manufacturing businesses was included in the original proposed ordinance. This requirement was found to comply with state law and has been included in the current proposed ordinance. The proposed carbon filter requirement is intended to mitigate cannabis odor and improve air quality.

### **III. RECOMMENDATIONS**

Staff are proposing amendments to Title 5 Business Licenses and Regulations Code that would: (1) create new Title 5 definitions regarding cannabis uses, (2) reorganize all Title 5 definitions for legibility and flexibility, (3) create a new cannabis business license category including application requirements and license content requirements, and (4) require carbon filters to be installed and maintained per the manufacturer sizing requirements in all cannabis cultivation and cannabis product manufacturing operations.

Based on the aforementioned strategy components, the proposal calls for modifications to Chapter 5.04 Definitions and Chapter 5.08 Licensing Provisions Generally and creation of Chapter 5.120 Cannabis. For full draft language, see Attachment A – Proposed Ordinance Amendments.

#### Chapter 5.04 Definitions

1. The inclusions of cannabis business requirements in Title 5 requires the inclusion of new definitions pertaining to the industry.
2. Cannabis related definitions proposed in the ordinance align with Title 20 Zoning Code and Montana Code Annotated definitions.
3. Currently, all definitions in Title 5 are given their own section. This formatting limits the ability to include new definitions over time.
4. The proposed amendments would repeal all current definitions in order to place them all under one section in Chapter 5.04 Definitions, titled Section 5.04.010 Generally. This change is intended to create amendment flexibly and increased legibility.

#### Chapter 5.08 Licensing Provisions Generally - Fees and Authority

5. Title 5 Section 5.08.020 states the City Treasurer shall collect fees, provide business license applications, and file licenses. This language is outdated, as Development Services has collected fees and issued business licenses for years.
6. The proposed amendments replace the words “City Treasurer” with “The City” to provide flexibility in process and to eliminate outdated language.
7. A new Cannabis Business License Category requires the license category to be listed in Title 5, Section 5.08.030 in order for City Council to set fees for the license type. The proposed amendments would include the Cannabis Business License category in Section 5.08.030.

## Chapter 5.08 Licensing Provisions Generally - Cannabis Business License Category

8. Currently, business licenses fall into two major categories: general business license and “office space, retail, wholesale or warehouse space” license. Though most businesses fit within these categories, there are additional license types for liquor sales, transient mobile vendors, and contractors. “Office space, retail, wholesale or warehouse space” licenses are required for rental businesses that lease spaces to tenants. Most other businesses fall within the general business license category.
9. Under the current Title 5 regulations, cannabis business types require a general business license.
10. In order to ensure compliance with Title 20 Zoning Code and Building Code, detailed information pertaining to cannabis uses is necessary. Though staff are currently able to request information to verify compliance with regulations per Title 5, Section 5.08.020.A.1.g, the requirement for cannabis business to provide specific details regarding their business in the application is not stated in Title 5.
11. The absence of clear cannabis licensing requirements in the code and on the application has required staff to request additional information for cannabis business license applications. The need to request information after the initial license application submittal increases total permitting time.
12. The proposed ordinance would create Title 5, Section 5.08.020.A.3 Cannabis Business License detailing application information requirements. The same application information requirements for a General Business license also apply to Cannabis Business licenses. In addition to these requirements, the applicant would have to list all proposed uses as defined in zoning code and the cultivation canopy area if applicable. The explicit requirement of this information is intended to provide clear guidance to applicants and reduce staff time spent requesting additional information.
13. The ordinance also proposes the addition of three General Business License application requirements in Title 5, Section 5.08.020.A.1: building address, previous use of space to be occupied, and amount of square footage in the building or suite to be used for the business. This information is required to determine zoning and building code compliance. Specifically, staff use it to determine building occupancy type, adequate parking, and substitution of legal non-conforming uses. Currently, staff request this information though it is not explicitly listed in the code. These requirements are proposed to be added to the Cannabis Business License and General Business License categories for clarity.
14. The legalization of recreational cannabis resulted in new regulations at the state and local level. Many business license records for cannabis businesses prior to 2022 lack sufficient information to verify current cannabis uses, legal non-conforming status, and compliance with regulations.
15. Per Title 20 Zoning Code, dispensaries are currently classified as retail. Dispensaries were also classified as retail prior to the 2021 Title 20 Zoning Code update.
16. Prior to legalization of recreational cannabis, medical cannabis was legal in Montana.
17. Zoning use classifications differ from Building Code structure occupancy types. Prior to the legalization of recreational cannabis, dispensaries were reviewed and approved by CPDI Building Staff as [B] Business occupancy under a patient-care model. This was due to the medical nature of cannabis at the time. Following legalization of recreational cannabis, all dispensaries are now [M] Mercantile occupancies. The [M] Mercantile occupancy aligns with the zoning retail use classification.

18. Due to the change in use/occupancy type, dispensaries that were previously allowed as a [B] occupancy will now need to complete a change-of-use building permit to be an [M] occupancy. This is a requirement of the Building Department.
19. If adopted by City Council, the amendments to Title 5 would require existing cannabis businesses to apply for a cannabis business license rather than renewing the existing general business license at the next renewal date. Completion of the new cannabis business license would document existing cannabis uses, legal non-conforming status in terms of cultivation canopy area and zoning district, and building code compliance. Businesses required to submit a change of use permit by the Building Department can be easily identified during the business license renewal process.
20. The new cannabis business license category will aid in the documentation of current cannabis uses and implementation of the Building Department required change in dispensary occupancy type. Additionally, the new cannabis business license category is intended to provide clear guidance to the applicant regarding information required for license approval.
21. The proposed ordinance would amend Title 5, Section 5.08.080 License – Contents to include requirements for information provided on the Cannabis Business License issued by the City. This amendment is necessary to create the new Cannabis Business License category. The proposed content requirements are identical to the content requirements for a General Business License.

#### Chapter 5.120 Cannabis

22. The proposed ordinance includes creation of a new Section, 5.120 Cannabis. This section would apply to any cannabis cultivation or cannabis manufacturing facilities seeking a business license, new or existing unless specifically exempted.
23. Cannabis cultivation and manufacturing are shown to emit odor and volatile organic compounds (VOCs) that negatively impact air quality. Air filtration and HVAC maintenance is crucial for mitigating impacts of odor, mold, and VOCs (see Attachment E White Paper). Carbon filters are currently the most effective technology for mitigating negative impacts. The proposal to require carbon filters was proposed in the original White Paper. City Staff intend to move forward with regulations addressing these impacts.
24. The proposed ordinance would require cannabis cultivation and manufacturing businesses to install and maintain carbon filters that are properly sized for the cultivation or cannabis product manufacturing area.

## **IV. AGENCY AND PUBLIC COMMENT**

On June 2<sup>nd</sup>, 2022 Community Planning, Development, and Innovation requested agency and interested party review and comment on the proposed amendments, see Attachment B – Agency Memo. Interested parties included current cannabis businesses.

On June 10<sup>th</sup>, 2022 Elena Evans of the Water Quality District commented “In 5.120.020, “grow room” is used but not defined. It would be great to define it as any area that is used for cannabis cultivation or manufacturing in addition to growing or clarify that it pertains not only to growing but also anything else that may cause an odor. In identifying ways to address complaints, we have found this document to be quite useful as it also discusses appropriate filtration (part 3):

<https://www.cityoflompoc.com/home/showpublisheddocument/24880/636946509039130000>

Thank you for the opportunity to comment. We are happy to discuss further if you would like.”

Staff addressed the “grow room” definition issue by replacing these words with “room used for cultivation or manufacturing” in the proposed ordinance.

On June 10<sup>th</sup>, 2022 Ben Schmidt of the Air Quality District commented “I would just like to second the comment posted below by Elena Evans. I am dealing with an odor complaint from a cannabis manufacturing/processing operation on South Avenue. I have verified that odors from this cannabis operation are present and we support the effort to control and mitigate odors through the Title 5 Amendments.”

No other agency comments were received at the time of this report.

The project was posted on Engage Missoula prior to drafting the white paper and periodically updated as new information was made available. As of July 6<sup>th</sup>, 2022, two (2) public comments were received. (see Attachment C).

Additionally, staff presented the white paper recommendations to stakeholder groups to seek feedback. At that point in the process, the proposal focused largely on cannabis cultivation energy consumption. The current proposal does not include energy requirements, but focuses on maintenance to Title 5 and creation of a unique cannabis business license type. Staff contacted over fifty (50) cannabis businesses within the City of Missoula by email or phone. During the White Paper stage, of those contacted, representatives from three (3) businesses attended the Stakeholder meeting on January 7<sup>th</sup>, 2022. Nine (9) individuals completed the corresponding survey which requested information about current lighting and filters used, as well as general feedback. Over half of survey takers indicated they already employ carbon filters or other methods of filtration and odor mitigation at their cultivation facilities.

## **V. REVIEW CRITERIA**

### **7-5-103 MCA, Ordinance requirements**

- 1) All ordinances must be submitted in writing in the form prescribed by resolution of the governing body.
- 2) An ordinance passed may not:
  - a) contain more than one comprehensive subject, which must be clearly expressed in its title, except ordinances for codification and revision of ordinances;
  - b) compel a private business to deny a customer of the private business access to the premises or access to goods or services;
  - c) deny a customer of a private business the ability to access goods or services provided by the private business; or
  - d) include any of the following actions for noncompliance with a resolution or ordinance that includes actions described in subsections (2)(b) and (2)(c):
    - i. allow for the assessment of a fee or fine;
    - ii. require the revocation of a license required for the operation of a private business;
    - iii. find a private business owner guilty of a misdemeanor; or
    - iv. bring any other retributive action against a private business owner, including but not limited to criminal charges.
- 3) The prohibition provided in subsection (2)(c) does not apply to persons confirmed to have a communicable disease and who are currently under a public quarantine order.

- 4) The prohibitions provided in subsections (2)(b) through (2)(d) do not apply to the adoption of an ordinance allowed in 75-7-411.
- 5) An ordinance must 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.
- 6) After passage and approval, all ordinances must be signed by the presiding officer of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.
- 7) As used in this section, "private business" means an individual or entity that is not principally a part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.

The ordinance proposes maintenance to Title 5 Business Licenses and Regulation in order to include provisions for current processes related to cannabis business and to update outdated process requirements. The subject of general amendments to Title 5 is listed in the ordinance title in compliance with MCA Section 7-5-103.2.a.

The proposed ordinance does not deny a customer or compel a business to deny a customer the ability to access the premises, or ability to access the goods and services provided by the business in compliance with MCA Section 7-5-103.2.b and c. Therefore, MCA Sections 7-5-103.2.d, 7-5-103.3, and 7-5-103.4 are met.

The proposed ordinance will be presented at two governing body meetings, not less than twelve days apart. The proposed ordinance will be made available to the public prior to first adoption and reading via Escribe and Engage Missoula.

## **VI. ATTACHMENTS:**

- A. Proposed ordinance amendments (July 2022)
- B. Agency memo and draft ordinance (June 3<sup>rd</sup>, 2022)
- C. Public Comment as of July 6<sup>th</sup>, 2022
- D. Cannabis Energy Conservation Incentives Memo (July 6<sup>th</sup>, 2022)
- E. White Paper (February 2022)