

**ORDINANCE 21-5785**

**AN ORDINANCE OF THE CITY OF BILLINGS,  
PROVIDING THAT THE BILLINGS, MONTANA CITY  
CODE (BMCC) BE AMENDED BY ADDING ARTICLE 7-  
2000 ESTABLISHING REGULATIONS FOR THE  
OPERATION OF MARIJUANA BUSINESSES AND  
ESTABLISHING REQUIREMENTS FOR MARIJUANA  
BUSINESSES TO OBTAIN BUSINESS LICENSES AND  
REPEALING ARTICLE 7-1700. – MEDICAL MARIJUANA**

**WHEREAS** the Initiative Measure 190 (I-190) passed by popular vote on November 2, 2020, statewide, in Yellowstone County, Montana, and in the City of Billings, Montana, legalizing adult-use marijuana and providing for approval of certain marijuana businesses within the State of Montana; and

**WHEREAS**, the 2021 Montana Legislature passed House Bill (HB) 701, with most sections effective January 1, 2022, extensively changes and regulates the use, possession, and sale for profit of medical and adult-use (recreational) marijuana and modifies I-190 and the Montana Medical Marijuana Act; and

**WHEREAS**, HB 701 provides that local governments may regulate marijuana businesses to protect the public health, safety, or welfare of the local jurisdiction; and

**WHEREAS**, the City of Billings is a municipality with self-governing powers as provided by the Montana Constitution, Article XI, Section 6 and MCA sections 7-1-101, -102; and

**WHEREAS**, the powers and authority of a local government unit with self-governing powers shall be liberally construed and every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority. MCA 7-1-106; see also Montana Constitution, Article XI, Section 4(2); and

**WHEREAS**, the City of Billings is specifically empowered through MCA 7-21-4101 to license all industries, pursuits, professions, and occupations and to impose penalties for failure to comply with such license requirements; and to fix the amount, terms, and manner of issuing and revoking licenses. Further, the City Council may refuse to issue licenses when it may deem it best for the public interests; and

**WHEREAS**, in a legitimate exercise of its legislative power to preserve the public peace, health, safety, and welfare of the City, the City Council wishes to require marijuana businesses obtain a business license prior to operating in the City of Billings; and

**WHEREAS**, in a legitimate exercise of its legislative power to preserve the public peace, health, safety, and welfare, the City Council of the City of Billings wishes to regulate the operation of marijuana businesses in the City of Billings;

**WHEREAS**, in a legitimate exercise of its legislative power to preserve the public peace, health, safety, and welfare, the City Council of the City of Billings wishes to define the rights of personal use and cultivation for individuals to clarify the limits of the regulations defined herein; and

**WHEREAS**, the City Council further recognizes that, unless properly regulated, the cultivation, manufacture, distribution, testing, possession, sale and use of marijuana may be harmful to public health, safety and welfare.

**NOW, WHEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:**

**Section 1.** Article 7-2000 of the Billings, Montana City Code (BMCC) be created and added to read as follows:

## **ARTICLE 7-2000 – MARIJUANA REGULATIONS**

### **DIVISION 1. GENERALLY**

#### **Sec. 7-2001. Marijuana, prohibited acts.**

(a) As used in this Article, 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 0.3% 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. The term does not include a drug approved by the United States food and drug administration pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(b) It shall be unlawful and a misdemeanor offense for any person to smoke, consume or use marijuana or marijuana products openly and publicly or in a manner that endangers others.

(1) The term "openly" means occurring or existing in a manner that is unconcealed, undisguised, or obvious.

(2) The term "publicly" means:

a. Occurring or existing in a public place;

b. Occurring or existing in any place that is commonly or usually open or accessible by the general public; or

c. Occurring or existing in any outdoor location where the consumption of marijuana is clearly observable from a public place.

(3) The term "public place" means a place to which the public or a substantial number of the public have access, and includes, but is not limited to, parks, playgrounds, open space areas, trails, paths, sidewalks, streets, highways, and public rights-of-way, public buildings, transportation facilities, schools, places of amusement, mercantile establishments, shopping centers, places of business usually open to the general public, the common areas of any public or private buildings or facilities, parking lots, and vehicles in or upon such places.

(c) It shall not be an offense under Subsection (b) of this Article if the consumption of marijuana is occurring on private residential property and the person consuming the marijuana is:

(1) An owner of the property; or

(2) A person who has a leasehold interest in the property; or

(3) Any other person who has been granted express or implied permission to consume marijuana on the property by the owner or the lessee of the property.

(4) Anyone who is consuming marijuana pursuant to this Subsection (c) on property zoned for single-family detached homes, duplexes and townhomes must be at least twenty-five (25) feet away from the front property line, and ten (10) feet away from any side or rear property line that is adjacent to a public place. In the event that the front of the single-family detached home, duplex or townhome is closer than twenty-five (25) feet to the front property line, the person consuming marijuana pursuant to this Subsection (c) must be at least the distance of the permitted front yard setback back from the front property line but in no event, may the person be closer than five (5) feet to the front property line.

(d) It shall be unlawful and a municipal offense for any person to produce, manufacture, or process marijuana or marijuana products with the use of chemicals for the purposes of enhancing, concentrating, or extracting tetrahydrocannabinol (THC) or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol, including but not limited to hash oil, except as provided in Article 7 and Article 27 of the Billings, Montana City Code.

(e) It shall be unlawful and a municipal offense for any person under twenty-one (21) years of age to possess, smoke, consume or use marijuana or marijuana products; provided, however, this subsection (e) shall not apply to any person licensed or authorized to possess or use marijuana or marijuana products pursuant to the laws of Montana or the United States while possessing or using same in accordance with the requirements and limitations of such license or authorization.

(f) It shall be unlawful and a municipal offense for any person twenty-one (21) years of age or older to possess more than one (1) ounce of marijuana; provided, however, this subsection (f) shall not apply to any person licensed or authorized to possess

marijuana pursuant to the laws of Montana or the United States while possessing same in accordance with the requirements and limitations of such license or authorization.

(g) Marijuana and marijuana products sold at a dispensary are regulated and sold on the basis of the concentration of THC in the products and not by weight and are subject to the restrictions in subsection (f).

(h) Except as provided in subsection (i), for purposes of this Article, a single package of marijuana or marijuana products are limited to:

- (1) for marijuana sold as flower, 1 ounce of usable marijuana. The total potential psychoactive THC of marijuana flower may not exceed 35%;
- (2) for a marijuana product sold as a capsule, no more than 100 milligrams of THC per capsule and no more than 800 milligrams of THC per package;
- (3) for a marijuana product sold as a tincture, no more than 800 milligrams of THC;
- (4) for a marijuana product sold as an edible or a food product, no more than 100 milligrams of THC. A single serving of an edible marijuana product may not exceed 10 milligrams of THC;
- (5) for a marijuana product sold as a topical product, a concentration of no more than 6% THC and no more than 800 milligrams of THC per package;
- (6) for a marijuana product sold as a suppository or transdermal patch, no more than 100 milligrams of THC per suppository or transdermal patch and no more than 800 milligrams of THC per package; and
- (7) for any other marijuana product, no more than 800 milligrams of THC.

(i) A dispensary may sell marijuana or marijuana products having higher THC potency levels than described in subsection (f) to registered cardholders.

#### **Sec. 7-2002. Findings and purpose.**

City Council finds that the cultivation, manufacture, distribution, testing, possession, sale and use of marijuana may be harmful to public health, safety and welfare if not carefully regulated. This Article is designed to protect public health, safety and welfare from the potential adverse effects of the cultivation, manufacture, distribution, testing, possession, sale and use of marijuana, while permitting marijuana to be cultivated, manufactured, distributed, tested, possessed, sold and used in accordance with state and local law. City Council further finds and declares that the subject matter of this Article is a matter of local and municipal interest.

#### **Sec. 7-2003. Incorporation of general licensing provisions.**

The provisions of Article 7, Article 13, and Article 27, Billings, Montana City Code, shall apply to this Article except where they may be inconsistent with the provisions of

this Article. No individual nor entity may operate a marijuana business within City limits without obtaining the appropriate licenses from the State and the City.

**Sec. 7-2004. Other licenses, taxes, and laws generally.**

The licenses and fees required by this Article for marijuana businesses replace the regular business, occupation and profession tax normally assessed under Billings, Montana City Code, but are in addition to any other applicable licenses, permits, or fees required by the city, county or state. A marijuana business licensed under this Article shall comply with all other applicable ordinances and laws, including city zoning code.

**Sec. 7-2005. Definitions.**

The following definitions shall apply throughout this Article:

(a) The definitions contained in Titles 15, 16, and 50, Montana Code Annotated, shall apply to this Article except where this Article provides a different definition, or the context of this Article makes it clear that the statutory definition does not apply.

(b) **Adjacent grounds:** means all areas that the licensee has a right to possess by virtue of his or her ownership or lease, which are outside the enclosed licensed premises, but adjacent and contiguous to the licensed premises, including but not limited to porches, patios, decks, entryways, lawns, parking lots and similar areas and all fixed and portable things in those areas, including but not limited to lights, signs, speakers and security devices.

(c) **Adult use dispensary:** means a licensed premises from which a person licensed by the Montana Department of Revenue and the City may:

(1) obtain marijuana or marijuana products from a licensed cultivator, manufacturer, dispensary, or other licensee approved under this Article; and

(2) sell marijuana or marijuana products to registered cardholders, adults that are 21 years of age or older, or both.

(d) **Adult-use marijuana or recreational marijuana:** except where the context clearly indicates otherwise, means growing marijuana plants, harvested marijuana in any condition and marijuana products of all kinds which are legally available for purchase and consumption by individuals age 21 or older whether or not the individual is a registered cardholder.

(e) **Affiliate:** means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another person.

(f) **Approve a license:** means to find that the requirements for a license have been met, but does not give the applicant the right to operate a marijuana business until the license is issued.

(g) Beneficial owner of or beneficiary ownership of or beneficially owns an: is determined in accordance with section 13(d) of the federal Securities and Exchange Act of 1934, as amended.

(h) Canopy: means the total amount of square footage dedicated to live plant production at a licensed premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

(i) Character and record: includes all aspects of a person's character and record, including but not limited to moral character, criminal record, serious traffic offenses, education, training, experience, civil judgments, truthfulness, honesty, financial responsibility, and records of previous sanctions against liquor licenses, gambling licenses or marijuana licenses, which the person owned, in whole or in part, or in which the person served as a principal, manager or employee. The conviction of any person for any offense shall not, in itself, be grounds for a finding of bad character and record if such person demonstrates that he or she has been rehabilitated, but rehabilitation shall not be considered if a provision in this Article declares that the offense is a per se disqualification.

(j) City administrator: means the Billings City Administrator or his/her designee.

(k) City attorney: means the Billings City Attorney or any attorney on his/her staff.

(l) City council: means the Billings City Council.

(m) Complaint: means a document filed with the City, any of its Departments, or documents originating within the City by its employees or agents, seeking sanctions against a marijuana business.

(n) Contiguous: means located within the same building as the marijuana business, located in a separate building on the same parcel of land as the marijuana business, or located in a separate building on a separate parcel of land that is adjacent to and shares at least fifty percent (50%) of a common lot line with the lot on which the marijuana business is located.

(o) Control, controls, controlled, controlling, controlled by, and under common control: means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting owner's interests, by contract, or otherwise.

(p) Controlling beneficiary owner: means a person that satisfies one or more of the following:

(1) is a natural person, an entity that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia, a publicly traded corporation, and:

a. acting alone or acting in concert, owns or acquires beneficial ownership of 5% or more of the owner's interest of a marijuana business;

b. is an affiliate that controls a marijuana business and includes, without limitation, any manager; or

c. is otherwise in a position to control the marijuana business; or

(2) is a qualified institutional investor acting alone or acting in concert that owns or acquires beneficial ownership of more than 15% of the owner's interest of a marijuana business.

(q) Creditor: means any person lending, paying or providing funds, directly or indirectly, to pay any part of the costs of operating the marijuana business including, but not limited to, the costs of rent, mortgage payments, utilities, debt payments, supplies, product, equipment, advertising, vehicles, salary and wages.

(r) Cultivator: means a person licensed by the State of Montana and the City to:

(1) plant, cultivate, grow, harvest, and dry marijuana; and

(2) 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.

(s) Employee: means the licensee's or proposed licensee's employees.

(t) Harm or harmful to public health, safety or welfare: means any matter that adversely affects the health, safety or welfare of any person or group of persons within the City of Billings or any adjacent community, including but not limited to matters related to crime, lighting, security, traffic, graffiti, loitering, litter, parking and noise. A showing of actual harm shall not be required and a showing of potential or threatened harm shall be sufficient. Any violation of any criminal statute or ordinance is per se substantially harmful to public health, safety and welfare, without any showing of actual or threatened harm. The mere possession, sale, cultivation, processing, smoking or ingestion of marijuana and marijuana products, when performed lawfully, shall not in itself be considered harmful to public health, safety and welfare.

(u) Indoor cultivation facility: means an enclosed area used to grow live plants that is within a permanent structure using artificial sunlight exclusively or to supplement natural sunlight. The term may include:

(1) a greenhouse;

(2) a hoop house; or

(3) a similar structure that protects the plants from variable temperature, precipitation, and wind.

(v) In public: means any area that the public may generally enter, including any business open to the public. The term includes the licensed premises and the adjacent grounds. The term includes persons in motor vehicles located in a public place.

(w) Issue a license: means to finalize the license after a previous approval of the license, and may or may not occur after approval of the license, depending on any completions, inspections, approvals or conditions that the City may require to be satisfied before issuance. Issuance gives the licensee the right to operate a marijuana business, provided that the licensee also obtains a State license and files a copy of the State license with the City.

(x) License Administrator: is the City Administrator or his/her designee.

(y) Licensed premises: means the area inside a building in which the cultivation, manufacture, processing, possession, weighing, display, packaging, sale and exchange of marijuana or marijuana products is licensed under this Article.

(z) Licensee: means the person or entity holding a marijuana business license under this Article.

(aa) 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 0.3% 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. The term does not include a drug approved by the United States food and drug administration pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(ab) Marijuana business license: means any of the licenses described in Article 7-2000 of the Billings, Montana City Code.

(ac) Marijuana concentrate: means any type of marijuana product consisting wholly or in part of the resin extracted from any part of the marijuana plant.

(ad) 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 other marijuana products.

(ae) Marijuana manufacturer: means a person licensed by the Department of Revenue and the City of Billings to convert or compound marijuana into marijuana products, marijuana concentrates, or marijuana extracts and package, repackage, label, or relabel marijuana products as allowed under state law and this Article.

(af) 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.

(ag) Marijuana transporter: means a person that is licensed to transport marijuana and marijuana products from one marijuana business to another marijuana business, or to and from a testing laboratory, and to temporarily store the transported marijuana and

marijuana products at its licensed premises, but is not authorized to sell marijuana or marijuana products to consumers.

(ah) Mature marijuana plant: means a harvestable marijuana plant.

(ai) Medical marijuana: means marijuana or marijuana products that are for sale solely to a registered cardholder.

(aj) Medical marijuana dispensary: means a medical marijuana store operated for the limited purpose of selling medical marijuana and marijuana products to registered cardholders.

(ak) Outdoor cultivation: means live plants growing in an area exposed to natural sunlight and environmental conditions including variable temperature, precipitation, and wind.

(al) Permit: when used as a verb means to:

(1) Participate in or contribute to an act, conduct or omission;

(2) Consent to or condone an act, conduct or omission;

(3) Know or have reason to know that an act, conduct or omission is or may be occurring, or probably will occur unless steps are taken to prevent the same, and failing to take reasonable steps to halt, thwart or prevent the same; or

(4) Ignore, avoid knowledge or notice of, or turn a blind eye to an act, conduct or omission that may be occurring.

(am) Person: means an individual, partnership, association, company, corporation, limited liability company, or organization.

(an) Principal: means a controlling beneficial owner or a passive beneficial owner as defined by Montana Code Annotated § 16-12-102, including, but not limited to, a natural person, business entity, publicly traded corporation, or qualified private fund that acting alone or in concert owns or acquires beneficial ownership of five percent (5%) or more of an ownership interest in the licensed business, is an affiliate that controls the business, including any manager, or that is in a position to control the marijuana business.

(ao) Publicly traded corporation: means any person other than an individual that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia or another Country that authorizes the sale of marijuana and that meets the definition and qualifications of a publicly traded corporation as promulgated by the State of Montana.

(ap) Registered Cardholder: means a person with a debilitating medical condition who has received and maintains a valid registry identification card from the State of Montana.

(aq) Registry identification card: means a document issued by the Department of Revenue, State of Montana that identifies an individual as a registered card holder.

(ar) Retail marijuana dispensary has the same meaning as an adult use dispensary.

(as) Seedling: means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

(at) Serious traffic offense: means any driving offense carrying eight (8) points or more under Section 61-5-206, Montana Code Annotated, and applicable state administrative rules, or the substantial equivalent of such offense in any other State.

(au) Testing laboratory: means a qualified person, licensed by the Montana Department of Revenue that:

(1) provides testing of representative samples of marijuana and marijuana products; and

(2) 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.

(av) Usable marijuana: means the dried leaves and flowers of the marijuana plant that are appropriate for the use of marijuana by an individual. The term does not include the seeds, stalks, and roots of the plant.

#### **Sec. 7-2006. Time.**

In calculating any period of time prescribed or allowed under this Article, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, even if it is a Saturday, Sunday, or legal holiday, unless the prescribed time period is ten (10) days or less.

#### **Sec. 7-2007. No private duties, cause of action or remedies.**

Nothing contained in this Article shall be construed as creating, directly or indirectly, any duty between private persons, a private cause of action or any private legal remedy.

#### **Sec. 7-2008. Construction and severability.**

Any court of competent jurisdiction construing or applying this Article shall seek a saving construction and application that makes the provisions of this Article constitutional. In the event that any court of competent jurisdiction determines that any provision in this Article violates any constitutional right, despite the court's saving construction and application, the Court shall strike the offending provision only and sever the same from the remainder of this Article, which shall remain valid and effective.

#### **Sec. 7-2009. Nature of license.**

(a) Every license issued under this Article confers only a limited and conditional privilege subject to the requirements, conditions, limitations and qualifications of this both Article and State law. The license does not confer a property right of any kind. The license and the privilege created by the license may be further regulated, limited or completely extinguished at the discretion of City Council or the electorate of the City, as provided in this Article, without any compensation to the licensee.

(b) Every license approved or issued under this Article shall be subject to the future exercise of the reserved rights of referendum and initiative, the exercise of the Local Option described in Section 16-12-301, Montana Code Annotated, and any other future ordinances adopted by a vote of the Electors of the City of Billings or City Council. Nothing contained in this Article grants to any licensee any vested right to continue operating under the provisions of this Article as they existed at the time the license was approved or issued, and every license shall be subject to any ordinance or prohibition adopted after the license was approved or issued.

(c) In the event that the Electors of the City of Billings, by a majority of the registered electors of the City, at a regular or special election, or a majority of City Council, vote to prohibit by ordinance the licensing and operation of any type of marijuana business within the City of Billings pursuant to Section 16-12-301, Montana Code Annotated, then every license issued or approved under this Article, which is prohibited under such ordinance, shall be deemed void and the operation of any such marijuana business prohibited under the ordinance shall become illegal on the effective day of the ordinance.

(d) Every license is separate and distinct and is tied to a specific location with specific conditions. The license cannot be assigned, delegated, sold, bequeathed, or otherwise transferred between persons or transferred to a different location, except as provided in this Article. No licensee shall exercise the privileges of any other licensee or delegate the privileges of its own license.

(e) The licenses issued under this Article consist of a limited and conditional privilege to operate the designated marijuana business, provided that the licensee also obtains any necessary State license. The license certificate issued by the City is merely evidence that a license was issued and is not the license itself. Assignment or conveyance of the license certificate alone does not transfer any right to the license.

#### **Sec. 7-2010. License and other fees.**

(a) Upon initial application for issuance of a license or renewal of an existing license, or request for a change to an existing license, the city shall collect a nonrefundable application or renewal fee as prescribed by council resolution, to be paid into the general fund. At the time of issuance of the license, an annual fee as prescribed by council resolution shall be collected. An approved application for issuance or renewal of a license is void one hundred and eighty (180) days after the date of approval if the licensee does not obtain the license.

(b) City Council may establish a separate fee schedule for all costs, licenses, and renewals provided for in this Article by resolution.

(c) In addition to the foregoing fees, applicants and licensees shall pay the reasonable fees of any governmental agency conducting any investigation, inspection, testing, other licensing, registration, fingerprinting, approval or permitting required under the Billings, Montana City Code, State law or State regulations.

(d) The primary purpose of the fees provided in this Section is to defray the costs of the particular municipal services provided and not to defray the costs of the general services of municipal government or to raise general revenues. The fees provided in this Section and established by City Council shall be reasonably related and proportional to the costs of the services provided and do not generate additional City revenue.

(e) If any license or application is denied, approved but not issued, lapsed, abandoned, withdrawn, surrendered, suspended, fined, revoked or otherwise sanctioned, no part of the fees paid therefor shall be refunded to the applicant or licensee.

(f) The City of Billings shall not be required to cultivate or care for any marijuana or marijuana products belonging to or seized from any licensee. The City of Billings is not authorized to sell marijuana, medical or otherwise. Any marijuana seized by the City for whatever reason shall be disposed of in accordance with law.

**Sec. 7-2011. Term of license.**

Unless otherwise specifically provided for in this Article, every license shall be valid for one (1) year from the date it is issued, unless the license is earlier revoked.

**Sec. 7-2012. Coordination with Montana Department of Revenue and State requirements.**

(a) The License Administrator shall inform the Montana Department of Revenue of its investigations, inspections and all decisions approving new licenses, issuing new licenses, imposing conditions on licenses, renewing licenses, approving major changes in licenses, information regarding minor changes, and sanctions imposed on licenses.

(b) To the extent that such coordination is reasonably feasible and efficient, the City of Billings shall coordinate its investigations and actions with the Montana Department of Revenue, but the City of Billings reserves the right to act independently and to reach its own findings of fact, findings of law and conclusions regarding approvals, issuance, denials, conditions, renewals, major changes, sanctions of licenses and any other matter related to licenses, without regard to the findings of fact, findings of law and conclusions that the State may reach regarding the same licenses based on the same incident or conduct.

(c) The approval or issuance of a license under this Article shall not constitute a representation by the City of Billings that the licensee is qualified for or will receive a State license. In the event of any conflict between the provisions of this Article and the provisions of the Montana Marijuana Regulation and Taxation Act or any other applicable state or local law, the more restrictive provision shall control.

**Sec. 7-2013. Personal use and cultivation of marijuana.**

(a) The following acts are lawful within the City of Billings for a person who is 21 years of age or older:

(1) Possessing, purchasing, obtaining, using, ingesting, inhaling, or transporting 1 ounce or less of usable marijuana, except that not more than 8 grams may be in concentrated form and not more than 800 milligrams of THC may be in edible marijuana products meant to be eaten or swallowed in solid form;

(2) Transferring, delivering, or distributing, without consideration, to a person who is 21 years of age or older, 1 ounce or less of usable marijuana, except that not more than 8 grams may be in concentrated form and not more than 800 milligrams of THC may be in edible marijuana products meant to be eaten or swallowed in solid form;

(3) In or on the grounds of a private residence, possession, planting, or cultivating up to two mature marijuana plants and two seedlings, or four mature marijuana plants and four seedlings for a registered cardholder, and possession, harvesting, drying, processing, or manufacturing the marijuana, provided that:

a. Marijuana plants and any marijuana produced by the plants in excess of 1 ounce must be kept in a locked space in or on the grounds of one private residence and may not be visible by normal, unaided vision from a public place;

b. Not more than twice the number of marijuana plants permitted under this subsection (a)(3) may be cultivated in or on the grounds of single private residence simultaneously;

c. A person growing or storing marijuana plants under this subsection (a)(3) must own the private residence where the plants are cultivated and stored or obtain written permission to cultivate and store marijuana from the owner of the private residence; and

d. No portion of a private residence used for cultivation of marijuana and manufacture of marijuana products for personal use may be shared with, rented, or leased to a marijuana business.

e. A sustained violation of any of the conditions of this subsection is a nuisance subject to the remedies in this Article.

(4) Assisting another person who is at least 21 years of age in any of the acts permitted by this section, including allowing another person to use one's residence for any of the acts described in this section; and

(5) Possession, purchasing, using, delivering, distributing, manufacturing, transferring, or selling to persons 18 years of age or older paraphernalia related to marijuana.

(b) The following acts are prohibited and subject to the following penalties:

- (1) A person who cultivates marijuana plants that are visible by normal, unaided vision from a public place in violation of subsection (a)(3) is subject to a civil fine not exceeding \$250 and forfeiture of the marijuana.
- (2) A person who cultivates marijuana plants or stores marijuana outside of a locked space is subject to a civil fine not exceeding \$250 and forfeiture of the marijuana.
- (3) A person who smokes marijuana in a public place is subject to a civil fine not exceeding \$50.

**Sec. 7-2014. Marijuana as a nuisance.**

- (a) Receipt by the City of a sustained complaint that a property on which a home cultivation exists has violated this Section 7-2013(a)(3) shall be considered a nuisance.
- (b) Each continuance of a nuisance for twenty-four (24) hours shall be considered a separate and distinct violation of Section 7-2013(a)(3).
- (c) Upon the first failure, neglect, or refusal to maintain the property free from marijuana cultivation in violation of Section 7-2013(a)(3), the city shall give notice to the non-complying owner, agent or occupant thereof. Such notice shall provide at a minimum:
  - (1) That the non-complying owner, or agent thereof, shall be allowed ten (10) days from the date of notice of noncompliance to cut or remove marijuana;
  - (2) That upon failure to comply, the city may, by its own work forces or by contract, cause the marijuana to be removed and the cost thereof shall be assessed again the non-complying real property together with an additional administrative fee as set forth in this Section.
- (d) Failure to remove the marijuana may cause the city to remove the marijuana and charge the cost thereof against the real property, together with an administrative cost equal to twenty-five (25) percent of the removal cost and a penalty of \$25.00 for the first time the city provides the removal, \$50.00 for the second removal, and \$75.00 for the third and any subsequent times the city provides removal per calendar year.
- (e) Notice of a violation under this Section shall be made by either:
  - (1) Posting a copy of the notice on the parcel;
  - (2) Mailing a copy of the notice by first class U.S. mail to the owner of the property at the last known address shown on the tax rolls of Yellowstone County; or
  - (3) Personal service upon the owner.

(f) Notice shall be deemed given and complete the day the notice is posted, mailed, or personally served.

(g) Annually, the city shall prepare a list of all lots, tracts and parcels of real property within the city from which and adjacent to which marijuana was removed by the city and for which charges and penalties have not been paid, the list shall include as a minimum the following:

- (1) Name as shown by the tax rolls, common address if known;
- (2) Tax code of the property;
- (3) Legal description of the lot, tract or parcel;
- (4) Cost of the marijuana removal for that property;
- (5) Administrative costs;
- (6) Penalty assessed.

(h) The assessment list shall be incorporated into a special assessment resolution in proper form which resolution shall be presented to the city council. From and after passage of the resolution, the assessments stated therein, together with administrative costs and penalty shall constitute a special tax, as provided in Montana Code Annotated 7-22-4101 and a lien on the real property shown on the assessment list. A copy of the resolution after passage shall be certified to the official collecting the city taxes and assessments.

(i) In the event an owner disagrees with a notice of violation, or due to extreme hardship is incapable of complying with the provisions of this article, the owner may appeal a violation notice to the director of planning within seven (7) days of receiving the violation notice. Such appeal must be in writing and must set forth the specific reasons why the violation notice is not well taken, or why the owner is unable to comply with the provisions of this chapter. The director of planning shall review the appeal and make a determination as to the validity of the owner's basis for objecting to the action demanded, and shall promptly notify the owner of the decision reached. For good cause shown, or in cases of extreme hardship, the director of planning may make a determination that the provisions of this article are inapplicable to a certain parcel. Decisions of the director of planning are final, and subject only to judicial review.

(j) An owner may file a written appeal of any costs, fees and penalties imposed under this article to the director of planning within seven (7) days of being billed. Such appeal must be in writing and must set forth the specific reasons as to the owner's objections to the costs, fees, and penalties imposed. The director of planning shall review the appeal and make a determination as to the validity of the owner's basis for objecting the costs, fees, and penalties imposed, and shall promptly notify the owner of the decision reached. For good cause shown, or in cases of extreme hardship, the director of planning may modify or waive costs, fees and penalties imposed under this article. Decisions of the director of planning are final, and subject only to judicial review

(k) All time periods referenced in this Section shall be calculated as actual calendar days, including weekends and holidays.

**Sec. 7-2015-Sec. 7-2020. Reserved**

**Division 2. Medical Marijuana Dispensary Licenses**

**Sec. 7-2021. Licenses and permit required.**

(a) No person shall operate a medical marijuana dispensary unless he or she has first obtained the following and maintains the same in full force and effect:

- (1) All permits from the City for the location of the proposed licensed premises;
- (2) A City license to operate a medical marijuana dispensary;
- (3) A City license for any other business that will be conducted on the licensed premises;
- (4) Ownership of, or a lease in effect on, the proposed licensed premises;
- (5) A State license to operate a medical marijuana dispensary; and
- (6) A State license for any other marijuana business that will be conducted on the licensed premises.

**Sec. 7-2022. Medical marijuana dispensary licenses.**

(a) The License Administrator may issue a medical marijuana dispensary license granting the privileges described in Title 16 and Title 50, Montana Code Annotated, subject to the requirements, conditions, qualifications, and limitations set forth in this Article and state law. A medical marijuana dispensary wishing to engage in marijuana cultivation, marijuana and marijuana product manufacturing, and marijuana and marijuana product transportation must obtain the appropriate licenses from the City of Billings and State of Montana as provided by city code and the laws of the State of Montana.

(b) No more than eight (8) medical marijuana dispensary licenses shall be authorized at any single time.

(c) The holder of a license for a medical marijuana dispensary issued under this section may not hold or have an interest in an adult use dispensary license without obtaining the appropriate licenses from the City of Billings and the State of Montana as provided by city code and the laws of the State of Montana.

**Sec. 7-2023. Application for medical marijuana dispensary license.**

(a) All initial applications and annual renewal applications for medical marijuana dispensary licenses shall be made to the License Administrator upon forms supplied by the City Administrator. Upon receipt of such application and the appropriate nonrefundable application fee, the License Administrator will make or cause to be made a thorough investigation as to the qualifications of the applicant and the suitability of the

premises for operating a medical marijuana dispensary. If, upon such investigation, it appears that the applicant is qualified under the law and that the premises are suitable for conducting a medical marijuana dispensary under the laws of the state and the rules and regulations of the city, the License Administrator approves such application for entry into a lottery process for the allotment of available dispensary licenses, if all other requirements of the laws are fulfilled.

(b) All of the following must be completed and presented by the applicant upon initial application:

(1) Application form under oath for each individual or business entity, along with the appropriate application fee in an amount as prescribed by council resolution. Said application fee is nonrefundable and shall be charged and collected from each individual applicant.

(2) All documents required by the City Administrator to be submitted with the initial application and any annual renewal application.

(3) When renewing a medical marijuana dispensary license, the applicant must submit a completed renewal form under oath, along with a nonrefundable renewal fee in an amount as prescribed by council resolution. If any changes in the information provided in the initial application have occurred, the renewal applicant must provide complete updated information regarding each change before his renewal application will be processed.

(4) Each initial and renewal applicant shall promptly furnish the License Administrator with all additional information pertaining to the application or to the applicant which the City Administrator may require through Administrative Order. Failure to supply the information requested within five (5) days after the request has been received by the applicant shall constitute grounds for delaying consideration of the initial or renewal application.

(5) At any time that a cap on the number of medical marijuana dispensaries is in place, only one lottery entry shall be given to a qualified applicant and only one medical marijuana dispensary license shall be awarded to an applicant selected by a lottery. A qualified applicant who is unsuccessful in the lottery process may initiate a new application to participate in a future lottery.

(6) The City Administrator may set standards for license applications through an Administrative Order, including designated time periods for acceptance of new applications, deadlines for final consideration of the applications submitted, and the date, manner, and means by which the lottery process shall be conducted.

(c) The determination by the License Administrator that the application appears to be complete shall not constitute any representation or determination that the application meets the requirements of this Article for approval or issuance of a license. Notwithstanding any determination that the application appears to be complete, the License Administrator may note concerns or deficiencies in the application and its contents after conducting its review of the application.

(d) After an application is accepted as complete, it may be amended or supplemented in writing before the License Administrator's final consideration, but each amendment shall be verified under oath by each principal, and the registered manager and employees shall verify under oath the portions of any amendment that pertain to each of them.

(e) After the application is set for final consideration by the License Administrator, the application shall not be further amended.

(f) Confidential information, as defined by Montana Code Annotated 2-6-1002, provided in the application that is specifically requested to be kept confidential by the applicant shall not be made publicly available except to the extent required by applicable law.

#### **Sec. 7-2024. Requirements to obtain and retain a medical marijuana dispensary license.**

In order to obtain and retain a license, the applicant shall demonstrate by a preponderance of the evidence to the License Administrator that the following requirements are satisfied:

(1) General requirements.

- (a) The applicant has obtained all permits from the City for the location of the proposed licensed premises;
- (b) The applicant has obtained a medical marijuana dispensary license from the State of Montana;
- (c) The applicant has obtained a State and City licenses for any other business activity that will be conducted on the licensed premises;
- (d) The applicant has submitted an application for a license that the License Administrator has determined is complete; and
- (e) The applicant has paid all fees required under this Article.

(2) Personal requirements for the licensee, principals, registered manager and employees:

- (a) The applicant, principals, registered manager and employees meet all requirements for issuance of a State license.
- (b) The applicant, principals, registered manager and employees are all over the age of twenty-one (21).
- (c) The applicant, principals, registered manager and employees have not been determined by any marijuana business licensing commission, any other licensing board within the State, or the Montana Department of Revenue to not be persons of good character and record within the preceding three (3) years.

(d) The applicant, principals, registered manager and employees have not discharged a sentence for any felony in the five (5) years immediately preceding the application, nor are they currently subject to a deferred judgment or sentence for a felony.

(e) The applicant, principals and registered manager have not held an interest in any liquor license, medical marijuana license or other license issued by any city, county or state that has been revoked, suspended, or fined within the preceding two (2) years.

(f) The applicant, principals, registered agent, creditors and employees have not had their authority, if any, to act as a primary caregiver revoked by the State within the preceding two (2) years.

(g) The applicant, principals, creditors and are not in default on any city, county, state or federal taxes, fees, fines or charges, do not have any outstanding warrants for their arrest, and do not have any outstanding liens or judgments payable to the City.

(h) The applicant and principals are not in default on any student loan.

(i) The applicant, principals and employees are trained or experienced in, and able to comply with, the requirements of this Article and state law pertaining to medical marijuana dispensaries and other marijuana businesses for which application is made. In determining whether an applicant, principal or employee has shown sufficient training or experience, the City Administrator shall consider, among other things, the following factors:

1. The role that the individual will play in operating the dispensary;
2. Previous experience operating medical marijuana dispensaries or marijuana businesses;
3. Completion of state or industry-approved courses on how to comply with Montana laws and regulations regarding medical marijuana dispensaries and marijuana businesses; and
4. The individual's understanding of state law and city code regulating medical marijuana.

(j) The applicant, principals, registered manager and employees all hold valid occupational licenses and registrations for medical marijuana issued by the State of Montana.

(k) The applicant and principals do not have any orders or judgments against them for child support in default or arrears.

(l) The applicant and principals are not peace officers or prosecuting attorneys.

(m) The applicant and principals are not licensed physicians who recommend medical marijuana.

(3) Location and other licensing of premises.

- (a) The proposed licensed premises and adjacent grounds meet all requirements for issuance of a state license.
- (b) The proposed licensed premises meet all zoning requirements.
- (c) The premises are not licensed or operated as an establishment for the sale or service of alcohol beverages as defined in Title 16, Article 3, Montana Code Annotated, a business subject to the regulations of Article 7-1900 et. seq. of the Billings City Code, a dance hall or an amusement establishment as defined in Article 7, Billings, Montana City Code.
- (d) The premises are not licensed or operated as a retail food establishment or wholesale food registrant.
- (e) Retail and medical marijuana licenses may be co-located on a licensed premises under a common owner, but only in accordance with state and local law.

(4) Control, security and code compliance of premises.

- (a) The applicant has sole legal control of the proposed licensed premises at the time the application is submitted, under a lease that is presently in effect or through present ownership of the proposed licensed premises.
- (b) The proposed licensed premises have a suitable limited access area where the cultivation, display, storage, processing, weighing, handling and packaging of medical marijuana and marijuana products occurs, which is posted "employees only," and is separated from the areas accessible to the public by a wall, counter or some other substantial barrier designed to keep the public from entering the area.
- (c) The applicant has submitted a security plan for the proposed licensed premises, which has been inspected and approved by the City, showing at least the following security measures:
  1. All doors, windows and other points of entry have secure and functioning locks;
  2. A locking safe or enclosed metallic storage vault located inside the proposed licensed premises in which any harvested medical marijuana and medical marijuana products will be secured when the licensed premises are not open to the public;
  3. If the licensed premises are connected by any passage or entryway to any other premises, there is a door between the two (2) premises that can be locked from the licensee's side and cannot be opened from the other side;

4. A professionally monitored burglar alarm system that detects unauthorized entry of all doors, windows and other points of entry to the licensed premises; and
5. Windows facing the adjacent grounds and lighting of the adjacent grounds sufficient to ensure that customers entering and leaving the licensed premises, entering and exiting parked cars on the adjacent grounds, and walking across the adjacent grounds can be observed by employees from inside the licensed premises.

(d) The proposed licensed premises and adjacent grounds comply with all zoning, health, building, plumbing, mechanical, fire and other codes, statutes and city code, as shown by completed inspections and approvals from the applicable city departments.

(e) There is sufficient parking available on the adjacent grounds given the size of the licensed premises and the number of employees and customers that can reasonably be expected to be present at any given time.

(f) The proposed licensed premises and adjacent grounds of the licensed premises will be operated in a manner that does not cause harm to public health, safety, and welfare.

(5) Requirements specific to a proposed licensed premises of a medical marijuana dispensary also intended to be used for marijuana cultivation or marijuana product manufacturing.

(a) The area of the proposed licensed premises utilized for cultivation is equipped with a ventilation system with carbon filters sufficient in type and capacity to eliminate marijuana odors emanating from the interior to the exterior discernible by a reasonable person. The ventilation system must be inspected and approved by the appropriate city department(s).

(b) The proposed licensed premises are located in a separate building that does not share any doors, windows, air passages, vents, ducts or any heating, ventilation, air conditioning or air handling equipment or structures with any other building or premises, except for a medical marijuana dispensary or marijuana manufacturer operation limited to the manufacturing of marijuana and marijuana products to be sold exclusively in the medical marijuana dispensary to registered cardholders.

(c) Walls, barriers, locks, signs and other means are in place to prevent the public from entering the area of the proposed licensed premises utilized for cultivation or manufacturing.

(d) No portion of the building in which the proposed licensed premises are located is utilized as a residence.

(e) A medical marijuana dispensary may obtain a City marijuana transporter license, authorizing temporary storage on the licensed premises of medical

marijuana concentrate and products received from a marijuana products manufacturer for the sole purpose of transfer to the license holder's commonly owned medical marijuana dispensaries, by providing a copy of the State application for a transporter license to the License Administrator, along with documents showing any changes to be made to the premises, operational plan, or security plan to accommodate the temporary storage.

(6) Requirements for premises that are not completed.

(a) If the proposed licensed premises have not been completed, inspected and approved as required in this Article at the time that the initial application or renewal license application is submitted, the applicant shall submit as part of the application:

1. A copy of a recorded deed in the name of the licensee showing ownership of the proposed licensed premises or a lease showing a right to occupy the proposed licensed premises; and
2. Plans, specifications, drawings and other documents showing that the proposed licensed premises and adjacent grounds will comply with the requirements of this Article when completed and inspected.

(b) The License Administrator may provide tentative approval of the license before the proposed licensed premises are completed, inspected and approved, but the City shall not issue the license until the licensed premises have been completed and all inspections and approvals required under this Article have been obtained.

(c) In the event that the license receives tentative approval, but the premises are not completed, inspected and approved as required in this Article within one hundred twenty (120) days of the tentative approval, the tentative approval shall lapse and the license shall not be issued.

(7) Requirements of this Section also apply to licensees; continuing duty.

(a) The requirements of this Section imposed on the applicant shall also apply to the licensee. The requirements of this Section imposed on the proposed licensed premises, adjacent grounds or location shall also apply to the licensed premises, adjacent grounds and actual locations, respectively.

(b) The licensee and its principals, registered manager and employees have a continuing duty to ensure that the requirements of this Section continue to be met after the license is issued and at all times that the license remains in effect.

**Sec. 7-2025. License certificate; posting of license certificate and notices on licensed premises.**

(a) After the License Administrator issues a license, the City Clerk's Office shall issue to the licensee a certificate evidencing issuance of the license. The license

certificate shall state the date issued, the term of the license, the name of the licensee, the address of the premises, conditions on the license and the following:

THIS LICENSE CONFERS ONLY A LIMITED AND CONDITIONAL PRIVILEGE SUBJECT TO THE REQUIREMENTS, CONDITIONS, LIMITATIONS AND QUALIFICATIONS OF THE BILLINGS, MONTANA CITY CODE, AS AMENDED, AND STATE LAW. THIS LICENSE DOES NOT CONFER A PROPERTY RIGHT OF ANY KIND. THE LICENSE AND THE PRIVILEGE CREATED BY THE LICENSE MAY BE FURTHER REGULATED, LIMITED OR COMPLETELY EXTINGUISHED BY THE CITY WITHOUT ANY COMPENSATION TO THE LICENSEE. THIS LICENSE IS SUBJECT TO THE FUTURE EXERCISE OF THE LOCAL OPTION DESCRIBED IN Montana Code Annotated §16-12-301, AND OTHER FUTURE ORDINANCES PASSED BY THE PEOPLE OF THE CITY OF BILLINGS OR CITY COUNCIL. THE HOLDER OF THIS LICENSE SHALL BE SUBJECT TO ANY ORDINANCE OR PROHIBITION PASSED AFTER THE LICENSE WAS APPROVED OR ISSUED. IN THE EVENT THAT THE PEOPLE OF THE CITY OF BILLINGS, BY A MAJORITY VOTE OF THE REGISTERED ELECTORS OF THE CITY, AT A REGULAR OR SPECIAL ELECTION, OR A MAJORITY OF CITY COUNCIL, VOTE TO PROHIBIT BY ORDINANCE THIS TYPE OF LICENSE AND THE OPERATION OF THIS TYPE OF MEDICAL MARIJUANA DISPENSARY WITHIN THE CITY OF BILLINGS, PURSUANT TO Montana Code Annotated §16-12-301, THEN THIS LICENSE SHALL BE VOID AND THE OPERATION OF THIS MEDICAL MARIJUANA DISPENSARY SHALL BE ILLEGAL ON THE EFFECTIVE DAY OF SUCH ORDINANCE.

(b) The licensee shall post the following on the licensed premises in a prominent place where the public, patients, and primary caregivers can easily view and read while standing in a location accessible to the public:

- (1) The license certificate issued by the State, along with any conditions on the same.
- (2) The license certificate issued by the City, along with any conditions on the same.
- (3) A notice at least twenty-four (24) inches by twenty-four (24) inches in letters at least one (1) inch in height, stating:

THIS MEDICAL MARIJUANA LICENSED PREMISES IS MANAGED BY: (STATE NAME, ADDRESS AND PHONE NUMBER FOR REGISTERED MANAGER). THE PRINCIPALS IN THIS BUSINESS ARE AS FOLLOWS: (NAMES)

(4) A notice at least twenty-four (24) inches by twenty-four (24) inches in letters at least one (1) inch in height, stating:

IF YOU HAVE CONCERNS ABOUT THE WAY THIS MEDICAL MARIJUANA LICENSED PREMISES IS OPERATED, OR OTHER ACTIVITY ON THESE PREMISES, PLEASE CONTACT THE CITY OF BILLINGS AT: (406) 657-8200.

(5) If the Licensee has received any sanction from the City during the preceding five (5) years, a notice at least twenty-four (24) inches by twenty-four (24) inches in letters at least one (1) inch in height, stating:

THIS MEDICAL MARIJUANA LICENSE HAS BEEN SANCTIONED BY THE CITY OF BILLINGS DURING THE PRECEDING FIVE (5) YEARS FOR THE FOLLOWING MISCONDUCT: (STATE DATE, VIOLATION AND SANCTION RECEIVED, LISTING ALL VIOLATIONS AND SANCTIONS IMPOSED IN THE PRECEDING FIVE (5) YEARS).

(6) A notice at least thirty (30) inches by thirty (30) inches in letters at least one (1) inch in height, stating:

THE MEDICAL MARIJUANA, MARIJUANA PLANTS AND MEDICAL MARIJUANA PRODUCTS SOLD ON THESE PREMISES ARE CULTIVATED, MANUFACTURED AND PROCESSED WITHOUT ANY GOVERNMENTAL OVERSIGHT AS TO HEALTH, SAFETY OR EFFICACY.

THERE MAY BE HEALTH RISKS ASSOCIATED WITH THE CONSUMPTION OF MEDICAL MARIJUANA AND MEDICAL MARIJUANA PRODUCTS.

(7) A notice at least thirty (30) inches by thirty (30) inches in letters at least one (1) inch in height, stating:

THE DIVERSION OF MEDICAL MARIJUANA FOR NON-MEDICAL PURPOSES IS A VIOLATION OF STATE AND LOCAL LAW.

THE USE OF MEDICAL MARIJUANA MAY IMPAIR A PERSON'S ABILITY TO DRIVE A MOTOR VEHICLE OR OPERATE MACHINERY. IT IS ILLEGAL UNDER STATE LAW TO DRIVE A MOTOR VEHICLE OR OPERATE MACHINERY WHILE UNDER THE INFLUENCE OF OR IMPAIRED BY MARIJUANA.

POSSESSION AND DISTRIBUTION OF MEDICAL MARIJUANA IS A VIOLATION OF FEDERAL LAW.

SMOKING OR CONSUMING MEDICAL MARIJUANA WITHIN THESE PREMISES, WITHIN FIFTEEN (15) FEET OF THESE PREMISES OR ANYWHERE IN PUBLIC IS UNLAWFUL.

(c) The licensee shall post the following on the licensed premises in a prominent place near other notices to employees, where the licensee, principals, registered manager and employees can easily view the same, a notice at least twenty-four (24) inches by twenty-four (24) inches in letters at least one (1) inch in height, stating:

NOTICE TO LICENSEE, PRINCIPALS, REGISTERED MANAGER AND EMPLOYEES:

THESE PREMISES, THE ADJACENT GROUNDS AND EVERY ROOM, AREA, LOCKER, SAFE AND CONTAINER ON THE LICENSED PREMISES AND ADJACENT GROUNDS EXCEPT YOUR PERSON, THE PERSONAL EFFECTS IN YOUR IMMEDIATE POSSESSION, AND YOUR PRIVATE VEHICLE, ARE SUBJECT TO

INSPECTION BY CITY EMPLOYEES AND POLICE OFFICERS AT ANY TIME THAT ANY PERSON IS PRESENT ON THE LICENSED PREMISES, WITHOUT A WARRANT, AND WITHOUT REASONABLE SUSPICION TO BELIEVE THAT ANY OFFENSE HAS OCCURRED. YOU HAVE NO REASONABLE EXPECTATION OF PRIVACY ON THESE PREMISES AND THE ADJACENT GROUNDS EXCEPT IN YOUR PERSON, THE PERSONAL EFFECTS IN YOUR IMMEDIATE POSSESSION, AND YOUR PRIVATE VEHICLE.

### **DIVISION 3. RETAIL MARIJUANA DISPENSARY LICENSES**

#### **Sec. 7-2031. Licenses and permit required.**

No person shall operate a retail marijuana dispensary unless he or she has first obtained the following and maintains the same in full force and effect.

- (1) All permits from the City for the location of the proposed licensed premises;
- (2) A City license to operate a retail marijuana dispensary;
- (3) A City license for any other business that will be conducted on the licensed premises;
- (4) Ownership of, or a lease in effect on, the proposed licensed premises;
- (5) A State license to operate a retail marijuana dispensary; and
- (6) A State license for any other marijuana business that will be conducted on the licensed premises.

#### **Sec. 7-2032. Retail marijuana dispensary licenses.**

(a) The License Administer may issue a retail marijuana dispensary license granting the privileges described in Title 15, Title 16, and Title 50, Montana Code Annotated, subject to the requirements, conditions, qualifications, and limitations set forth in this Article. A retail marijuana dispensary wishing to engage in marijuana cultivation, marijuana and marijuana product manufacturing, and marijuana and marijuana product transportation must obtain the appropriate licenses from the City of Billings and State of Montana as provided by city code and the laws of the State of Montana. Likewise, a retail marijuana dispensary wishing to sell medical marijuana and medical marijuana products to registered cardholders as provided under Title 15, Title 16, and Title 50, Montana Code Annotated must obtain the appropriate licenses from the City of Billings and State of Montana as provided by city code and the laws of the State of Montana.

(b) No more than four (4) retail marijuana dispensary licenses shall be authorized at any time.

(c) The holder of a license for a retail marijuana dispensary issued under this section may not hold or have an interest in a medical marijuana dispensary license without obtaining the appropriate licenses from the City of Billings and the State of Montana as provided by city code and the laws of the State of Montana.

**Sec. 7-2033. Application for retail marijuana dispensary license.**

(a) All initial applications and annual renewal applications for retail marijuana dispensary licenses shall be made to the License Administrator upon forms supplied by the City Administrator. Upon receipt of such application and the appropriate nonrefundable application fee, the License Administrator will make or cause to be made a thorough investigation as to the qualifications of the applicant and the suitability of the premises for operating a retail marijuana dispensary. If, upon such investigation, it appears that the applicant is qualified under the law and that the premises are suitable for conducting a retail marijuana dispensary under the laws of the state and the rules and regulations of the city, the License Administrator shall approve such application for entry into a lottery process for the allotment of available dispensary licenses if all other requirements of the laws are fulfilled.

(b) All of the following must be completed and presented by the applicant upon initial application:

- (1) Application form under oath for each individual or business entity, along with the appropriate application fee in an amount as prescribed by council resolution. Said application fee is nonrefundable and shall be charged and collected from each individual applicant;
- (2) All documents required by the City Administrator to be submitted with the initial application and any annual renewal application;
- (3) When renewing a retail marijuana dispensary license, the applicant must submit a completed renewal form under oath, along with a nonrefundable renewal fee in an amount as prescribed by council resolution. If any changes in the information provided in the initial application have occurred, the renewal applicant must provide complete updated information regarding each change before his renewal application will be processed.
- (4) Each initial and renewal applicant shall promptly furnish the License Administrator with all additional information pertaining to the application or to the applicant which the City Administrator may require through Administrative Order. Failure to supply the information requested within five (5) days after the request has been received by the applicant shall constitute grounds for delaying consideration of the initial or renewal application.
- (5) At any time that a cap on the number of retail marijuana dispensaries is in place, only one lottery entry shall be given to a qualified applicant and only one retail marijuana dispensary license shall be awarded to an applicant selected by a lottery. A qualified applicant who is unsuccessful in the lottery process may initiate a new application to participate in a future lottery.
- (6) The City Administrator may set standards for license applications through an Administrative Order, including designated time periods for acceptance of new applications, deadlines for final consideration of the applications submitted, and the date, manner, and means by which the lottery process shall be conducted.

(7) No more than four (4) retail marijuana dispensary licenses may be outstanding at any one time.

(c) The determination by the License Administrator that the application appears to be complete shall not constitute any representation or determination that the application meets the requirements of this Article for approval or issuance of a license.

Notwithstanding any determination that the application appears to be complete, the License Administrator may note concerns or deficiencies in the application and its contents after conducting its review.

(d) After an application is accepted as complete, it may be amended or supplemented in writing before License Administrator's final consideration, but each amendment shall be verified under oath by each principal, and the registered manager and employees shall verify under oath the portions of any amendment that pertain to each of them.

(e) After the application is set for final consideration by the License Administrator, the application shall not be amended.

**Sec. 7-2034. Requirements to obtain and retain a retail marijuana dispensary license.**

In order to obtain and retain a license, the applicant shall demonstrate by a preponderance of the evidence to the License Administrator that the following requirements are satisfied:

(1) General requirements.

(a) The applicant has all permits from the City for the location of the proposed licensed premises;

(b) The applicant has obtained a retail marijuana dispensary license from the State of Montana;

(c) The applicant has obtained a City license for any other business activity that will be conducted on the licensed premises;

(d) The applicant has submitted an application for a license that the License Administrator has determined is complete; and

(e) The applicant has paid all fees required under this Article.

(2) Personal requirements for the licensee, principals, registered manager and employees.

(a) The applicant, principals, registered manager and employees meet all requirements for issuance of a State license.

(b) The applicant, principals, registered manager and employees are all over the age of twenty-one (21).

- (c) The applicant, principals, registered manager and employees have not been determined by any marijuana business licensing commission, any other licensing board within the State, or the Montana Department of Revenue to not be persons of good character and record within the preceding three (3) years.
- (d) The applicant, principals, registered manager and employees have not discharged a sentence for any felony in the five (5) years immediately preceding the application, nor are they currently subject to a deferred judgment or sentence for a felony.
- (e) The applicant, principals and registered manager have not held an interest in any liquor license, medical marijuana license or other license issued by any city, county or state that has been revoked, suspended, or fined within the preceding two (2) years.
- (f) The applicant, principals, registered agent, creditors and employees have not had their authority, if any, to act as a primary caregiver revoked by the State within the preceding two (2) years.
- (g) The applicant, principals, creditors and are not in default on any city, county, state or federal taxes, fees, fines or charges, do not have any outstanding warrants for their arrest, and do not have any outstanding liens or judgments payable to the City.
- (h) The applicant and principals are not in default on any student loan.
- (i) The applicant, principals and employees are trained or experienced in, and able to comply with, the requirements of this Article and state law pertaining to retail marijuana dispensaries and other marijuana business for which application is made. In determining whether an applicant, principal or employee has shown sufficient training or experience, the License Administrator shall consider, among other things, the following factors:
  1. The role that the individual will play in operating the dispensary;
  2. Previous experience operating marijuana businesses;
  3. Completion of state or industry-approved courses on how to comply with Montana laws and regulations regarding retail marijuana dispensaries and marijuana businesses; and
  4. The individual's understanding of state law and City code regulating retail marijuana.
- (j) The applicant, principals, registered manager and employees all hold valid occupational licenses and registrations for retail marijuana issued by the State of Montana.
- (k) The applicant and principals do not have any orders or judgments against them for child support in default or arrears.

- (l) The applicant and principals are not peace officers or prosecuting attorneys.
- (m) The applicant and principals are not licensed physicians who recommend medical marijuana.

(3) Location and other licensing of premises.

- (a) The proposed licensed premises and adjacent grounds meet all requirements for issuance of a state license.
- (b) The proposed licensed premises meet all zoning requirements.
- (c) The premises are not licensed or operated as an establishment for the sale or service of alcohol beverages as defined in Title 16, Article 3, Montana Code Annotated, a business subject to the regulations of Article 7-1900 et. seq. of the Billings City Code, a dance hall or an amusement establishment as defined in Article 7, Billings, Montana City Code.
- (d) The premises are not licensed or operated as a retail food establishment or wholesale food registrant.
- (e) Retail and medical marijuana licenses may be co-located on a licensed premises under a common owner, but only in accordance with state and local law.

(4) Control, security and code compliance of premises.

- (a) The applicant has sole legal control of the proposed licensed premises at the time the application is submitted, under a lease that is presently in effect or through present ownership of the proposed licensed premises.
- (b) The proposed licensed premises have a suitable limited access area where the cultivation, display, storage, processing, weighing, handling and packaging of marijuana and marijuana products occurs, which is posted "employees only," and is separated from the areas accessible to the public by a wall, counter or some other substantial barrier designed to keep the public from entering the area.
- (c) The applicant has submitted a security plan for the proposed licensed premises, which has been inspected and approved by the City, showing at least the following security measures:
  1. All doors, windows and other points of entry have secure and functioning locks;
  2. A locking safe or enclosed metallic storage vault located inside the proposed licensed premises in which any harvested marijuana and marijuana products will be secured when the licensed premises are not open to the public;
  3. If the licensed premises are connected by any passage or entryway to any other premises, there is a door between the two (2) premises that can

be locked from the licensee's side and cannot be opened from the other side;

4. A professionally monitored burglar alarm system that detects unauthorized entry of all doors, windows and other points of entry to the licensed premises; and

5. Windows facing the adjacent grounds and lighting of the adjacent grounds sufficient to ensure that customers entering and leaving the licensed premises, entering and exiting parked cars on the adjacent grounds, and walking across the adjacent grounds can be observed by employees from inside the licensed premises.

(d) The proposed licensed premises and adjacent grounds comply with all zoning, health, building, plumbing, mechanical, fire and other codes, statutes and ordinances, as shown by completed inspections and approvals from the City.

(e) There is sufficient parking available on the adjacent grounds given the size of the licensed premises and the number of employees and customers that can reasonably be expected to be present at any given time.

(f) The proposed licensed premises and adjacent grounds of the licensed premises will be operated in a manner that does not cause harm to public health, safety and welfare.

(5) Requirements specific to a marijuana cultivator license on a proposed licensed premises of a retail marijuana dispensary.

(a) The area of the proposed licensed premises utilized for cultivation is equipped with a ventilation system with carbon filters sufficient in type and capacity to eliminate marijuana odors emanating from the interior to the exterior discernible by a reasonable person. The ventilation system must be inspected and approved by the City.

(b) The proposed licensed premises are located in a separate building that does not share any doors, windows, air passages, vents, ducts or any heating, ventilation, air conditioning or air handling equipment or structures with any other building or premises, except for a marijuana dispensary or marijuana manufacturer operation limited to the manufacturing of marijuana and marijuana products to be sold exclusively in the marijuana dispensary.

(c) Walls, barriers, locks, signs and other means are in place to prevent the public from entering the area of the proposed licensed premises utilized for cultivation.

(d) No portion of the building in which the proposed licensed premises are located is utilized as a residence.

(e) A retail marijuana dispensary may obtain a City marijuana transporter license, authorizing temporary storage on the licensed premises of marijuana concentrate

and products received from a marijuana products manufacturer for the sole purpose of transfer to the permit holder's commonly owned marijuana dispensaries, by providing a copy of the State application for a transporter license to the License Administrator, along with documents showing any changes to be made to the premises, operational plan, or security plan to accommodate the temporary storage.

(6) Requirements for premises that are not completed.

(a) If the proposed licensed premises have not been completed, inspected and approved as required in this Article at the time that the initial application or renewal license application is submitted, the applicant shall submit as part of the application:

1. A copy of a recorded deed in the name of the licensee showing ownership of the proposed licensed premises or a lease showing a right to occupy the proposed licensed premises; and
2. Plans, specifications, drawings and other documents showing that the proposed licensed premises and adjacent grounds will comply with the requirements of this Article when completed and inspected.

(b) The License Administrator may provide tentative approval of the license before the proposed licensed premises are completed, inspected and approved, but the City shall not issue the license until the licensed premises have been completed and all inspections and approvals required under this Article have been obtained.

(c) In the event that the license receives tentative approval, but the premises are not completed, inspected and approved as required in this Article within one hundred twenty (120) days of the tentative approval, the tentative approval shall lapse and the license shall not be issued.

(7) Requirements of this Section also apply to licensees; continuing duty.

(a) The requirements of this Section imposed on the applicant shall also apply to the licensee. The requirements of this Section imposed on the proposed licensed premises, adjacent grounds or location shall also apply to the licensed premises, adjacent grounds and actual locations, respectively.

(b) The licensee and its principals, registered manager and employees have a continuing duty to ensure that the requirements of this Section continue to be met after the license is issued and at all times that the license remains in effect.

**Sec. 7-2035. License certificate; posting of license certificate and notices on licensed premises.**

(a) After the City Administrator issues a license, the City Clerk's Office shall issue to the licensee a certificate evidencing issuance of the license. The license certificate shall

state the date issued, the term of the license, the name of the licensee, the address of the premises, conditions on the license and the following:

THIS LICENSE CONFERS ONLY A LIMITED AND CONDITIONAL PRIVILEGE SUBJECT TO THE REQUIREMENTS, CONDITIONS, LIMITATIONS AND QUALIFICATIONS OF THE BILLINGS, MONTANA CITY CODE, AS AMENDED, AND STATE LAW. THIS LICENSE DOES NOT CONFER A PROPERTY RIGHT OF ANY KIND. THE LICENSE AND THE PRIVILEGE CREATED BY THE LICENSE MAY BE FURTHER REGULATED, LIMITED OR COMPLETELY EXTINGUISHED BY THE CITY WITHOUT ANY COMPENSATION TO THE LICENSEE. THIS LICENSE IS SUBJECT TO THE FUTURE EXERCISE OF THE LOCAL OPTION DESCRIBED IN Montana Code Annotated §16-12-301, AND OTHER FUTURE ORDINANCES PASSED BY THE PEOPLE OF THE CITY OF BILLINGS OR CITY COUNCIL. THE HOLDER OF THIS LICENSE SHALL BE SUBJECT TO ANY ORDINANCE OR PROHIBITION PASSED AFTER THE LICENSE WAS APPROVED OR ISSUED. IN THE EVENT THAT THE PEOPLE OF THE CITY OF BILLINGS, BY A MAJORITY VOTE OF THE REGISTERED ELECTORS OF THE CITY, AT A REGULAR OR SPECIAL ELECTION, OR A MAJORITY OF CITY COUNCIL, VOTE TO PROHIBIT BY ORDINANCE THIS TYPE OF LICENSE AND THE OPERATION OF THIS TYPE OF RETAIL MARIJUANA DISPENSARY WITHIN THE CITY OF BILLINGS, PURSUANT TO Montana Code Annotated §16-12-301, THEN THIS LICENSE SHALL BE VOID AND THE OPERATION OF THIS RETAIL MARIJUANA DISPENSARY SHALL BE ILLEGAL ON THE EFFECTIVE DAY OF SUCH ORDINANCE.

(b) The licensee shall post the following on the licensed premises in a prominent place where persons can easily view and read while standing in a location accessible to the public:

- (1) The license certificate issued by the State, along with any conditions on the same.
- (2) The license certificate issued by the City, along with any conditions on the same.
- (3) A notice at least twenty-four (24) inches by twenty-four (24) inches in letters at least one (1) inch in height, stating:

THIS RETAIL MARIJUANA LICENSED PREMISES IS MANAGED BY: (STATE NAME, ADDRESS AND PHONE NUMBER FOR REGISTERED MANAGER). THE PRINCIPALS IN THIS BUSINESS ARE AS FOLLOWS: (NAMES)

- (4) A notice at least twenty-four (24) inches by twenty-four (24) inches in letters at least one (1) inch in height, stating:

IF YOU HAVE CONCERNS ABOUT THE WAY THIS RETAIL MARIJUANA LICENSED PREMISES IS OPERATED, OR OTHER ACTIVITY ON THESE PREMISES, PLEASE CONTACT THE BILLINGS POLICE DEPARTMENT AT: 406-657-8460.

(c) The licensee shall post the following on the licensed premises in a prominent place near other notices to employees, where the licensee, principals, registered

manager and employees can easily view the same: a notice at least twenty-four (24) inches by twenty-four (24) inches in letters at least one (1) inch in height, stating:

**NOTICE TO LICENSEE, PRINCIPALS, REGISTERED MANAGER AND EMPLOYEES:**

THESE PREMISES, THE ADJACENT GROUNDS AND EVERY ROOM, AREA, LOCKER, SAFE AND CONTAINER ON THE LICENSED PREMISES AND ADJACENT GROUNDS EXCEPT YOUR PERSON, THE PERSONAL EFFECTS IN YOUR IMMEDIATE POSSESSION, AND YOUR PRIVATE VEHICLE, ARE SUBJECT TO INSPECTION BY CITY EMPLOYEES AND POLICE OFFICERS AT ANY TIME THAT ANY PERSON IS PRESENT ON THE LICENSED PREMISES, WITHOUT A WARRANT, AND WITHOUT REASONABLE SUSPICION TO BELIEVE THAT ANY OFFENSE HAS OCCURRED. YOU HAVE NO REASONABLE EXPECTATION OF PRIVACY ON THESE PREMISES AND THE ADJACENT GROUNDS EXCEPT IN YOUR PERSON, THE PERSONAL EFFECTS IN YOUR IMMEDIATE POSSESSION AND YOUR PRIVATE VEHICLE.

**DIVISION 4. MARIJUANA CULTIVATOR LICENSE**

**Sec. 7-2041. Licensing of marijuana cultivators required.**

(a) A marijuana cultivator license allows a marijuana cultivator to plant, cultivate, grow, dry, package, and label marijuana and sell marijuana to licensed marijuana manufacturers, licensed dispensaries, and to other licensed marijuana cultivators, and to sell marijuana products to licensed dispensaries.

(b) All cultivation that is licensed under this Article may only occur at an indoor cultivation facility.

(c) The use of hoop houses other than for personal use marijuana plants is prohibited.

(d) Cultivation licenses shall be issued according to the state's tiered canopy system up to and including a tier 4 canopy license according to the following license types:

(1) A micro tier canopy license allows for a canopy of up to 250 square feet at one indoor cultivation facility.

(2) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one indoor cultivation facility.

(3) A tier 2 canopy license allows for a canopy of up to 2,500 square feet at up to two indoor cultivation facilities.

(4) A tier 3 canopy license allows for a canopy of up to 5,000 square feet at up to three indoor cultivation facilities.

(5) A tier 4 canopy license allows for a canopy of up to 7,500 square feet at up to four indoor cultivation facilities.

(e) A canopy is measured horizontally starting from the outermost point of a plant on the perimeter of a dedicated growing space and continue around the outside of all plants located within the dedicated growing space.

(f) A marijuana cultivator licensee may designate multiple canopy areas at a cultivation facility, but each canopy area must be separated by a physical boundary such as an interior wall or by at least eight feet of open space.

(g) Initial application and renewal fees for each cultivation tier shall be set by City Council by resolution.

**Sec. 7-2042. Application for marijuana cultivator license.**

(a) All initial applications and renewal applications for marijuana cultivation licenses shall be made to the License Administrator upon forms supplied by the City Administrator. Upon receipt of such application and the appropriate nonrefundable application fee, the License Administrator will make or cause to be made a thorough investigation as to the qualifications of the applicant and the suitability of the premises for operating a marijuana cultivation business. If, upon such investigation, it appears that the applicant is qualified under the law and that the premises are suitable for the cultivation of marijuana under the laws of the state and the rules and regulations of the city, the License Administrator shall approve such application if all other requirements of the laws are fulfilled.

(b) All of the following must be completed and presented by the applicant upon initial application:

(1) Application form under oath for each individual or business entity, along with the appropriate application fee in an amount as prescribed by council resolution. Said application fee is nonrefundable and shall be charged and collected from each individual applicant.

(2) All documents required by the City Administrator to be submitted with the initial application and any renewal application.

(3) When renewing a marijuana cultivation license, the applicant must submit a completed renewal form under oath, along with a nonrefundable renewal fee in an amount as prescribed by council resolution. If any changes in the information provided in the initial application have occurred, the renewal applicant must provide complete updated information regarding each change before the renewal application will be processed.

(4) Each initial and renewal applicant shall promptly furnish the License Administrator with all additional information pertaining to the application or to the applicant which the City Administrator may require through Administrative Order. Failure to supply the information requested within five (5) days after the request has been received by the applicant shall constitute grounds for delaying consideration of the initial or renewal application.

(5) The City Administrator may set standards for license applications through an Administrative Order, including designated time periods for acceptance of new applications, deadlines for final consideration of the applications submitted, and the date, manner, and means by which the lottery process shall be conducted, if applicable.

(c) The determination by the License Administrator that the application appears to be complete shall not constitute any representation or determination that the application meets the requirements of this Article for approval or issuance of a license.

Notwithstanding any determination that the application appears to be complete, the License Administrator may note concerns or deficiencies in the application and its contents after conducting its review of the application.

(d) After an application is accepted as complete, it may be amended or supplemented in writing before the License Administrator's final consideration, but each amendment shall be verified under oath by each principal, and the registered manager and employees shall verify under oath the portions of any amendment that pertain to each of them.

(e) After the application is set for final consideration by the License Administrator, the application shall not be amended.

(f) Confidential information, as defined by Montana Code Annotated 2-6-1002, provided in the application that is specifically requested to be kept confidential by the applicant shall not be made publicly available except to the extent required by applicable law.

#### **Sec. 7-2043. Requirements to obtain and retain a marijuana cultivator license.**

In order to obtain and retain a license, the applicant shall demonstrate by a preponderance of the evidence to the License Administrator that the following requirements are satisfied:

##### **(1) General requirements.**

(a) The applicant has obtained a permit from the City for the location(s) of the proposed licensed premises;

(b) The applicant has obtained a cultivator license from the State of Montana;

(c) The applicant has obtained a City license for any other business activity that will be conducted on the licensed premises;

(d) The applicant has submitted an application for a license that the License Administrator has determined is complete; and

(e) The applicant has paid all fees required under this Article.

##### **(2) Personal requirements for the licensee, principals, registered manager and employees.**

- (a) The applicant, principals, registered manager and employees meet all requirements for issuance of a State license.
- (b) The applicant, principals, registered manager and employees are all over the age of twenty-one (21).
- (c) The applicant, principals, registered manager and employees have not been determined by any marijuana business licensing commission, any other licensing board within the State, or the Montana Department of Revenue to not be persons of good character and record within the preceding three (3) years.
- (d) The applicant, principals, registered manager and employees have not discharged a sentence for any felony in the five (5) years immediately preceding the application, nor are they currently subject to a deferred judgment or sentence for a felony.
- (e) The applicant, principals and registered manager have not held an interest in any liquor license, medical marijuana license or other license issued by any city, county or state that has been revoked, suspended, or fined within the preceding two (2) years.
- (f) The applicant, principals, registered agent, creditors and employees have not had their authority, if any, to act as a primary caregiver revoked by the State within the preceding two (2) years.
- (g) The applicant, principals, creditors and are not in default on any city, county, state or federal taxes, fees, fines or charges, do not have any outstanding warrants for their arrest, and do not have any outstanding liens or judgments payable to the City.
- (h) The applicant and principals are not in default on any student loan.
- (i) The applicant, principals and employees are trained or experienced in, and able to comply with, the requirements of this Article and state law pertaining to the cultivation, transportation, storage and distribution of marijuana and marijuana products for which application is made. In determining whether an applicant, principal or employee has shown sufficient training or experience, the License Administrator shall consider, among other things, the following factors:
  - 1. The role that the individual will play in operating the cultivation business;
  - 2. Previous experience operating marijuana businesses;
  - 3. Completion of state or industry-approved courses on how to comply with Montana laws and regulations regarding marijuana businesses; and
  - 4. The individual's understanding of state law and City code regulating marijuana businesses.

- (j) The applicant, principals, registered manager and employees all hold valid occupational licenses and registrations required by the State of Montana.
- (k) The applicant and principals do not have any orders or judgments against them for child support in default or arrears.
- (l) The applicant and principals are not peace officers or prosecuting attorneys.
- (m) The applicant and principals are not licensed physicians who recommend medical marijuana.
- (n) The applicant and principals have no beneficial ownership interest in any testing facility in the state of Montana or any other state.

(3) Location and other licensing of premises.

- (a) The proposed licensed premises and adjacent grounds meet all requirements for issuance of a state license.
- (b) The proposed licensed premises meet all zoning requirements.
- (c) The premises are not licensed or operated as an establishment for the sale or service of alcohol beverages as defined in Title 16, Article 3, Montana Code Annotated, a business subject to the regulations of Article 7-1900 et. seq. of the Billings City Code, a dance hall or an amusement establishment as defined in Article 7, Billings, Montana City Code.
- (d) The premises are not licensed or operated as a retail food establishment or wholesale food registrant.
- (e) The premises are used solely for the purposes of the cultivation of marijuana.

(4) Control, security and code compliance of premises.

- (a) The applicant has sole legal control of the proposed licensed premises at the time the application is submitted, under a lease that is presently in effect or through present ownership of the proposed licensed premises.
- (b) The proposed licensed premises have a suitable limited access area where the cultivation, storage, processing, weighing, handling and packaging of marijuana and marijuana products occurs, which is posted "employees only," and is separated from the areas accessible to the public by a wall, counter or some other substantial barrier designed to keep the public from entering the area.
- (c) The applicant has submitted a security plan for the proposed licensed premises, which has been inspected and approved by the City, showing at least the following security measures:
  1. All doors, windows and other points of entry have secure and functioning locks;

2. If the licensed premises are connected by any passage or entryway to any other premises, there is a door between the two (2) premises that can be locked from the licensee's side and cannot be opened from the other side;
3. A professionally monitored burglar alarm system that detects unauthorized entry of all doors, windows and other points of entry to the licensed premises; and
4. Windows facing the adjacent grounds and lighting of the adjacent grounds sufficient to ensure that customers entering and leaving the licensed premises, entering and exiting parked cars on the adjacent grounds, and walking across the adjacent grounds can be observed by employees from inside the licensed premises.

(d) The proposed licensed premises and adjacent grounds comply with all zoning, health, building, plumbing, mechanical, fire and other codes, statutes and ordinances, as shown by completed inspections and approvals from the applicable city departments.

(e) There is sufficient parking available on the adjacent grounds given the size of the licensed premises and the number of employees and customers that can reasonably be expected to be present at any given time.

(f) The proposed licensed premises and adjacent grounds of the licensed premises will be operated in a manner that does not cause harm to public health, safety and welfare.

(5) Requirements for premises that are not completed.

(a) If the proposed licensed premises have not been completed, inspected and approved as required in this Article at the time that the initial application or renewal license application is submitted, the applicant shall submit as part of the application:

1. A copy of a recorded deed in the name of the licensee showing ownership of the proposed licensed premises or a lease showing a right to occupy the proposed licensed premises; and
2. Plans, specifications, drawings and other documents showing that the proposed licensed premises and adjacent grounds will comply with the requirements of this Article when completed and inspected.

(b) The License Administrator may provide tentative approval of the license before the proposed licensed premises are completed, inspected and approved, but the City shall not issue the license until the licensed premises have been completed and all inspections and approvals required under this Article have been obtained.

(c) In the event that the license receives tentative approval, but the premises are not completed, inspected and approved as required in this Article within one hundred twenty (120) days of the tentative approval, the tentative approval shall lapse and the license shall not be issued.

(6) Requirements of this Section also apply to licensees; continuing duty.

(a) The requirements of this Division imposed on the applicant shall also apply to the licensee. The requirements of this Division imposed on the proposed licensed premises, adjacent grounds or location shall also apply to the licensed premises, adjacent grounds and actual locations, respectively.

(b) The licensee and its principals, registered manager and employees have a continuing duty to ensure that the requirements of this Division continue to be met after the license is issued and at all times that the license remains in effect.

(7) A marijuana cultivator shall use the seed-to-sale tracking system developed pursuant to 16-12-105 to create shipping manifests documenting the transport of marijuana and marijuana products throughout the state.

(8) A marijuana transporter may deliver marijuana or marijuana products to licensed premises or registered cardholders only and may not make deliveries of marijuana or marijuana products to individual consumers.

(9) A person delivering marijuana or marijuana products for a marijuana cultivator must possess a valid marijuana worker permit issued by the state and be a current employee of the marijuana transporter business.

(10) A marijuana cultivator licensee must create and maintain a manual of written standard operating procedures to produce marijuana. The marijuana cultivator licensee must keep the manual at the licensed premises and make it available for City inspection at all times. The manual must include, at a minimum:

(a) when and how all pesticides or other chemicals are to be applied during the production process;

(b) water usage and wastewater disposal protocols; and

(c) a waste disposal plan.

(11) If a marijuana cultivator makes a material change to the standard operating procedures, it must document the change and revise the written standard operating procedures manual accordingly.

(12) A marijuana cultivator licensee must maintain on the licensed premises:

(a) the material safety data sheet for all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana at the licensed premises; and

(b) the original label, or a copy, for all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana at the licensed premises.

(13) A marijuana cultivator licensee must maintain a log of all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana in the seed-to-sale tracking system.

(14) A marijuana cultivator licensee may not cultivate hemp at a licensed premises.

## **DIVISION 5. MARIJUANA TRANSPORTER LICENSE**

### **Sec. 7-2050. Licensing of marijuana transporters.**

(a) A marijuana transporter license may be issued to a person to provide logistics, distribution, delivery, and storage of marijuana and marijuana products. A licensed marijuana transporter is responsible for the marijuana and marijuana products once it takes control of the marijuana or marijuana product.

(b) A marijuana transporter may contract with multiple licensed marijuana businesses.

(c) All persons who transport marijuana or marijuana products shall hold a valid marijuana transporter license except as specifically provided in this Article or under state law.

### **Sec. 7-2051. Application for marijuana transporter license.**

(a) All initial applications and renewal applications for marijuana transporter licenses shall be made to the License Administrator upon forms supplied by the City Administrator. Upon receipt of such application and the appropriate nonrefundable application fee, the License Administrator will make or cause to be made a thorough investigation as to the qualifications of the applicant and the suitability of the premises for operating a marijuana transporter business. If, upon such investigation, it appears that the applicant is qualified under the law and that the premises are suitable for storage of marijuana and marijuana products under the laws of the state and the rules and regulations of the city, the License Administrator shall approve such application if all other requirements of the laws are fulfilled.

(b) All of the following must be completed and presented by the applicant upon initial application:

(1) Application form under oath for each individual or business entity, along with the appropriate application fee in an amount as prescribed by council resolution. Said application fee is nonrefundable and shall be charged and collected from each individual applicant;

(2) All documents required by the City Administrator to be submitted with the initial application and any renewal application;

(3) When renewing a marijuana transporter license, the applicant must submit a completed renewal form under oath, along with a nonrefundable renewal fee in an amount as prescribed by council resolution. If any changes in the information provided in the initial application have occurred, the renewal applicant must

provide complete updated information regarding each change before the renewal application will be processed.

(4) Each initial and renewal applicant shall promptly furnish the License Administrator with all additional information pertaining to the application or to the applicant which the City Administrator may require through Administrative Order. Failure to supply the information requested within five (5) days after the request has been received by the applicant shall constitute grounds for delaying consideration of the initial or renewal application.

(c) The determination by the License Administrator that the application appears to be complete shall not constitute any representation or determination that the application meets the requirements of this Article for approval or issuance of a license. Notwithstanding any determination that the application appears to be complete, the License Administrator may note concerns or deficiencies in the application and its contents after conducting a review of the application.

(d) After an application is accepted as complete, it may be amended or supplemented in writing before the License Administrator's final consideration, but each amendment shall be verified under oath by each principal, and the registered manager and employees shall verify under oath the portions of any amendment that pertain to each of them.

(e) After the application is set for final consideration by the License Administrator, the application shall not be amended.

(f) Confidential information, as defined by Montana Code Annotated 2-6-1002, provided in the application that is specifically requested to be kept confidential by the applicant shall not be made publicly available except to the extent required by applicable law.

### **Sec. 7-2052. Requirements to obtain and retain a marijuana transporter license.**

In order to obtain and retain a license, the applicant shall demonstrate by a preponderance of the evidence to the License Administrator that the following requirements are satisfied:

#### **(1) General requirements.**

- (a) The applicant has obtained all permits from the City for the location of the proposed licensed premises;
- (b) The applicant has obtained a transporter license from the State of Montana;
- (c) The applicant has obtained a City license for any other business activity that will be conducted on the licensed premises;
- (d) The applicant has submitted an application for a license that the License Administrator has determined is complete; and
- (e) The applicant has paid all fees required under this Article.

(2) Personal requirements for the licensee, principals, registered manager and employees.

- (a) The applicant, principals, registered manager and employees meet all requirements for issuance of a State license.
- (b) The applicant, principals, registered manager and employees are all over the age of twenty-one (21).
- (c) The applicant, principals, registered manager and employees have not been determined by any marijuana business licensing commission, any other licensing board within the State, or the Montana Department of Revenue to not be persons of good character and record within the preceding three (3) years.
- (d) The applicant, principals, registered manager and employees have not discharged a sentence for any felony in the five (5) years immediately preceding the application, nor are they currently subject to a deferred judgment or sentence for a felony.
- (e) The applicant, principals and registered manager have not held an interest in any liquor license, medical marijuana license or other license issued by any city, county or state that has been revoked, suspended, or fined within the preceding two (2) years.
- (f) The applicant, principals, registered agent, creditors and employees have not had their authority, if any, to act as a primary caregiver revoked by the State within the preceding two (2) years.
- (g) The applicant, principals, creditors and are not in default on any city, county, state or federal taxes, fees, fines or charges, do not have any outstanding warrants for their arrest, and do not have any outstanding liens or judgments payable to the City.
- (h) The applicant and principals are not in default on any student loan.
- (i) The applicant, principals and employees are trained or experienced in, and able to comply with, the requirements of this Article and state law pertaining to the transportation, storage and distribution of marijuana and marijuana products for which application is made. In determining whether an applicant, principal or employee has shown sufficient training or experience, the License Administrator shall consider, among other things, the following factors:
  1. The role that the individual will play in operating the transport business;
  2. Previous experience operating marijuana businesses;
  3. Completion of state or industry-approved courses on how to comply with Montana laws and regulations regarding marijuana businesses; and
  4. The individual's understanding of state law and City code regulating marijuana businesses.

- (j) The applicant, principals, registered manager and employees all hold valid occupational licenses and registrations required by the State of Montana.
- (k) The applicant and principals do not have any orders or judgments against them for child support in default or arrears.
- (l) The applicant and principals are not peace officers or prosecuting attorneys.
- (m) The applicant and principals are not licensed physicians who recommend medical marijuana.
- (n) The applicant and principals have no beneficial ownership interest in any testing facility in the state of Montana or any other state.

(3) Location and other licensing of premises.

- (a) The proposed licensed premises and adjacent grounds meet all requirements for issuance of a state license.
- (b) The proposed licensed premises meet all zoning requirements.
- (c) The premises are not licensed or operated as an establishment for the sale or service of alcohol beverages as defined in Title 16, Article 3, Montana Code Annotated, a business subject to the regulations of Article 7-1900 et. seq. of the Billings City Code, a dance hall or an amusement establishment as defined in Article 7, Billings, Montana City Code.
- (d) The premises are not licensed or operated as a retail food establishment or wholesale food registrant.
- (e) The premises are used solely for the purposes of the transport and temporary storage of marijuana and marijuana products in compliance with all state and local regulations.

(4) Control, security and code compliance of premises.

- (a) The applicant has sole legal control of the proposed licensed premises at the time the application is submitted, under a lease that is presently in effect or through present ownership of the proposed licensed premises.
- (b) The proposed licensed premises have a suitable limited access area where the storage, processing, weighing, handling and packaging of marijuana and marijuana products occurs, which is posted "employees only," and is separated from the areas accessible to the public by a wall, counter or some other substantial barrier designed to keep the public from entering the area.
- (c) The applicant has submitted a security plan for the proposed licensed premises, which has been inspected and approved by the City, showing at least the following security measures:

1. All doors, windows and other points of entry have secure and functioning locks;
2. If the licensed premises are connected by any passage or entryway to any other premises, there is a door between the two (2) premises that can be locked from the licensee's side and cannot be opened from the other side;
3. A professionally monitored burglar alarm system that detects unauthorized entry of all doors, windows and other points of entry to the licensed premises; and
4. Windows facing the adjacent grounds and lighting of the adjacent grounds sufficient to ensure that customers entering and leaving the licensed premises, entering and exiting parked cars on the adjacent grounds, and walking across the adjacent grounds can be observed by employees from inside the licensed premises.

(d) The proposed licensed premises and adjacent grounds comply with all zoning, health, building, plumbing, mechanical, fire and other codes, statutes and ordinances, as shown by completed inspections and approvals from the applicable city departments.

(e) There is sufficient parking available on the adjacent grounds given the size of the licensed premises and the number of employees and customers that can reasonably be expected to be present at any given time.

(f) The proposed licensed premises and adjacent grounds of the licensed premises will be operated in a manner that does not cause harm to public health, safety and welfare.

(5) Requirements for premises that are not completed.

(a) If the proposed licensed premises have not been completed, inspected and approved as required in this Article at the time that the initial application or renewal license application is submitted, the applicant shall submit as part of the application:

1. A copy of a recorded deed in the name of the licensee showing ownership of the proposed licensed premises or a lease showing a right to occupy the proposed licensed premises; and
2. Plans, specifications, drawings and other documents showing that the proposed licensed premises and adjacent grounds will comply with the requirements of this Article when completed and inspected.

(b) The License Administrator may provide tentative approval of the license before the proposed licensed premises are completed, inspected and approved, but the City shall not issue the license until the licensed premises have been

completed and all inspections and approvals required under this Article have been obtained.

(c) In the event that the license receives tentative approval, but the premises are not completed, inspected and approved as required in this Article within one hundred twenty (120) days of the tentative approval, the tentative approval shall lapse and the license shall not be issued.

(6) Distribution and delivery of marijuana and marijuana products.

(a) All distribution and delivery of marijuana and marijuana products must:

1. occur in a motor vehicle as defined by state law;
2. depart from a licensed premises and be delivered to a licensed premises or to a registered cardholder's address;
3. be accompanied by a printed manifest derived from the seed-to-sale tracking system that contains the following information:
  - a. the physical address and license number of the departure location;
  - b. the physical address and license number or registered cardholder number of the arrival location;
  - c. date and time of departure;
  - d. date and time of arrival;
  - e. transport vehicle year, make, model, and license plate number;
  - f. carrier, policy number, and expiration date of state minimum liability insurance policy for transport vehicle;
  - g. name and signature of each licensee or its employee accompanying the transport; and
  - h. a complete description of the marijuana or marijuana product being transported. The description must include:
    - 1) the name and type of product being transported;
    - 2) amount of product being transported;
    - 3) RFID tracking tag numbers of the product being transported; and
    - 4) all delivery and transport of products must be accomplished within 48 hours from the date and time of departure.

- (b) The printed manifest may not be voided or changed after leaving the departure location.
- (c) A copy of the transport manifest must be given to each licensed premises receiving the inventory described in the transport manifest.
- (d) A receiving licensed premises is responsible for ensuring that the marijuana or marijuana products match the description in the transport manifest. It is the responsibility of the receiving licensed premises to immediately record receipt of the transported inventory.
- (e) It is the responsibility of the receiving licensed premise to immediately document and report discrepancies between product received and items described for transport on the manifest, respectively.
- (f) All vehicles used to transport marijuana or marijuana products:
  1. Shall be considered a licensed premises for purposes of inspection by the City. Transport vehicles may be stopped and inspected by the City at any licensed premises or during transport.
  2. Shall be lockable and equipped with a security alarm system.
  3. Shall not leave the state of Montana while any amount of marijuana or marijuana product is in the motor vehicle.
  4. Shall not have any external marks, words, or symbols that indicate the vehicle is used for transport of marijuana or marijuana products or that it is owned or leased by a marijuana business.
- (g) A marijuana transporter licensee or employee of a marijuana transporter licensee must not sell marijuana or marijuana products; or transport marijuana or marijuana product directly to consumers.
- (h) A marijuana transport licensee must contact the City within 24 hours if a vehicle transporting marijuana items is involved in an accident that involves product loss.
- (i) Copies of transport manifest and delivery receipts must be presented to law enforcement officers or authorized City employees, if requested.
- (j) If a marijuana transporter licensee maintains a licensed premises to temporarily store marijuana or marijuana products, the licensee must have a state marijuana storage facility endorsement for each storage facility.

(7) Requirements of this Section also apply to licensees; continuing duty.

- (a) The requirements of this Division imposed on the applicant shall also apply to the licensee. The requirements of this Division imposed on the proposed licensed premises, adjacent grounds or location shall also apply to the licensed premises, adjacent grounds and actual locations, respectively.

(b) The licensee and its principals, registered manager and employees have a continuing duty to ensure that the requirements of this Division continue to be met after the license is issued and at all times that the license remains in effect.

(8) A marijuana transporter shall use the seed-to-sale tracking system developed pursuant to 16-12-105 to create shipping manifests documenting the transport of marijuana and marijuana products throughout the state.

(9) A marijuana transporter may deliver marijuana or marijuana products to licensed premises or registered cardholders only and may not make deliveries of marijuana or marijuana products to individual consumers.

(10) A person delivering marijuana or marijuana products for a marijuana transporter must possess a valid marijuana worker permit issued by the state and be a current employee of the marijuana transporter business.

**Sec. 7-2053. Exceptions to requirements to obtain and retain a marijuana transporter license.**

The following acts do not require a City marijuana transporter license but may, depending upon the circumstances, require another state or city marijuana business license:

(a) A registered cardholder or consumer is not required to possess a marijuana transporter license when purchasing marijuana or marijuana products at a dispensary for their personal use.

(b) A person employed by a licensed marijuana business or a testing laboratory who holds a state-issued marijuana worker license, or a person who holds a marijuana business license, may transport marijuana or marijuana products between other licensed premises without a transporter license so long as such transportation:

(1) Complies with rules implementing the seed-to-sale tracking system set forth in Montana Code Annotated 16-12-105; and

(2) Includes a printed manifest containing information as required by the Montana Department of Revenue.

(c) A person employed by a licensed marijuana business and who holds a state-issued marijuana worker license, or a person who holds a marijuana business license may deliver marijuana from a dispensary to a registered cardholder provided that the person delivering the marijuana or marijuana products:

(1) complies with rules adopted by the Montana Department of Revenue; and

(2) includes a printed delivery manifest from a dispensary to a registered cardholder containing the registered cardholder's address and cardholder number and the dispensary's address and license number.

**DIVISION 6. MARIJUANA MANUFACTURER LICENSE**

**Sec. 7-2056. Licensing of marijuana manufacturers.**

(a) A marijuana manufacturer license allows a marijuana manufacturer to convert or to compound marijuana into marijuana products. A marijuana manufacturer licensee may buy marijuana and marijuana products from licensed marijuana cultivators and licensed marijuana manufacturers and may sell marijuana products to licensed marijuana dispensaries.

(b) A person licensed as a manufacturer shall:

- (1) prepare marijuana products at a licensed premises exclusively; and
- (2) use equipment that is used exclusively for the manufacture and preparation of marijuana products.

(c) All licensed premises on which marijuana products are manufactured must meet any applicable standards set by a local board of health for a retail food establishment as defined in 50-50-102.

(d) Manufacturer licenses shall be issued according to the state's tiered system according to the following license types:

- (1) Tier 1 is a manufacturing facility that produces, on a monthly basis, less than 1 pound of concentrate and up to 10 pounds of concentrate;
- (2) Tier 2 is a manufacturing facility that produces, on a monthly basis, between 10 pounds of concentrate and 15 pounds of concentrate; and
- (3) Tier 3 is a manufacturing facility that produces, on a monthly basis, 15 pounds or more of concentrate.

(e) A manufacturer may apply to advance to the next licensing level in conjunction with a regular renewal application.

(f) Fees for the initial application and renewal licenses based upon tier level will be set by City Council resolution.

**Sec. 7-2057. Application for marijuana manufacturer license.**

(a) All initial applications and renewal applications for marijuana manufacturer licenses shall be made to the License Administrator upon forms supplied by the City Administrator. Upon receipt of such application and the appropriate nonrefundable application fee, the License Administrator will make or cause to be made a thorough investigation as to the qualifications of the applicant and the suitability of the premises for operating a marijuana manufacturing business. If, upon such investigation, it appears that the applicant is qualified under the law and that the premises are suitable for the manufacture of marijuana products under the laws of the state and the rules and regulations of the city, the License Administrator shall approve such application if all other requirements of the laws are fulfilled.

(b) All of the following must be completed and presented by the applicant upon initial application:

(1) Application form under oath for each individual or business entity, along with the appropriate application fee in an amount as prescribed by council resolution. Said application fee is nonrefundable and shall be charged and collected from each individual applicant.

(2) All documents required by the City Administrator to be submitted with the initial application and any renewal application.

(3) When renewing a marijuana manufacturer license, the applicant must submit a completed renewal form under oath, along with a nonrefundable renewal fee in an amount as prescribed by council resolution. If any changes in the information provided in the initial application have occurred, the renewal applicant must provide complete updated information regarding each change before the renewal application will be processed.

(4) Each initial and renewal applicant shall promptly furnish the License Administrator with all additional information pertaining to the application or to the applicant which the City Administrator may require through Administrative Order. Failure to supply the information requested within five (5) days after the request has been received by the applicant shall constitute grounds for delaying consideration of the initial or renewal application.

(5) The City Administrator may set standards for license applications through an Administrative Order, including designated time periods for acceptance of new applications and deadlines for final consideration of the applications submitted.

(c) The determination by the License Administrator that the application appears to be complete shall not constitute any representation or determination that the application meets the requirements of this Article for approval or issuance of a license. Notwithstanding any determination that the application appears to be complete, the License Administrator may note concerns or deficiencies in the application and its contents after conducting its review of the application.

(d) After an application is accepted as complete, it may be amended or supplemented in writing before the License Administrator's final consideration, but each amendment shall be verified under oath by each principal, and the registered manager and employees shall verify under oath the portions of any amendment that pertain to each of them.

(e) After the application is set for final consideration by the License Administrator, the application shall not be amended.

(f) Confidential information, as defined by Montana Code Annotated 2-6-1002, provided in the application that is specifically requested to be kept confidential by the applicant shall not be made publicly available except to the extent required by applicable law.

**Sec. 7-2058. Requirements to obtain and retain a marijuana manufacturer license.**

In order to obtain and retain a license, the applicant shall demonstrate by a preponderance of the evidence to the License Administrator that the following requirements are satisfied:

(1) General requirements.

- (a) The applicant has obtained a permit from the City for the location(s) of the proposed licensed premises;
- (b) The applicant has obtained a manufacturer license from the Montana Department of Revenue;
- (c) The applicant has obtained a City license for any other business activity that will be conducted on the licensed premises;
- (d) The applicant has submitted an application for a license that the License Administrator has determined is complete; and
- (e) The applicant has paid all fees required under this Article.

(2) Personal requirements for the licensee, principals, registered manager and employees.

- (a) The applicant, principals, registered manager and employees meet all requirements for issuance of a State license.
- (b) The applicant, principals, registered manager and employees are all over the age of twenty-one (21).
- (c) The applicant, principals, registered manager and employees have not been determined by any marijuana business licensing commission, any other licensing board within the State, or the Montana Department of Revenue to not be persons of good character and record within the preceding three (3) years.
- (d) The applicant, principals, registered manager and employees have not discharged a sentence for any felony in the five (5) years immediately preceding the application, nor are they currently subject to a deferred judgment or sentence for a felony.
- (e) The applicant, principals and registered manager have not held an interest in any liquor license, medical marijuana license or other license issued by any city, county or state that has been revoked, suspended, or fined within the preceding two (2) years.
- (f) The applicant, principals, registered agent, creditors and employees have not had their authority, if any, to act as a primary caregiver revoked by the State within the preceding two (2) years.

(g) The applicant, principals, creditors and are not in default on any city, county, state or federal taxes, fees, fines or charges, do not have any outstanding warrants for their arrest, and do not have any outstanding liens or judgments payable to the City.

(h) The applicant and principals are not in default on any student loan.

(i) The applicant, principals and employees are trained or experienced in, and able to comply with, the requirements of this Article and state law pertaining to the manufacture, transportation, storage and distribution of marijuana and marijuana products for which application is made. In determining whether an applicant, principal or employee has shown sufficient training or experience, the City Administrator shall consider, among other things, the following factors:

1. The role that the individual will play in operating the manufacturing business;
2. Previous experience operating marijuana businesses;
3. Completion of state or industry-approved courses on how to comply with Montana laws and regulations regarding marijuana businesses; and
4. The individual's understanding of state law and City code regulating marijuana businesses.

(j) The applicant, principals, registered manager and employees all hold valid occupational licenses and registrations required by the Montana Department of Revenue.

(k) The applicant and principals do not have any orders or judgments against them for child support in default or arrears.

(l) The applicant and principals are not peace officers or prosecuting attorneys.

(m) The applicant and principals are not licensed physicians who recommend medical marijuana.

(n) The applicant and principals have no beneficial ownership interest in any testing facility in the state of Montana or any other state.

(3) Location and other licensing of premises.

(a) The proposed licensed premises and adjacent grounds meet all requirements for issuance of a state license.

(b) The proposed licensed premises meet all zoning requirements.

(c) The premises are not licensed or operated as an establishment for the sale or service of alcohol beverages as defined in Title 16, Article 3, Montana Code Annotated, a business subject to the regulations of Article 7-1900 et. seq. of the

Billings City Code, a dance hall or an amusement establishment as defined in Article 7, Billings, Montana City Code.

(d) The premises are not licensed or operated as a retail food establishment or wholesale food registrant.

(e) The premises are used solely for the purposes of the manufacturing of marijuana and marijuana products.

(4) Control, security and code compliance of premises.

(a) The applicant has sole legal control of the proposed licensed premises at the time the application is submitted, under a lease that is presently in effect or through present ownership of the proposed licensed premises.

(b) The proposed licensed premises have a suitable limited access area where manufacture of marijuana products will occur designed to keep the public from entering the area.

(c) The applicant has submitted a security plan for the proposed licensed premises, which has been inspected and approved by the City, showing at least the following security measures:

1. All doors, windows and other points of entry have secure and functioning locks;
2. If the licensed premises are connected by any passage or entryway to any other premises, there is a door between the two (2) premises that can be locked from the licensee's side and cannot be opened from the other side;
3. A professionally monitored burglar alarm system that detects unauthorized entry of all doors, windows and other points of entry to the licensed premises.

(d) The proposed licensed premises and adjacent grounds comply with all zoning, health, building, plumbing, mechanical, fire and other codes, statutes and ordinances, as shown by completed inspections and approvals from the applicable city departments.

(e) There is sufficient parking available on the adjacent grounds given the size of the licensed premises and the number of employees and customers that can reasonably be expected to be present at any given time.

(f) The proposed licensed premises and adjacent grounds of the licensed premises will be operated in a manner that does not cause harm to public health, safety and welfare.

(5) Requirements for premises that are not completed.

(a) If the proposed licensed premises have not been completed, inspected and approved as required in this Article at the time that the initial application or renewal license application is submitted, the applicant shall submit as part of the application:

1. A copy of a recorded deed in the name of the licensee showing ownership of the proposed licensed premises or a lease showing a right to occupy the proposed licensed premises; and
2. Plans, specifications, drawings and other documents showing that the proposed licensed premises and adjacent grounds will comply with the requirements of this Article when completed and inspected.

(b) The License Administrator may provide tentative approval of the license before the proposed licensed premises are completed, inspected and approved, but the City shall not issue the license until the licensed premises have been completed and all inspections and approvals required under this Article have been obtained.

(c) In the event that the license receives tentative approval, but the premises are not completed, inspected and approved as required in this Article within one hundred twenty (120) days of the tentative approval, the tentative approval shall lapse and the license shall not be issued.

(6) Requirements of this Section also apply to licensees; continuing duty.

(a) The requirements of this Division imposed on the applicant shall also apply to the licensee. The requirements of this Division imposed on the proposed licensed premises, adjacent grounds or location shall also apply to the licensed premises, adjacent grounds and actual locations, respectively.

(b) The licensee and its principals, registered manager and employees have a continuing duty to ensure that the requirements of this Division continue to be met after the license is issued and at all times that the license remains in effect.

(7) A marijuana manufacturer licensee must take all reasonable measures and precautions to ensure the following:

(a) that there is sufficient space for placement of equipment and storage of materials for the maintenance of sanitary operations for the manufacture of marijuana products;

(b) that all surfaces, including utensils and equipment used for the preparation of marijuana products, shall be cleaned and sanitized as frequently as is necessary to protect against contamination;

(c) that the water supply is safe and potable; and

(d) that the storage and transport of finished marijuana products shall be under conditions that will protect products against physical, chemical, and microbial contamination.

(8) A marijuana manufacturer licensee must:

(a) use equipment, counters, and surfaces for manufacturing that are food grade, do not react adversely with any solvent being used, reduce the potential for development of microbials, molds, and fungi, and can be easily cleaned;

(b) maintain detailed instructions for making each marijuana product, concentrate, or extract; and

(c) conduct necessary safety checks prior to commencing processing.

(9) A marijuana manufacturer licensee that engages in chemical manufacturing must:

(a) use only hydrocarbon-based solvents that are at least 99 percent pure, except when using solvents outlined in (10)(b);

(b) only use nonhydrocarbon-based solvents that are food grade;

(c) use only potable water and ice made from potable water;

(d) use a professional grade closed loop extraction system designed to recover the solvents;

(e) have equipment used in processing approved for use by the designated City departments;

(f) have an emergency eye-wash station in any room in which chemical manufacturing is occurring; and

(g) have all applicable material safety data sheets readily available.

(10) A marijuana manufacturer licensee that engages in chemical manufacturing may use:

(a) a mechanical and/or physical extraction process;

(b) a chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol, or ethanol; or

(c) a chemical extraction process using the solvent carbon dioxide, provided that the process:

1. does not involve the use of heat over 180 degrees Fahrenheit; and

2. uses a professional grade closed-loop carbon dioxide gas extraction system where every vessel is rated to a minimum of six hundred PSI.

(11) A marijuana manufacturer licensee that engages in chemical manufacturing may not use:

- (a) class 1 solvents;
- (b) pressurized, canned fuel intended for use in camp stoves, handheld torch devices, refillable cigarette lighters, and similar products; or
- (c) denatured alcohol.

(12) A marijuana manufacturer licensee shall not utilize a branded, commercially-manufactured food product (e.g. Chex Mix, Nerds, Ropes) as an edible marijuana product except when commercially-manufactured food products are used as ingredients in an edible marijuana product in a way that renders them unrecognizable as the commercial food product in the final edible marijuana product and the licensee does not state or advertise to the consumer that the final edible marijuana product contains the commercially manufactured food product.

(13) A marijuana manufacturer licensee may not infuse any food with marijuana that requires heated, time-temperature control or a hot holding unit to keep it safe for human consumption and may not serve hot or heated foods that promote onsite consumption.

(14) Any foods that require refrigeration or freezing to keep them safe for human consumption must be stored in a refrigerator or freezer until the time of sale and must be affixed with a label that indicates the product must be kept refrigerated or frozen, as appropriate

(15) A marijuana manufacturer licensee may not treat or otherwise alter a marijuana product with any noncannabinoid additive that would increase potency, toxicity, or addictive potential, or that is added for purposes of making the product more appealing to children.

(16) A marijuana manufacturer licensee must have current, written standard operating procedures at the licensed premises and available for inspection for the following:

- (a) each category and type of marijuana product that it produces;
- (b) cleaning all equipment, counters, and surfaces thoroughly;
- (c) proper handling and storage of any solvent, gas, or other chemical used in processing or on the licensed premises;
- (d) proper disposal of any waste produced during processing; and
- (e) training employees on how to use the closed-loop system and handle and store the solvents and gasses safely.

(17) A marijuana manufacturer licensee and an employee of a marijuana manufacturer licensee may transport their marijuana and marijuana products, but may

not transport the marijuana or marijuana products of other licensees without a marijuana transporter license.

(18) A person delivering marijuana or marijuana products for a marijuana manufacturer must possess a valid marijuana worker permit issued by the state and be a current employee of the marijuana transporter business.

## **DIVISION 7. MARIJUANA TESTING LABORATORY**

### **Sec. 7-2061. Licensing of marijuana testing laboratory and permit required**

(a) A marijuana testing laboratory license allows a marijuana testing laboratory to provide testing of representative samples of marijuana and marijuana products and to provide information about the chemical composition and potency of a sample, as well as the presence of molds, pesticides, or other contaminants.

(b) No person shall operate a marijuana testing laboratory unless he or she has first obtained the following and maintains the same in full force and effect:

(1) All permits from the City for the location of the proposed licensed premises;

(2) A City license to operate a marijuana testing laboratory;

(3) Ownership of, or a lease in effect on, the proposed licensed premises;

(4) A State license to operate a marijuana testing laboratory; and

(5) A state laboratory endorsement from the Montana Department of Public Health and Human Services or, in lieu thereof, the state laboratory's standard form of approval or endorsement for the applicant of a marijuana testing laboratory license.

### **Sec. 7-2062. Application for marijuana testing laboratory license.**

(a) All initial applications and renewal applications for marijuana testing laboratory licenses shall be made to the License Administrator upon forms supplied by the City Administrator. Upon receipt of such application and the appropriate nonrefundable application fee, the License Administrator will make or cause to be made a thorough investigation as to the qualifications of the applicant and the suitability of the premises for operating a marijuana testing laboratory. If, upon such investigation, it appears that the applicant is qualified under the law and that the premises are suitable for the testing of marijuana and marijuana products under the laws of the state and the rules and regulations of the city, the License Administrator shall approve such application if all other requirements of the laws are fulfilled.

(b) All of the following must be completed and presented by the applicant upon initial application:

(1) Application form under oath for each individual or business entity, along with the appropriate application fee in an amount as prescribed by council resolution.

Said application fee is nonrefundable and shall be charged and collected from each individual applicant.

(2) All documents required by the City Administrator to be submitted with the initial application and any renewal application.

(3) When renewing a marijuana testing laboratory license, the applicant must submit a completed renewal form under oath, along with a nonrefundable renewal fee in an amount as prescribed by council resolution. If any changes in the information provided in the initial application have occurred, the renewal applicant must provide complete updated information regarding each change before the renewal application will be processed.

(4) Each initial and renewal applicant shall promptly furnish the License Administrator with all additional information pertaining to the application or to the applicant which the City Administrator may require through Administrative Order. Failure to supply the information requested within five (5) days after the request has been received by the applicant shall constitute grounds for delaying consideration of the initial or renewal application.

(5) The City Administrator may set standards for license applications through an Administrative Order, including designated time periods for acceptance of new applications and deadlines for final consideration of the applications submitted.

(c) The determination by the License Administrator that the application appears to be complete shall not constitute any representation or determination that the application meets the requirements of this Article for approval or issuance of a license. Notwithstanding any determination that the application appears to be complete, the License Administrator may note concerns or deficiencies in the application and its contents after conducting its review of the application.

(d) After an application is accepted as complete, it may be amended or supplemented in writing before the License Administrator's final consideration, but each amendment shall be verified under oath by each principal, and the registered manager and employees shall verify under oath the portions of any amendment that pertain to each of them.

(e) After the application is set for final consideration by the License Administrator, the application shall not be amended.

(f) Confidential information, as defined by Montana Code Annotated 2-6-1002, provided in the application that is specifically requested to be kept confidential by the applicant shall not be made publicly available except to the extent required by applicable law.

**Sec. 7-2063. Requirements to obtain and retain a marijuana testing laboratory license.**

In order to obtain and retain a license, the applicant shall demonstrate by a preponderance of the evidence to the License Administrator that the following requirements are satisfied:

(1) General requirements.

- (a) The applicant has obtained all permits from the City for the location(s) of the proposed licensed premises;
- (b) The applicant has obtained a marijuana testing laboratory license from the Montana Department of Revenue;
- (c) A state laboratory endorsement from the Montana Department of Public Health and Human Services or, in lieu thereof, the state laboratory's standard form of approval or endorsement for the applicant of a marijuana testing laboratory license.
- (d) The applicant has submitted an application for a license that the License Administrator has determined is complete;
- (e) The applicant has paid all fees required by city council resolution; and
- (f) An inspection conducted for licensure or renewal of a license must include a review of an applicant's or testing laboratory's:
  - 1. physical premises where testing will be conducted;
  - 2. instrumentation;
  - 3. protocols for sampling, handling, testing, reporting, security and storage, and waste disposal;
  - 4. raw data on tests conducted by the laboratory, if the inspection is for renewal of a license; and
  - 5. vehicles used for transporting marijuana or marijuana product samples for testing purposes.

(2) Personal requirements for the licensee, principals, registered manager and employees.

- (a) The applicant, principals, registered manager and employees meet all requirements for issuance of a State license.
- (b) The applicant, principals, registered manager and employees are all over the age of twenty-one (21).
- (c) The applicant, principals, registered manager and employees have not been determined by any marijuana business licensing commission, any other licensing board within the State, or the Montana Department of Revenue to not be persons of good character and record within the preceding three (3) years.

- (d) The applicant, principals, registered manager and employees have not discharged a sentence for any felony in the five (5) years immediately preceding the application, nor are they currently subject to a deferred judgment or sentence for a felony.
- (e) The applicant, principals and registered manager have not held an interest in any liquor license, medical marijuana license or other license issued by any city, county or state that has been revoked, suspended, or fined within the preceding two (2) years.
- (f) The applicant, principals, registered agent, creditors and employees have not had their authority, if any, to act as a primary caregiver revoked by the State within the preceding two (2) years.
- (g) The applicant, principals, creditors and are not in default on any city, county, state or federal taxes, fees, fines or charges, do not have any outstanding warrants for their arrest, and do not have any outstanding liens or judgments payable to the City.
- (h) The applicant and principals are not in default on any student loan.
- (i) The applicant, principals and employees are trained or experienced in, and able to comply with, the requirements of this Article and state law pertaining to the testing of samples of marijuana and marijuana products for which application is made. In determining whether an applicant, principal or employee has shown sufficient training or experience, the License Administrator shall consider, among other things, the following factors:
  1. The role that the individual will play in operating the marijuana testing laboratory;
  2. Previous experience operating marijuana businesses;
  3. Completion of state or industry-approved courses on how to comply with Montana laws and regulations regarding marijuana businesses; and
  4. The individual's understanding of state law and City code regulating marijuana businesses.
- (j) The applicant, principals, registered manager and employees all hold valid occupational licenses and registrations required by the Montana Department of Revenue.
- (k) The applicant and principals do not have any orders or judgments against them for child support in default or arrears.
- (l) The applicant and principals are not peace officers or prosecuting attorneys.
- (m) The applicant and principals are not licensed physicians who recommend medical marijuana.

(n) A person who is a controlling beneficial owner of a testing laboratory or holds a financial interest in a licensed testing laboratory may not be a controlling beneficial owner or have a financial interest in any entity involved in the cultivation, manufacture, or sale of marijuana or marijuana products for whom testing services are performed in the state of Montana or any other state.

(3) Location and other licensing of premises.

(a) The proposed licensed premises and adjacent grounds meet all requirements for issuance of a state license.

(b) The proposed licensed premises meet all zoning requirements.

(c) The premises are not licensed or operated as an establishment for the sale or service of alcohol beverages as defined in Title 16, Article 3, Montana Code Annotated, a business subject to the regulations of Article 7-1900 et. seq. of the Billings City Code, a dance hall or an amusement establishment as defined in Article 7, Billings, Montana City Code.

(d) The premises are not licensed or operated as a retail food establishment or wholesale food registrant.

(e) The premises are used solely for the purposes of the testing of marijuana and marijuana products.

(4) Control, security and code compliance of premises.

(a) The applicant has sole legal control of the proposed licensed premises at the time the application is submitted, under a lease that is presently in effect or through present ownership of the proposed licensed premises.

(b) The proposed licensed premises have a suitable limited access area where testing of marijuana and marijuana products will occur designed to keep the public from entering the area.

(c) The applicant has submitted a security plan for the proposed licensed premises, which has been inspected and approved by the City, showing at least the following security measures:

1. All doors, windows and other points of entry have secure and functioning locks;
2. If the licensed premises are connected by any passage or entryway to any other premises, there is a door between the two (2) premises that can be locked from the licensee's side and cannot be opened from the other side;
3. A professionally monitored burglar alarm system that detects unauthorized entry of all doors, windows and other points of entry to the licensed premises.

(d) The proposed licensed premises and adjacent grounds comply with all zoning, health, building, plumbing, mechanical, fire and other codes, statutes and ordinances, as shown by completed inspections and approvals from the applicable city departments.

(e) There is sufficient parking available on the adjacent grounds given the size of the licensed premises and the number of employees and customers that can reasonably be expected to be present at any given time.

(f) The proposed licensed premises and adjacent grounds of the licensed premises will be operated in a manner that does not cause harm to public health, safety and welfare.

(5) Requirements for premises that are not completed.

(a) If the proposed licensed premises have not been completed, inspected and approved as required in this Article at the time that the initial application or renewal license application is submitted, the applicant shall submit as part of the application:

1. A copy of a recorded deed in the name of the licensee showing ownership of the proposed licensed premises or a lease showing a right to occupy the proposed licensed premises; and
2. Plans, specifications, drawings and other documents showing that the proposed licensed premises and adjacent grounds will comply with the requirements of this Article when completed and inspected.

(b) The License Administrator may provide tentative approval of the license before the proposed licensed premises are completed, inspected and approved, but the City shall not issue the license until the licensed premises have been completed and all inspections and approvals required under this Article have been obtained.

(c) In the event that the license receives tentative approval, but the premises are not completed, inspected and approved as required in this Article within one hundred twenty (120) days of the tentative approval, the tentative approval shall lapse and the license shall not be issued.

(6) Requirements of this Section also apply to licensees; continuing duty.

(a) The requirements of this Division imposed on the applicant shall also apply to the licensee. The requirements of this Division imposed on the proposed licensed premises, adjacent grounds or location shall also apply to the licensed premises, adjacent grounds and actual locations, respectively.

(b) The licensee and its principals, registered manager and employees have a continuing duty to ensure that the requirements of this Division continue to be met after the license is issued and at all times that the license remains in effect.

(7) A marijuana testing laboratory licensee must take all reasonable measures and precautions to ensure the following:

(a) that there is sufficient space for placement of equipment and storage of materials for the testing of marijuana and marijuana products;

(b) that all state laws and regulations are followed;

(8) A marijuana testing laboratory must have current, written standard operating procedures at the licensed premises and available for inspection for the following:

(a) each category and type of marijuana product that it tests;

(b) provisions for maintaining a clean and hygienic testing area;

(c) proper handling and storage of any solvent, gas, or other chemical used in processing or on the licensed premises;

(d) proper handling of marijuana and marijuana products before, during, and after the testing process; and

(e) proper disposal of any waste produced during processing.

(9) A marijuana testing laboratory may transport their marijuana and marijuana products to be tested from the originating marijuana businesses to the marijuana testing laboratory without a marijuana transporter.

(10) A person delivering marijuana or marijuana products to a marijuana testing laboratory must possess a valid marijuana worker permit issued by the state and be a current employee of the marijuana transporter business.

(11) A marijuana testing laboratory licensee must maintain of all test results in the seed-to-sale tracking system or in some other manner sufficient for City inspectors to review marijuana testing laboratory results.

(12) A person who obtains a testing laboratory license or is an employee of a licensed testing laboratory is authorized to possess and test marijuana as allowed by this Article.

(13) If an analysis of raw testing data indicates that licensees are providing test results that vary among testing laboratories by an amount determined by the state laboratory by rule, the City shall investigate the inconsistent results and determine within 60 days the steps the testing laboratories must take to ensure that each testing laboratory provides accurate and consistent results.

(14) If the analysis of raw testing data indicates a testing laboratory may be providing inconsistent results, the City may suspend the testing laboratory's license. A suspension must be based on rules adopted by the state laboratory.

(15) The City shall revoke a testing laboratory's license upon a determination that the laboratory is:

- (a) providing test results that are fraudulent or misleading; or
- (b) providing test results without having:
  - 1. the equipment needed to test marijuana, marijuana concentrates, or marijuana products; or
  - 2. the equipment required under this Article to conduct the tests for which the laboratory is providing results.

## **DIVISION 8. DENIAL OF MARIJUANA BUSINESS LICENSE, LOTTERY ENTRY, OR LICENSE RENEWAL AND APPEAL OF SANCTIONS**

### **Sec. 7-2064. Good cause for denial of new license, denial of lottery entry or denial of license renewal or for sanctions.**

The License Administrator may deny a new application for a marijuana business license, deny an applicant participation in a lottery system, deny the renewal of a license, suspend, revoke, or impose sanctions on a marijuana business license previously approved or issued if the License Administrator finds that any of the following have occurred:

- (1) The licensee, principals, manager, employees, the licensed premises or the adjacent grounds do not meet or no longer meet one (1) or more of the requirements of this Article, any other provision of Billings, Montana City Code, State law or State regulations;
- (2) The licensee has failed to obtain any State license, certification, registration or approval, or meet any other requirement imposed by State law or regulations;
- (3) The licensee, principals, manager or employees have committed or attempted to commit any violation of any City ordinance, State statute or State regulation or have permitted others to violate the same on the licensed premises or adjacent grounds or on other licensed premises or adjacent grounds;
- (4) The licensed premises have been operated in a way that substantially deviates from the operational plan submitted to the City;
- (5) The licensed premises or adjacent grounds have been operated in a way that substantially harms the public health, safety or welfare;
- (6) A check, credit card, debit card or other payment for any tax, fee, fine, fine in lieu or other sum due to the City from the licensee has been stopped or rejected for insufficient funds, closed account or similar reasons;
- (7) Any tax, fee, fine, fine in lieu of suspension or other sum due to the City from the licensee is unpaid and more than thirty (30) days in default; or
- (8) The licensed premises have not been operated for more than one (1) year.

**Sec. 7-2065. Appeal of denial of marijuana business license, lottery entry license renewal, or sanctions.**

(a) Any person aggrieved by any decision of the License Administrator concerning the denial of a marijuana business license, denial of a lottery entry, denial of license renewal, suspension, revocation, or sanctions imposed on an existing marijuana business license may appeal that action as provided by this Division.

(b) The person aggrieved shall file a written notice of appeal with the city clerk within twenty (20) days of personal service or mailing of the written notice of the License Administrator's decision.

(c) All appeals will be informally heard by an administrative hearing officer appointed by the city. Upon receipt of an appeal, the License Administrator will schedule a time and place for hearing such appeal no more than thirty (30) days from receipt of the notice of appeal.

(d) The city clerk will give written notice to the appellant of the time and place of hearing by causing the notice to be personally served or deposited in the United States mail at Billings, Montana, postage prepaid, addressed to the appellant at the address provided on the written notice of appeal. The hearing officer will have authority to make an initial determination of all questions raised on appeal.

(e) The appeal shall clearly state the applicable basis for the appeal. The scope of the appeal hearing pursuant to this section shall be limited to those issues raised by the appellant in the written appeal, as submitted. The rules of evidence and civil procedure shall not apply to such a hearing. The original decision of the License Administrator shall remain in effect during the period of appeal.

(f) The hearing officer shall submit a written decision and provide it to the parties within twenty (20) days of the hearing. After a decision by the hearing officer, an aggrieved person or licensee may appeal to the City Administrator who shall review the written decision of the hearing officer. No additional hearing shall be permitted. The City Administrator may affirm, reverse, or modify the hearing officer's decision and determine the appropriate remedy. The decision of the City Administrator is final.

(g) When any marijuana business license has been revoked for violation of this article, no marijuana business license of any type shall be granted to the following persons for a period of one year from the decision of the City Administrator or hearing officer, as applicable: the person who held the revoked license; the licensee's spouse; any person who held or holds more than a five percent ownership interest in any corporation, partnership, limited liability company or other organization that holds or held the revoked license; and any corporation, partnership, limited liability company or other organization in which any person who holds or formerly held the revoked license has more than a five percent ownership interest. Any additional marijuana business license may be revoked or suspended in the discretion of the City Administrator for up to one year if held by the person whose license was revoked for violation of this Article or by a corporation, partnership, limited liability company, or other organization in which that person holds a controlling interest.

**Sec. 7-2066. Conditions on licenses.**

(a) At the time that a new license is first approved, when an existing license is renewed, at any time that a sanction other than revocation is imposed, or at any time that a licensee applies for a major change to a license, licensed premises or adjacent grounds, the License Administrator may recommend that any condition related to the license, licensed premises or adjacent grounds be required, that is reasonably necessary to protect public health, safety, or welfare, including but not limited to the following:

- (1) Additional security requirements, including but not limited to security guards, steel doors, steel window coverings and surveillance cameras;
- (2) Additional record keeping requirements;
- (3) Limits and requirements on parking and traffic flow;
- (4) Requirements for walls, doors, windows, locks and fences on the licensed premises and adjacent premises;
- (5) Limits on the number of registered medical marijuana patients who may be served by a retail marijuana dispensary that also seeks to sell medical marijuana to registered cardholders;
- (6) Limits on the quantity of marijuana that may be sold to a marijuana product manufacturer;
- (7) Limits on medical marijuana products;
- (8) Requirements and limits on ventilation and lighting;
- (9) Limits or requirements on areas on the licensed premises that are closed, locked or not open to public view;
- (10) Limits on the products other than marijuana and marijuana products that can be sold on the premises;
- (11) Limits on noise inside the licensed premises or on the adjacent grounds;
- (12) Prohibitions on certain conduct on the premises;
- (13) Sanitary requirements;
- (14) Limits on hours of operation;
- (15) Requirements for screening new and existing employees;
- (16) Requirements for identifying medical marijuana patients and primary caregivers;
- (17) A requirement that the licensee temporarily close the licensed premises to the public until certain changes, inspections or approvals are made; and

(18) A limit on the square footage of the licensed premises.

(b) The License Administrator may impose the foregoing conditions in lieu of or in addition to any sanctions that it may impose, except where the sanction is revocation.

**Sec. 7-2067. Burden of proof.**

(a) In any proceeding under this Article to obtain approval or issuance of a license, renewal of a license, concerning denial of a new license, or to obtain approval for any new principal, manager, employee or any major change, the applicant or licensee shall have the burden to prove by a preponderance of the evidence: (1) his or her right to such license; and (2) that there is no good cause for denial of the license or approval.

(b) In any proceeding under this Article in which any person seeks to impose a condition on a license, the person seeking to impose the condition shall have the burden to prove by a preponderance of the evidence that the condition is necessary to protect public health, safety or welfare.

(c) In any proceeding under this Article to impose any sanction against a license, the City shall have the burden to prove every allegation necessary to impose a sanction by a preponderance of the evidence.

**Sec. 7-2068. Evidence.**

(a) The Montana Rules of Evidence and the common law rules of evidence shall not apply. The hearing officer may accept into evidence any testimony or exhibit and give such evidence the weight that they believe it deserves.

(b) The hearing officer may accept hearsay and multiple-hearsay testimony and may base its decision solely on such hearsay if such hearsay is reasonably reliable and trustworthy and has probative value accepted by reasonable and prudent persons in the conduct of their affairs. The hearing officer shall not be required to make a finding that the hearsay meets this standard. If the hearing officer admits the hearsay, it shall be conclusively presumed that the hearsay met this standard unless the hearing officer makes findings to the contrary.

(c) The hearing officer shall have the right to exclude testimony and other evidence as irrelevant, cumulative or on the ground that the witness does not have standing and was not called as a witness by a party who does have standing.

(d) The hearing officer may take administrative notice of any matter contained in its file.

**Sec. 7-2069. Standing.**

(a) At any hearing for issuance of a new license, for denial of a new license, for renewal or for any major change in the premises, only the following parties shall have standing to be heard:

(1) The applicant or licensee;

(2) Any person who resides within a one-half (½) mile radius of the adjacent grounds of the proposed or licensed premises;

(3) Any person who owns any real property within a one-half (½) mile radius of the adjacent grounds of the proposed licensed premises;

(4) Any person who owns or is employed by any business within a one-half (½) mile radius of the adjacent grounds of the proposed licensed premises; and

(5) The City of Billings.

(b) At all other hearings, only the applicant or licensee and the City of Billings shall have standing.

## **DIVISION 9. FORFEITURE, SUSPENSION, AND REVOCATION OF LICENSE**

### **Sec. 7-2072. General.**

(a) Administrative actions to impose sanctions against a licensee may be initiated only by complaint filed by the City or by the License Administrator by his/her own motion.

(b) The License Administrator shall review any complaint filed with the City ex parte and determine whether the complaint and any documents or exhibits submitted therewith show probable cause to believe that grounds for sanctions exist. If the License Administrator finds that the complaint along with any documents or exhibits submitted therewith do not show probable cause to believe that a violation of this Article, State law or State regulations has occurred, the License Administrator shall dismiss the complaint without prejudice to refile the complaint with additional information showing probable cause. If the License Administrator finds that the complaint along with the documents or exhibits submitted therewith show probable cause to believe that a violation of this Article, State law or State regulations has occurred, the License Administrator shall set a hearing and notify the licensee to appear before the License Administrator on a specific date and at a specific time to answer the complaint.

(c) Following the hearing, the License Administrator may impose sanctions, deny an application for renewal, or revoke the license. The licensee shall be provided a copy of the License Administrator's decision within fourteen (14) days.

(d) A person aggrieved by the License Administrator's decision under this Section may appeal the License Administrator's decision under the same appeal process provided in Division 8.

(e) In the event that a license expires while proceedings for sanctions are pending, the license may be temporarily extended by the License Administrator until the adjudicator's final decision. The licensee shall pay a license extension fee for each thirty (30) day period or portion thereof that the license is temporarily extended. If the fee is not paid, the license shall expire. After the adjudicator makes their final decision, the licensee shall submit an application for renewal within fifteen (15) days of the final decision unless otherwise prohibited under this Article.

(f) A licensee shall have no right to surrender its license while an investigation, complaint or proceeding for sanctions is pending, but the License Administrator or other adjudicator officer may consent to the surrender.

(g) No complaint or action for the sanctions provided in this Article shall be instituted or based upon any conduct or omission by a licensee, principal, registered manager or employee that occurred more than two years before the complaint for sanctions was filed, but such conduct or omissions may be admitted in evidence if relevant to other violations that have occurred within the two-year limitation period.

**Sec. 7-2073. Sanctions.**

(a) The License Administrator, hearing officer, or City Administrator, as applicable, may impose any one (1) or more of the following sanctions against a license, in whatever combination they find appropriate, subject to the right to appeal, or the applicant or licensee, if any:

- (1) Additional conditions as described this Division;
- (2) A fine in an amount assessed by the City Administrator or hearing officer not to exceed \$500.00;
- (3) Suspension for up to one hundred eighty (180) days;
- (4) Fine in lieu of suspension;
- (5) The reasonable costs of investigating, prosecuting, and hearing the violation, including the direct and indirect costs of the City Attorney, police officers, witnesses, subpoenas, City Clerk's Office, hearing officer and other City employees utilized in any proceedings for sanctions; and
- (6) Revocation.

(b) The License Administrator, hearing officer, or City Administrator, as applicable, may recommend that any sanction or portion of any sanction be suspended on any reasonable condition that the City Administrator, or hearing officer if applicable, deems appropriate in their discretion.

**7-2074. Factors to consider in determining sanctions.**

(a) In determining the appropriate recommended sanction(s) and whether any sanction or portion of a sanction should be suspended, the following factors shall be considered:

- (1) The severity of the violation;
- (2) Whether the violation was committed deliberately, willfully, intentionally, knowingly, recklessly, wantonly, negligently or accidentally;
- (3) Whether the licensee profited or gained some competitive advantage from the violation or attempted to do so;

- (4) Potential and actual harm to patients, primary caregivers, residents, businesses and the reputation of the medical marijuana industry;
- (5) Harm to public health, safety and welfare;
- (6) Warnings given to the licensee, principals, registered manager or employees by the City Administrator or any State or City employee before the violation occurred;
- (7) The deterrent effect of the sanction on the licensee and other licensees;
- (8) Whether the violation was committed or permitted by a principal, registered manager or employee;
- (9) Previous violations by the licensee, principals, manager, or employees of the same or different nature and at the same or different licensed premises, including contempt;
- (10) Previous sanctions imposed on the licensee, including sanctions for contempt;
- (11) Steps taken by the licensee before the violation occurred to prevent the violation from occurring;
- (12) Whether the violation occurred on the licensee's licensed premises or its adjacent grounds, or the licensed premises or adjacent grounds of another licensee;
- (13) Any plans that the licensee may present showing how it intends to remedy the problem and prevent the same and similar violations in the future; and
- (14) Any other aggravating or mitigating factors, except those that the City Administrator, or hearing officer if applicable, may not consider.

(b) In determining the appropriate recommended sanction, the following factors shall not be considered:

- (1) Gender, race, ethnicity, ancestry, religion or sexual orientation;
- (2) The licensee's business income at the licensed premises, except for fines in lieu of suspension;
- (3) The probable effect of the sanction on the licensee's finances;
- (4) Any criminal sanction imposed on any person as a result of the same or related conduct;
- (5) Any administrative penalty imposed by the State as a result of the same or related conduct;
- (6) Any civil judgment imposed as a result of the same or related conduct.

(c) The administrative sanctions recommended as provided in this Section are intended to be in addition to any administrative, civil or criminal penalty, or judgment imposed by any court or other licensing commission.

**Sec. 7-2075. Summary suspension.**

(a) The City Administrator may suspend license without notice or hearing if the City Administrator finds, ex parte, that there is probable cause to believe that:

- (1) The licensee or its principals, registered manager or employees have committed a willful or deliberate violation of this Article; and
- (2) The continued operation of the marijuana business poses an immediate and substantial threat to public health, safety and welfare, such that waiting the time required to hold a regular disciplinary hearing would probably result in substantial harm to public health, safety and welfare.

(b) If the City Administrator suspends the license ex parte, the City it shall notify the licensee in writing as soon as is practical that it has been summarily suspended, that it must close its licensed premises, and the date, time and place of the ten-day hearing to follow.

(c) The City Administrator shall hold a hearing within ten (10) business days, at which the licensee may be present, to determine whether the recommended summary suspension should continue pending a full hearing on the alleged violation.

(d) The City Administrator shall set a full hearing on the recommended sanctions to be imposed for the violation that led to summary suspension to be held within twenty (20) calendar days from the date the licensee was first informed of the summary suspension and required to close the licensed premises, unless the City Administrator finds at the ten-day hearing that there no longer is probable cause to believe that a violation occurred.

(e) The licensee may waive the ten (10) day hearing requirement and request a later hearing, but such waiver shall operate as consent to continue the City Administrator's summary suspension until the later date.

**Sec. 7-2076. Imputing knowledge and violations to the licensee.**

(a) Any fact that a licensee's principal, registered manager or employee knows or once had knowledge of, or in the exercise of reasonable diligence should know, or should have once known, shall be imputed to the licensee for purposes finding whether a violation occurred and imposing sanctions.

(b) Any fact that occurs in the licensed premises or adjacent grounds that a reasonable person observing the area would be aware of shall be imputed to the licensee for purposes of determining whether a violation occurred and imposing sanctions.

(c) Any violation of law committed by a licensee's principal, registered manager or employee, or which any of the same permit on the licensed premises or adjacent grounds, shall be imputed to the licensee for purposes of determining whether a violation occurred and imposing sanctions.

**Sec. 7-2077. Effect of sanctions.**

(a) New conditions. A licensee who has new conditions imposed on the license as a sanction shall bring the licensed premises into compliance with the new condition within such period as the City Administrator may specify. Failure to do may be grounds for further sanctions.

(b) Fine, fine in lieu of suspension and costs. A licensee who has a fine, a fine in lieu of suspension or costs imposed on the license shall:

(1) Pay the fine and costs imposed within the time specified by the City Administrator. In the event that the fine is not paid within the time specified by the City Administrator, the City Administrator may impose any license suspension or impose alternative or additional sanctions for failure to pay the fine or costs in a timely manner.

(2) Post signs at least thirty-six (36) inches by thirty-six (36) inches on every entrance to the licensed premises with letters at least one (1) inch in height for a period of ten (10) continuous days which shall be specified by the City Administrator, stating:

THE MARIJUANA BUSINESS LICENSE FOR THESE PREMISES HAS BEEN FINED AND ADJUDGED COSTS BY THE CITY OF BILLINGS IN THE AMOUNT OF \$ \_\_\_\_\_ FOR VIOLATING THE FOLLOWING PROVISIONS OF THE BILLINGS, MONTANA CITY CODE RELATING TO MARIJUANA BUSINESSES: (STATE NATURE OF VIOLATION AND SECTION VIOLATED)

(c) Suspension of license. A licensee whose license has been suspended shall:

(1) Close the licensed premises to all persons except the registered manager and employees during the term of the suspension.

(2) Post signs at least thirty-six (36) inches by thirty-six (36) inches on every entrance to the licensed premises with letters at least one (1) inch in height during the period that the suspension is imposed, stating:

THE MARIJUANA BUSINESS LICENSE FOR THESE PREMISES HAS BEEN SUSPENDED BY ORDER OF THE BILLINGS CITY ADMINISTRATOR FOR DAYS FROM \_\_\_\_\_ THROUGH \_\_\_\_\_ FOR VIOLATING THE FOLLOWING PROVISIONS OF THE BILLINGS, MONTANA CITY CODE RELATING TO MARIJUANA BUSINESSES: (STATE NATURE OF VIOLATION AND SECTION VIOLATED)

(d) Revocation of license. A licensee whose license is revoked shall:

(1) Close the licensed premises and dispose of all marijuana on the licensed premises through legal means within such time and by such means as the City Administrator determines.

(2) Not be eligible to apply for a new license for a period of two (2) years.

**Sec. 7-2078. Discovery.**

(a) Any complaint or motion for sanctions shall contain a summary of the legal and factual grounds for the same.

(b) Interested parties may obtain copies of such documents through public records requests.

(c) Any party may provide copies to another party by filing a copy with the License Administrator, which any party may access and copy upon reasonable notice and upon payment of reasonable copying charges.

(d) No party shall be entitled to any additional discovery and the hearing officer shall not order any further discovery.

**Sec. 7-2079. Unlawful acts.**

It shall be misdemeanor municipal offense for any person to make any false statement, written or verbal, to any City employee, in any investigation, inquiry, hearing, testimony, application, report or document related in any way to marijuana businesses or the application or licensing thereof.

**Sec. 7-2080. Unlawful acts - licensees, principals, registered managers and employees.**

It shall be unlawful and a municipal offense for any licensee, principal, registered manager or employee of a licensee to commit any of the following acts:

(1) To violate, fail, neglect or refuse to comply with any requirement of this Article or Titles 15, 16, and 50, Montana Code Annotated, or of any State regulation pertaining to regulation of marijuana.

(2) To permit any violation of this Article or any law or regulation on the licensed premises or the adjacent grounds.

(3) To operate a marijuana business at any time that any of the requirements or conditions contained in Article are not satisfied.

(4) To fail, neglect or refuse to collect taxes on any transaction or to promptly pay any sales and use tax, excise tax, fee or charge required under this Article, under the Montana Code Annotated, or under the Billings, Montana City Code.

(5) To fail, neglect or refuse to promptly provide any books, records, reports, information, documents or answers to requests for information required under this Article.

(6) To refuse to provide signed answers to requests for information, except as provided in this Article, or to refuse to answer any request for information on any grounds prohibited under this Article.

(7) To violate any ordinance, statute or regulation on the licensed premises or on the adjacent grounds.

(8) To violate any condition or to permit the violation of any condition placed on a license issued under this Article or by the State.

(9) To permit anyone under the age of twenty-one (21) to be present on the licensed premises other than registered cardholders.

(10) To permit anyone who is not an employee to enter the limited access area.

(11) To permit any employee to enter the limited access area without a visible employee badge.

(12) To conduct any cultivation, manufacturing, testing, processing, packaging, display, sale or exchange of marijuana plants, harvested marijuana or marijuana products outside the licensed premises.

(13) To transport any quantity of marijuana or marijuana products without carrying with the marijuana or marijuana products, a written manifest showing the following information, or to refuse to provide to any law enforcement officer upon demand a written manifest showing the following information:

- (a) The weight and volume of marijuana or marijuana products carried;
- (b) A description of the make, model and VIN number of the vehicle carrying the marijuana or marijuana products;
- (c) The name and address of the driver of the vehicle;
- (d) The name and address of the licensed retail marijuana establishment from which the retail marijuana originated;
- (e) The name and address of the licensed marijuana establishment to which the marijuana or marijuana products is being delivered;
- (f) The date and time that the marijuana or marijuana products departed the licensed marijuana establishment where the marijuana originated.

(14) To allow anyone who does not possess a current and valid owner and occupational license to transport marijuana or marijuana products between licensed premises.

(15) To transfer, distribute, sell, give away, or dispose of any marijuana or any marijuana product by any other means than a face-to-face transaction within the licensed premises. Transfer, distribution, sale, gift, or disposing of marijuana via the internet or any on-line service is prohibited and unlawful.

(16) To display, transfer, distribute, serve, sell, give away, or dispose of any marijuana or marijuana product in any public place other than the licensed premises.

(17) For any licensee or any manager, employee, or agent of such licensee to fail to immediately report to the City any disturbance, unlawful or disorderly conduct, or criminal activity occurring at the location, on the premises, or within the licensed premises set forth on the license. A licensee, manager, employee, or agent will be criminally liable for any failure to report in a timely manner.

(18) To abandon a licensed premises or otherwise cease operation without notifying the License Administrator at least ten (10) days in advance, without accounting for and forfeiting to the state for destruction or disposition all marijuana or products containing marijuana, and without paying all due sales and use taxes, excise taxes, fees or charges required by the Billings, Montana City Code or Montana Code Annotated.

(19) To smoke or consume any marijuana, marijuana plant or marijuana product on a licensed premises or the adjacent grounds;

(20) To permit others to smoke or consume any marijuana, marijuana plant or marijuana product on a licensed premises or the adjacent grounds.

## DIVISION 10. MISCELLANEOUS

### **Sec. 7-2083. Registered manager.**

Every marijuana business licensee shall designate at least one (1) registered manager and delegate to the registered manager authority over the day-to-day operations of the licensee and the responsibility to ensure that the licensed premises and adjacent premises are operated in compliance with this Article.

### **Sec. 7-2084. Major changes to license, licensed premises or adjacent grounds requiring submission and approval by the City of Billings.**

(a) No marijuana business licensee shall make any of the following changes without first obtaining the written approval of the License Administrator:

(1) Any change in location of the licensed premises;

(2) Any change in the licensee's principals or creditors;

(3) The hiring, substitution, or replacement of the registered manager;

(4) Any change in the structure, walls, doors, windows, ventilation, plumbing, electrical supply, floor plan, footprint, elevation, operation, operational plan, patios, decks, safe or vault, locks, security plan, surveillance system, doors, window coverings or security system at the licensed premises;

(5) Any material change to the adjacent grounds, including but not limited to lighting, parking, traffic flow, surfaces, landscaping, fences, speakers or sounds; and

(6) Any material change in or deviation from the operational plan submitted at the time that the license was approved.

(b) The License Administrator may summarily approve all other proposed major changes or hold a public hearing on the same, in the License Administrator's discretion, depending on how substantial the change appears to be and whether the proposed change is likely to cause substantial harm to public health, safety or welfare.

(c) The License Administrator shall determine whether the proposed change would probably cause substantial harm to public health, safety or welfare or result in a violation of any law or regulation.

(d) No application for renewal of a license, change of location or other major change may be applied for or acted upon while any complaint for sanctions is pending with the City or the State.

(e) Licenses are non-transferable.

#### **Sec. 7-2085. Reports of minor changes.**

Every licensee shall report the following to the License Administrator, in writing within ten (10) days of such event:

(1) Any change in the licensee's trade name, trademark, logo or service mark used at the licensed premises, adjacent grounds, on any product sold or exchanged at the licensed premises, on any advertising or sign, or in any correspondence or document;

(2) Any change in the labeling or packaging of products sold at the licensed premises;

(3) Any new loans or debts that the licensee or its principals may incur that are related to the licensed premises, adjacent grounds or any ownership interest in the licensee, in a single or cumulative amount greater than ten thousand dollars (\$10,000.00);

(4) Any charges filed against or any conviction of any principal, registered manager or employee for any felony, misdemeanor or serious traffic offense, including but not limited to any deferred judgment or entry into any diversion program ordered or supervised by a court of law;

(5) Any change to any sign on the licensed premises or adjacent grounds; and

(6) The hiring, dismissal or resignation of any employee or the dismissal or resignation of a registered manager.

(7) A person that becomes a principal of a publicly traded corporation that is a marijuana business or that becomes a beneficial owner, through direct or indirect ownership of a controlling beneficial owner, of five percent (5%) or more of a marijuana business that is a publicly traded corporation must disclose said change to the City Clerk's Office within thirty (30) days of such change. Such a notification shall be

forwarded to the License Administrator to determine if additional information should be submitted to the License Administrator and if a hearing is needed.

**Sec. 7-2086. Renewal of marijuana business license.**

(a) A licensee may renew its license by submitting an application at least thirty (30) days before and no more than ninety (90) days before the expiration of the license. If a licensee fails to file an application for renewal of his or her license at least thirty (30) days before expiration of the license, the license shall expire.

(b) A licensee may renew a license that has expired if:

(1) The license has expired less than ninety (90) days; and

(2) The licensee pays the regular renewal fee established by City Council resolution.

(c) In the event that an application for renewal has been filed at least thirty (30) days before the expiration of the previous license, but the License Administrator has not yet issued a determination that the renewal application be approved or denied, the previous license shall be deemed extended until the License Administrator rules on the application for renewal, but in no event may the license be extended more than ninety (90) days under this Subsection. The licensee shall pay a license extension fee for any such extension after the first thirty (30) days.

(d) The License Administrator may hold a hearing on any application for renewal or the License Administrator may summarily renew a license if it appears from the application and other information that the licensee is:

(1) In compliance with this Article;

(2) There have not been any significant changes in the licensee, the principals, the licensed premises, the adjacent grounds or the registered manager previously approved; and

(3) There is no reason to believe that there are any grounds for sanctions or denial of the license.

(e) In the event that the License Administrator denies renewal of a marijuana business license, an aggrieved party may appeal the decision of the License Administrator under the same appeal process set forth in Division 8 of this Article.

**Sec. 7-2087. Trade names, trademarks, logos, labels, packaging and advertising.**

(a) With regards to a licensee's building façade, signs, and other outdoor advertising, a licensee must comply with all state laws and regulations as to the content of the building façade, signs, and other outdoor advertising, in addition to Article 27 of the Billings, Montana City Code. This section shall not apply to any advertisement contained within a newspaper, magazine or other periodical of general circulation within the City or on the internet, which may include coupons, or that is purely incidental to sponsorship of a charitable event by a marijuana establishment, except that such

signage and advertising must not be misleading, false, infringe upon any state or federal trademark, nor be designed to appeal to minors.

(b) A licensee shall submit approval of signage subject to this Section by the State of Montana Department of Revenue Cannabis Control Division to the License Administrator to confirm compliance with state law.

(c) Nothing contained in this Section shall be construed as creating a prior restraint on speech or press. The City shall not require an applicant or licensee to obtain any recommendation for approval from the License Administrator before using any logo, trademark, trade name, sign or advertising. Nothing contained in this Section shall prevent the City from taking civil, administrative or criminal action against any person or license after any logo, trademark, trade name, sign or advertising has been used. An applicant or licensee may request the License Administrator make an administrative determination as to whether a logo, trademark, trade name, sign, or advertising would be prohibited under this Section, but the License Administrator shall not be required to make such a determination nor shall such determination be binding on the City.

(d) Any court of competent jurisdiction construing or applying this Section shall seek a saving construction and application that makes the Section constitutional. In the event that any court of competent jurisdiction determines that any provision in this Section violates any right that any person may have to free speech or press, despite the Court's saving construction and application, the Court shall strike this Section only and sever the same from the remainder of this Article, which shall remain valid and effective without this Section.

### **Sec. 7-2088. Books and records.**

(a) Every licensee shall maintain on the licensed premises, at any time that any person is present on the licensed premises, accurate and up to date books and records of the business operations of the licensee, or an authentic copy of the same, including but not limited to the following:

(1) Lists, manifests, orders, invoices and receipts for all marijuana, marijuana plants and marijuana products cultivated, harvested, processed, produced, delivered, purchased, stored, sold and exchanged during the preceding two (2) years, by each transaction or event, including the date and time of each transaction, source, strain, type, quantity, weight and purchaser and whether each transaction involved harvested marijuana, live plants, marijuana products or seeds;

(2) An inventory of all marijuana and marijuana products presently on the licensed premises;

(3) Sales and use taxes collected and paid;

(4) The name of any other medical marijuana dispensary licensee with whom the licensee has transacted any business, including but not limited to any purchase, sale, or exchange of marijuana plants, harvested marijuana or medical marijuana products if not already entered in the seed-to-sale tracking system; and

(5) The name of any agent who takes delivery of medical marijuana or medical marijuana products on behalf of a registered cardholder, the identification of medical marijuana and medical marijuana products received, the date such items were received and the name and registered cardholder number, to the extent not already entered in the seed-to-sale tracking system.

(b) To the extent that any licensee has such information in its possession, the licensee shall separate any record showing the patient's debilitating medical condition from all other records, maintain such records separately from all other records, and mark the cover to such records: "Confidential Patient Medical Information."

**Sec. 7-2089. Inspection of books and records; audits.**

(a) Pursuant to MCA 16-12-210, any law or code enforcement officer may, without a warrant and without reasonable suspicion, inspect the books and records described in Section 7-2088, Billings, Montana City Code, at any time that anyone is present inside the licensed premises, but shall not inspect the records described in Section 7-2088(b), Billings, Montana City Code, unless a warrant or other court order specifically authorizes inspection of such records or there are legal grounds that would excuse the requirement of a warrant.

(b) Upon five (5) days written notice, the licensee shall provide the books and records of the licensee for inspection and auditing by the City but shall not be required to provide the records described in Section 7-2088(b), Billings, Montana City Code.

(c) In the event that the information described in Section 7-2088(b), Billings, Montana City Code, is interspersed in the same record or contained on the same sheet of paper or electronic record, the licensee shall copy the records, redact the information described in Section 7-2088(b) and provide a redacted copy to the City or code enforcement officers.

**Sec. 7-2090. Inspection of licensed premises and adjacent grounds.**

(a) Every licensed premises and adjacent grounds shall be open to inspection by police officers, building officials, firefighters, zoning officials, code enforcement officials, sales, use and excise tax officials, health department officials, or any other appropriate city designees at any time that anyone is present in the licensed premises, without obtaining a search warrant, and without reasonable suspicion to believe that any violation has occurred. Such right of inspection shall continue until all marijuana is removed from the licensed premises and adjacent grounds and all marijuana related business has terminated and final inspections are made in accordance with Subsection (f) below.

(b) The licensee, principals, registered managers and employees shall have no reasonable expectation of privacy as to the buildings, rooms, areas, vehicles, furniture, safes, lockers or containers on the licensed premises and adjacent grounds, except as provided in this Section.

(c) Licensees, principals, registered managers and employees on the licensed premises and adjacent grounds shall retain a reasonable expectation of privacy with

regard to their persons, the personal effects in their immediate possession, and their own motor vehicles on the licensed premises and adjacent grounds, to the extent provided by other legal authority, but shall have no reasonable expectation of privacy as to other areas, vehicles, safes, lockers, containers or objects on the licensed premises or adjacent grounds.

(d) Patients, primary caregivers and other persons on the licensed premises and adjacent grounds shall retain a reasonable expectation of privacy as to their medical condition, their persons, the personal effects in their immediate possession, and their motor vehicles on the licensed premises and adjacent grounds, to the extent provided by other legal authority, but shall have no reasonable expectation of privacy as to other areas, vehicles, containers or objects on the licensed premises and adjacent grounds.

(e) Police officers and other officials shall not inspect records described in Section 7-2088(b), Billings, Montana City Code, or any person, place or area in which a person retains a reasonable expectation of privacy, unless a search warrant is obtained for the same or there are legal grounds that would excuse the requirement of a warrant.

(f) Within seven (7) days of the revocation, surrender, or other termination of a medical marijuana license, during which time licensee shall maintain possession of the premises, the licensees, principals, registered managers and employees shall make the licensed premises and adjacent grounds open to inspection by police officers, building officials, firefighters, zoning officials, code enforcement officials, sales, use and excise tax officials, and health department officials. Said final inspection shall reveal that marijuana is no longer present on the licensed premises or adjacent grounds and that all marijuana related business has terminated. A failed final inspection for failing to lawfully dispose of marijuana and marijuana products on the premise constitutes a misdemeanor municipal offense.

#### **Sec. 7-2091. Requests for information.**

(a) Any City employee responsible for enforcing any City ordinance, State law or regulation may submit a written request for information relevant to such enforcement to the licensee by certified mail, return receipt requested, at the address of the licensed premises.

(b) The licensee shall provide complete written answers to such questions, signed by the registered manager, within twenty (20) days of the date that the request was mailed or hand delivered to the licensee or registered manager, but shall not be required to disclose the information described in Section 7-2088(b), Billings, Montana City Code.

(c) The licensee, principals, registered manager and employees shall have no expectation of privacy in any information or document pertaining to the operation of the licensed business, licensed premises and adjacent grounds as to the State or City. The City shall use reasonable efforts to notify a marijuana business license applicant or a marijuana business licensee of any public records request for records pertaining to the applicant's or licensee's operations to permit objection by the applicant or licensee if desired.

(d) In the event that the licensee refuses to provide answers on the grounds that the answer may tend to incriminate him or her for some criminal offense, or on advice of legal counsel, the City and License Administrator may properly draw the inference and conclusion that the answer to the question would have been adverse to the licensee's position regarding the investigation or other matter then pending, and may institute a complaint and proceedings for sanctions based on such conclusion.

(e) The licensee may not refuse to answer a question submitted to it on the grounds that:

- (1) The answer may incriminate its principals, creditors, registered manager or employees;
- (2) The answer might place his or her license in jeopardy; or
- (3) The question is not relevant.

(f) If the licensee is a natural person, the licensee may seek an injunction against the request for information on the ground that the information is highly personal, does not involve the finances or operation of the licensed premises, self-incrimination, or is protected by the licensee's own constitutional right to privacy, but shall also be required to satisfy all requirements under Montana law for issuance of a temporary restraining order, preliminary injunction or permanent injunction. Failure of the licensee to seek an injunction against the request for information within twenty (20) days from the date the request for information is mailed to the licensee shall constitute a waiver of any right of privacy regarding the requested information.

#### **Sec. 7-2092. General labeling requirements.**

(a) Labeling requirements apply to marijuana and marijuana products sold from a dispensary to customers. A licensee that sells marijuana or marijuana products to other licensees are not required to comply with labeling requirements.

(b) All information required on the label of marijuana or a marijuana product shall be:

- (1) unobstructed and conspicuous. A licensee may affix multiple labels to a package, or use a booklet, accordion, or other type of label, provided that no required information is completely and permanently obstructed.
- (2) displayed in a legible font, such as Times New Roman, Arial, or Helvetica. The lowercase letter "o" must be at least one-sixteenth of an inch in height;
- (3) displayed in a color that contrasts conspicuously with the background; and
- (4) displayed in English, although a licensee may choose to display required information in additional languages.

(c) All marijuana or marijuana products shall be labeled with the following information:

- (1) the common or usual name of the marijuana product (e.g., flower, inhaled extract, edible or drinkable, topical, transdermal patch);
- (2) the name of the marijuana dispensary that sold the product and the license number or numbers of the cultivator and manufacturer, as applicable;
- (3) the unique identification number generated from the seed-to-sale tracking system;
- (4) date of harvest for marijuana flower or date of manufacture for marijuana products;
- (5) the net quantity of contents of the marijuana product. The statement of quantity shall be:
  - a. stated in U.S. Customary Units and Metric (SI) Units, with the latter enclosed in parenthesis;
  - b. If the product is a liquid:
    1. expressed in terms of fluid measure; and
    2. preceded by the phrase "Net Contents" or "Net"; or
  - c. If the product is a solid, semi-solid, or viscous:
    1. Expressed in terms of weight; and
    2. Preceded by the phrase "Net Weight," the abbreviation "Nt. Wt.," or "Net."
  - d. In addition to weight or fluid measure, a licensee shall include the number of servings in the net quantity of contents statement if the product is a multi-serving marijuana product (e.g., Net Weight: 2 oz. (56.7 g) (10 cookies)).
- (6) The following statement: "This product has been tested and meets the requirements of the state of Montana."
- (7) A QR code that links to the product's certificate of analysis with a statement informing customers they can scan the code to see additional product information;
- (8) The universal symbol, available from the Montana Department of Revenue's website. The universal symbol:
  - a. shall be at least .33 inches wide and .33 inches high;
  - b. may be downloaded from the Montana Department of Revenue's website; and
  - c. shall be in the following form:



d. All marijuana and marijuana products shall be labeled with the following warnings:

1. "Keep out of reach of children and pets";
2. This product may be addictive"; and
3. "This product may have intoxicating effects. Do not drive while under the influence of marijuana."

e. Marijuana or marijuana product labeling shall not contain any statement or information that is false or misleading.

f. The label of manufactured marijuana products must identify the method of manufacturing (e.g., mechanical, chemical) and for chemical manufacturing must identify the solvent used in the manufacturing process.

g. Marijuana or marijuana products that, because of their size, do not have sufficient space for all of the information required for compliance with the Act and Montana Department of Revenue rules may, if approved by the department pursuant to 16-12-208, Montana Code Annotated, display the information required in (c) in a legible font that does not meet the minimum size requirement established in (b)(2).

h. Marijuana or marijuana products in excess of the THC limits in 16-12-224, Montana Code Annotated, may only be sold to registered cardholders and must contain the following additional information:

1. "For medical use only"; and
2. "This product is not approved by the U.S. Food and Drug Administration to treat, cure, or prevent any disease."

i. Marijuana or marijuana products that do not require heat to administer or consume shall not have a total THC or total potential psychoactive THC value listed on the marijuana facts panel.

(d) At any time, the City may require testing of marijuana and marijuana products at the business's expense to confirm the accuracy of the labeling of any product required to be labeled in this Division.

**Sec. 7-2093. Labeling requirements for marijuana flower.**

- (a) In addition to the general labeling requirements set forth in Section 7-2092, each package of marijuana flower sold to a customer shall be labeled with a marijuana facts panel.
- (b) A marijuana facts panel shall include the percentage of concentration of:
  - (1) total potential psychoactive THC;
  - (2) THC;
  - (3) THCa;
  - (4) CBD; and
  - (5) CBDA.

- (c) A marijuana facts panel may include the percentage concentration of each additional marketed cannabinoid or terpene, if applicable.

**Sec. 7-2094. Labeling of ingestible marijuana products.**

- (a) In addition to the general labeling requirements set forth in Section 7-2092, each package of ingestible marijuana-infused product sold to a customer shall be labeled with the following information:
  - (1) An ingredients list that shall include all ingredients in the ingestible marijuana products listed by common or usual name in descending order of predominance by weight and the word "marijuana" followed by the part of the plant (e.g., flower, trim) or form of concentrate (e.g., oil, infused butter) used as an ingredient in the manufacturing process. Any substance that is present in an ingestible marijuana product in an insignificant amount and that does not have any technical or functional effect in the finished product may be excluded from the ingredients list.
  - (2) An allergen statement that shall declare the presence of major food allergens in plain language.
  - (3) A marijuana facts panel containing the following information:
    - a. The milligrams per serving size or dose of:
      - 1. THC;
      - 2. THCa;
      - 3. CBD; and
      - 4. CBDA.
    - b. The number of servings or doses per package; and
    - c. For multi-serving packages, the total milligrams per package of:

1. THC;
2. THCa;
3. CBD; and
4. CBDA.

(4) In addition to the required warnings in Section 7-2092, each package of ingestible marijuana-infused product sold to a customer shall be labeled with the following information: "The intoxicating effects of this product may be delayed by two or more hours."

(b) A marijuana facts panel for ingestible marijuana-infused products may not contain information on the total potential psychoactive THC, total THC, or otherwise mislead customers into believing the product has higher THC levels than it does.

(c) A marijuana facts panel may include the milligrams of each additional marketed cannabinoid and terpene per serving size, dose, or package.

**Sec. 7-2095. Labeling of non-ingestible marijuana products.**

(a) In addition to the general labeling requirements set forth in Section 7-2092, each packaging of non-ingestible marijuana-infused products shall be labeled with the following information:

(1) An ingredients list that shall include all ingredients in the non-ingestible marijuana product listed by common or usual name in descending order of predominance by weight and the word "marijuana" followed by the part of the plant (e.g., flower, trim) or form of concentrate (e.g., oil, infused butter) used as an ingredient in the manufacturing process. Any substance that is present in a non-ingestible marijuana product in an insignificant amount and that does not have any technical or functional effect in the finished product may be excluded from the ingredients list.

(2) A marijuana facts panel containing the following information:

a. The milligrams per serving size or dose of:

1. THC;
2. THCa;
3. CBD; and
4. CBDA.

b. The number of servings or doses per package; and

c. For multi-serving packages, the total milligrams per package of:

1. THC;

2. THCa;
3. CBD; and
4. CBDA.

(b) A marijuana facts panel for non-ingestible marijuana products may not contain information on the total potential psychoactive THC, total THC, or otherwise mislead customers into believing the product has higher TCH levels than it does.

(c) A marijuana facts panel may include information about each additional marketed cannabinoid and terpene expressed in terms of milligrams per serving size, dose, or package.

**Sec. 7-2096. Labeling requirements for marijuana concentrates and extracts.**

(a) In addition to the general labeling requirements set forth in Section 7-2092, each packing of marijuana concentrate sold to a customer shall be labeled with the following information:

(1) An ingredients list that shall include all ingredients in the marijuana concentrate listed by common or usual name in descending order of predominance by weight and the word "marijuana" followed by the part of the plant (e.g., flower, trim) from which the marijuana concentrate is derived. Any substance that is present in a marijuana concentrate in an insignificant amount and that does not have any technical or functional effect in the finished product may be excluded from the ingredients list.

(2) An allergen statement that shall declare the presence of major food allergens in plain language unless the marijuana concentrate is not intended to be cooked with, eaten, or otherwise swallowed and digested.

(3) A marijuana facts panel containing the following information:

a. For marijuana concentrates that require the application of heat before they are administered or consumed:

1. the percentage concentration of:

- a) total potential psychoactive THC;
- b) THC;
- c) THCa;
- d) CBD; and
- e) CBDA.

2. The number of servings or doses per package.

b. For marijuana concentrates that do not require the application of heat before they are administered or consumed:

1. the percentage concentration of:

- a) THC;
- b) THCa;
- c) CBD; and
- d) CBDA.

(4) In addition to the required warnings in Section 7-2092, each package of activated concentrate that is intended to be cooked with, eaten, or otherwise swallowed and digested shall be labeled with the following: "The intoxicating effects of this product may be delayed by two or more hours."

(b) A marijuana facts panel for marijuana concentrates that do not require the application of heat to be administered or consumed may not contain information on the total potential psychoactive THC, total THC, or otherwise mislead customers into believing the product has higher THC levels than it does.

(c) A marijuana facts panel may include information about each additional marketed cannabinoid and terpene, expressed in percentage of concentration by weight or by volume or in milligrams.

#### **Sec. 7-2097. Packaging requirements.**

(a) All packaging of marijuana and marijuana products shall:

(1) protect the product from contamination and shall not impart any toxic or deleterious substance to the marijuana or marijuana product;

(2) be capable of being resealed if the package contains more than one serving size;

(3) not primarily appeal to children. Packaging that primarily appeals to children includes but is not limited to packaging that:

a. depicts a child;

b. portrays objects, images, celebrities, or cartoon figures that primarily appeal to children or are commonly used to market products to children; or

c. otherwise has special attractiveness for children beyond the general attractiveness for adults.

(4) not bear any reasonable resemblance to the trademarked or characteristic packaging of any commercially available product including but not limited to candy, snacks, baked goods, or beverages.

(b) All marijuana and marijuana products provided to customers at the point of sale shall be in exit packaging that:

- (1) is child resistant as defined in ARM 42.39.102;
- (2) is opaque; and
- (3) contains the warnings required by 16-12-215, Montana Code Annotated, in the format required by 16-12-208, Montana Code Annotated.

(c) Drinkable marijuana products that contain more than one serving per package must include a device or mechanism for measuring a single serving of the product.

(d) Exit packaging of marijuana and marijuana products provided to customers at the point of sale may not contain any other information or design elements other than what is allowed under 16-12-208(6)(b)(ii), Montana Code Annotated.

#### **Sec. 7-2098. Penalties and remedies.**

- (a) Any person, licensee, principal, registered manager, or employee of a licensee that violates any requirement of this Article shall upon conviction be guilty of a misdemeanor and may be punished by a fine of up to \$500.00 and/or incarceration for a term of up to six (6) months. Each such person, licensee, principal, registered manager, or employee of a licensee shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this article is committed, continued or permitted by any such person.
- (b) Any person, licensee, principal, registered manager, or employee of a licensee that fails to comply with the requirements of this Article shall be deemed to be creating a public nuisance and shall be subject to penalties as provided in section 18-1304 and shall further be subject to civil action to restrain or abate the nuisance as authorized in sections 18-301 et seq. as the City deems appropriate. Such ability of the City to prosecute and/or enjoin or abate is in addition to any other remedies available to the city at law or in equity.

#### **Sec. 7-2099. Remedies cumulative.**

The remedies provided in this Article are cumulative and do not preclude any other available remedy at law or in equity.

#### **Sec. 7-2100. Changes in law.**

When reference is made in this Article to any local law or regulation or to any state or federal statute, regulation or other law, the reference includes any subsequent amendment or superseding provision.

**Section 2. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 3. REPEALER.** Article 7-1700. – Medical Marijuana and all resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 4. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading October 25, 2021

PASSED by the City Council on second reading November 8, 2021.

PASSED, ADOPTED AND APPROVED by the City Council on third reading November 22, 2021.

ATTEST:



CITY OF BILLINGS

BY:

*William A. Cole*  
William A. Cole, Mayor

BY: *Denise R. Bohlman*  
Denise R. Bohlman, City Clerk