

ORDINANCE 150-2022

AN ORDINANCE REPEALING AND REPLACING TITLE 3 CHAPTER 6 MEDICAL MARIJUANA

**CHAPTER 6
MARIJUANA**

3-6-1: DEFINITIONS:

As used herein, the following terms shall have the meanings ascribed to them below. The general definition rules of § 1-2-105, MCA, apply to this Ordinance. All terms not specifically defined herein are to be defined according to their common usage at the time of the effective date of this Ordinance.

COMPLIANCE means full compliance with all the provisions of this Ordinance, Town Code, Town Zoning Code, Town Business License regulations in general, and any and all other applicable local, state and county rules, regulations, laws, codes or ordinances that may be applicable.

CONDITIONAL USE PERMIT means the Conditional Use Permit approval, review, process and permit described in the Ennis Town Zoning Code and any amendments thereto.

COMMERCIAL MARIJUANA PREMISES means any marijuana dispensary, marijuana manufacturer, marijuana testing laboratory, or other premises at which commercial activity related to the sale, production, promotion, manufacture, distribution or consumption of THC products or related paraphernalia occurs. A retail marijuana business shall not be considered a commercial marijuana business, unless a substantial portion, more than 50% of annual or gross revenue is commercial in nature.

CONTINUOUS OPERATION means open for business no less than 20-hours per week within regular business hours of 8 AM to 5 PM for no less than 50 continuous weeks prior to November 21, 2021.

DETECTABLE means that a qualified K9 or drug sniffing dog alerts or otherwise indicates the presence of marijuana odor or presence of marijuana.

DISTANCE MEASUREMENT when computing the distance between a marijuana business and any school, library, public park, public pool, residence or any other location that requires a location measurement, the distance shall be computed by direct measurement in a straight line from the nearest legal parcel line of the land used for the school, library, public park, public pool, residence or other location to the nearest external portion of the building or premises where the marijuana business is located.

MARIJUANA means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination. The term does not include hemp, including any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight

basis, or commodities or products manufactured with hemp, or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

MARIJUANA BUSINESS means and includes without limitation any storefront, premises, business, operation, facility or location where there are any activities regarding the sale, distribution, supply, transportation, growth, testing, dispensary, provider, manufacture or production of any marijuana derivative, marijuana infused product, medical marijuana, marijuana plants or THC product or related products, goods or services. No marijuana business shall be allowed or permitted and in the Town of Ennis without a business license from the Town of Ennis and without showing compliance with all requirements of this Ordinance, the Town Zoning Code, Town Business License regulations generally, and other applicable local, state and / or county laws, rules, regulations or ordinances. No person shall be permitted to engage in Marijuana Business without a first obtaining a Marijuana Business license or permit from the Town of Ennis identifying the location of the Marijuana Business and showing compliance with all applicable provisions of this Ordinance.

MARIJUANA DERIVATIVE means any mixture or preparation of the dried leaves, flowers, resin, or byproducts of the marijuana plant, including but not limited to marijuana concentrates and marijuana-infused products.

MARIJUANA DISPENSARY means any premises from which THC products are available for commercial sale to general consumers and/or to medical marijuana cardholders. A hospital, clinic, pharmacy, or doctor's office shall not be considered a marijuana dispensary merely because they may prescribe or dispense medical marijuana, unless prescribing or dispensing medical marijuana is the location's primary source of revenue.

MARIJUANA-INFUSED PRODUCT means a product that contains marijuana and is intended for use by a means other than smoking. The term includes but is not limited to edible products, ointments, and tinctures.

MARIJUANA MANUFACTURER includes any business, location, premises or facility where marijuana is grown or THC products are made, prepared, produced or developed for commercial purposes, distribution or sales.

MARIJUANA PROVIDER means a person licensed by the Department of Revenue to manufacture and provide marijuana-infused products for consumers and/or licensed by the Department of Health and Human Services to manufacture and provide medical marijuana to cardholders.

MARIJUANA TESTING LABORATORY means a building, location, premise or facility which provides through the use of equipment and testing processes or analysis generates information or determines the chemical composition, potency, presence of molds, pesticides or contaminants or other quantitative analysis regarding marijuana or THC products or samples thereof.

PERSON means any individual, company, limited liability company, partnership, association, association, employee, manager, member-manager or other entity with ownership, control, management or employment with the marijuana business. Person or persons, plural and singular shall apply throughout whenever necessary or reasonably required to give meaning and effect to the provisions.

PUBLIC PARK includes any playground or outdoor sports area or facility that is open to the general public. The term does not include fishing accesses, State or National forests, campgrounds or BLM land.

RESIDENCE includes any private premise where a person lives such as a private dwelling, a place of habitation, a house, a multi-dwelling unit for residential occupants, or an apartment unit, regardless of whether said premise is occupied seasonally or year-round, as well as any building which is publicly available for sale for residential purposes. No marijuana business shall be permitted or allowed in any residence, and no homes business shall be operated as a marijuana business.

RESIDENTIAL SUBDIVISION means any platted subdivision that is primarily residential in character, includes ten or more residences, and is not within a town site. No commercial or marijuana business shall be permitted in any residential subdivision, residential zone or home business.

SCHOOL for purposes of determining compliance with Distance Measurement or Location of any marijuana business as required the word "school" includes without limitation any home school, preschool, daycare center, elementary school, middle school, high school, or other building or premises used for adult education or other learning center.

THC PRODUCTS includes marijuana, marijuana concentrate, marijuana derivatives, and marijuana-infused products, and any other naturally occurring or synthetic product which contains THC and which is advertised or intended for the medicinal and/or recreational uses commonly associated with marijuana. The term does not include CBD or hemp products with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

3-6-2: BUSINESS LICENSE REQUIRED:

A. COMPLIANCE: A Marijuana Business license applicant must show compliance with state and county laws, rules, regulations and ordinances. No business license shall be issued until applicant shows compliance with any and all state, county or other Town laws, rules, ordinances or regulations.

B. CONDITIONAL USE PERMIT: No Marijuana Business license shall issue without a Conditional Use Permit issued by the Town Commission. The Town Commission shall have broad discretionary authority to require any reasonable conditions that would promote public health, safety, welfare, security or otherwise accomplish the provisions of Chapter 6, Marijuana Business and / or serve or promote the Intent and Purpose, Design Parameters, or other provisions of the Traditional Neighborhood District Overlay 11-3F-1.

3-6-3: LOCATION RESTRICTIONS:

A. LOCATION: No Marijuana Business may be located within 500 feet of a school or 250 feet of a library, public park, or public pool, or in a residential zone or subdivision.

B. EXCEPTIONS: The location restrictions 3-6-3(A) shall not apply to any marijuana business which can show that it has been in continuous operations at the same location since November 21, 2021.

C. SUBSEQUENT DEVELOPMENT: No Marijuana Business shall be made non-compliant by subsequent development of any school, library, public park, public pool or approved residential subdivision by annexation, development or otherwise.

D. ZONING DISTRICTS PROHIBITED: No marijuana business shall be a Permitted Use in any Zoning District or a Conditional Use in any Residential Districts 11-3B-1 through 11-3B-4, R-RD, R-LD, R-MD, R-TD and Local Commercial Residential District 11-3C-1.

E. ZONING DISTRICTS CONDITIONAL USE: Marijuana Business shall be allowed only as a Conditional Use in the Zoning Districts: Core Commercial Residential 11-3C-2, Highway Commercial 11-3D-1, Commercial Industrial 11-3D-2, Planned Industrial District 11-3E-1, and Agricultural Districts 11-3A-3.

3-6-4: VISIBILITY AND PROPERTY REQUIREMENTS:

A. VISIBILITY: Commercial Marijuana premises are responsible to ensure that THC products are not plainly visible from any residence, public property, or public roadway.

B. GROW LIGHTS: Marijuana Business that use grow lights are required to ensure that grow lighting is not plainly visible from any residence, public property, or public roadway during night hours.

C. HOURS OF OPERATION: Commercial Marijuana premises which are located within 500 feet of any residence may not be open to the public or require employees to be present between the hours of 10:00 PM and 6:00 AM and shall not have more than seven employees working at the premises at any single time.

D. ODOR CONTAINMENT: Commercial Marijuana premises must ensure that they do not generate any marijuana odors which are detectable or discernible within the interior of any residence, other business, or public building, or at any outdoor location more than 100 feet from their property during normal weather. Marijuana manufacturers which are located within 1,000 feet of any residence must install carbon or charcoal filters or similar devices sufficient to prevent marijuana or other chemical smells from being immediately discernible on any other person's property during normal weather. The Town of Ennis is given discretion to resolve any disputes regarding the adequacy of a given manufacturer's filtration system.

E. ENVIRONMENTAL: Prior to beginning operations and obtaining a business license in the Town of Ennis, any marijuana manufacturer or marijuana testing laboratory must provide the Town of Ennis with a written plan for disposal of any chemicals, runoff, fertilizer, marijuana plant waste, or other substances which are regulated by the County or Town; State Department of Environmental Quality, or U.S. Environmental Protection Agency, or which otherwise could plausibly create a public health hazard exceeding the hazards created by ordinary household trash or waste.

3-6-5: COMMERCIAL MARIJUANA BUSINESS SECURITY:

A. SECURITY: Commercial Marijuana premises are responsible to ensure that any buildings containing THC products are secured and locked at all times. THC products may not be stored or grown outdoors, except temporarily during transportation.

B. AUDIO AND VIDEO SURVEILLANCE: Commercial Marijuana premises are responsible to ensure that any building which regularly stores THC products or is used in any marijuana business operations must have security audio and video motion-activated cameras with minimum full color HD “high definition” image quality or better which cover all entrances, exits and areas where THC products are located or stored and which are in good operating condition and repair at all times. Any and all captured audio and video must be stored and backed up no less than 30-days from time of capture and made available on demand to the Ennis Town Zoning Administrator of Ennis Police Department.

C. EMPLOYEES: Commercial Marijuana premises may not employ, or subcontract with, any person who is under 18 years of age, and may not knowingly permit any person who is under 18 years of age to be present on the premises unless that person is a medical marijuana cardholder and/or is in the immediate presence of a parent or guardian.

D. HOURS OF OPERATION: Commercial Marijuana premises may not sell, give, or otherwise transfer THC products to the general public between the hours of 9:00 PM. and 7:00 AM.

3-6-6: NO OPEN USE OR DISPLAY:

A. No person shall use, smoke, consume or display in an open and visible manner any marijuana or THC products in any place in the Town of Ennis that is commonly used by the public. Violation of this provision shall be punishable and enforceable as per the applicable provisions of this Ordinance.

B. Possession of a medical marijuana license or prescription for use of marijuana or THC products shall be no defense to the prohibition against open display or use.

3-6-7: ENFORCEMENT:

A. ENNIS: The Ennis Police Department is hereby vested with the power and authority to enforce all portions of this Ordinance. Such authority includes, but is not limited to, the authority to investigate alleged or suspected violations of the Ordinance, to issue complaints, to issue notices of violations, to post notice of violations at a commercial marijuana premises found to be in violation, and, where necessary to obtain compliance with a suspension issued under this Ordinance, to lock or otherwise physically block access to a commercial marijuana facility.

B: MADISON COUNTY: Madison County Sanitarian's office and its designated representatives are also hereby vested concurrent jurisdiction and authority to enforce Section 6 of this Ordinance. Such authority includes, but is not limited to, the authority to investigate alleged or suspected violations of the Ordinance, to issue complaints, to issue notices of violations, and to post notice of violations at a commercial marijuana premises alleged to be in violation.

C: INSPECTIONS: Owners or operators of commercial marijuana premises are responsible to make the premises available for inspection by the Town of Ennis Zoning Administrator and/or Ennis Police Department at any time during their regular business hours, and at other times if reasonable advance notice is given, for the purposes of confirming that they are complying with this Ordinance.

D. **CONCURRENT JURISDICTION:** Nothing in this Ordinance is intended to limit the authority of the Department of Revenue, Department of Public Health and Human Service, or any other state or federal agency to enforce relevant laws and regulations in the Town of Ennis. Nothing in this Ordinance shall be construed as limiting the authority of a state or county to regulate marijuana business within their jurisdiction which are more restrictive than those in this Ordinance.

E. **NO DEFENSE:** Prescription for medical purposes, medical marijuana license or any other permit, approval or license by any board, department, agency or governing body by the state or county shall not be a defense to any violation of this Ordinance. MCA 16-12-301 provides authority for the Town of Ennis to adopt local regulations more restrictive than the state or county.

3-6-8: NOTICE OF VIOLATION, PENALTIES AND PROHIBITIONS:

A. **NOTICE OF VIOLATION:** Whenever there is probable cause to believe that a violation of this Ordinance has occurred or is occurring, the Town of Ennis Zoning Administrator or Ennis Police Department may serve a Notice of Violation on any person or persons suspected to have violated or be in violation any provision, section or requirement of this Ordinance. Service of the Notice of Violation shall be considered sufficient if it is: (1) delivered to or posted at the location of the commercial marijuana business and mailed to the address which the marijuana provider has provided to the Town of Ennis on its business license application or to the agent for service of process on file with the Montana Secretary of State; (2) served personally to the person or persons; (3) served by any other lawful means provided by Montana Criminal Procedure law for the service of any misdemeanor complaint; or (4) served by any other lawful means provided by Montana Rules of Civil Procedure.

B. **FINES AND PENALTIES:** Fines upon conviction of violating any part, requirement or section of this Ordinance: First Conviction \$100; Second Conviction \$300; Third Conviction \$500. Upon a First conviction the business and / or person may be suspended from doing business for a period of 30-days. For purposes of penalties and mandatory suspension or relation of other crimes the look back period is lifelong.

C. **MANDATORY SUSPENSION:** Second conviction the business and / or person shall be suspended from doing business no less than 30-days and no more than 180-days. Third conviction all business license privileges or ability to work in the Town of Ennis in the marijuana business shall be permanently suspended. Purposely or knowingly operating or working in a marijuana business in the Town of Ennis during a period of suspension shall be punishable as provided under 3-6-7(B) – (C) with each day punishable as a separate violation

D. **RELATION TO OTHER CRIMES:** No person convicted of possession of dangerous drugs or distribution of dangerous drugs shall be licensed, permitted or allowed to operate, manage, own any interest, work on serve as any employee in any marijuana business in the Town of Ennis.

E. **JURISDICTION AND FORFEITURE:** Violations of this Ordinance shall be prosecuted in the Ennis City Court subject to all local court rules and procedures. The Court shall have the authority in any enforcement proceeding to Order forfeiture of any goods, supplies, profits, funds, marijuana or THC product that the Court may deem just and proper under the circumstances.

3-6-9: CONFLICTS AND INTERPRETATION: Wherever any provision of this Ordinance may conflict with other provisions of the Town Code or Zoning Code, the provisions of this Ordinance shall control and the Town Code or Zoning Code shall be deemed amended accordingly. The Town Zoning Administrator shall have the power and authority to issue administrative determinations regarding any part or parts of this Ordinance subject to appeal to the Zoning Board of Adjustment.

3-6-10. SEVERABILITY: If any provision of this Ordinance is held to be invalid, such invalidity shall not affect any other provisions or applications of this Ordinance which can be given effect without the invalid provision.

LEGISLATIVE NOTES PUBLICATION AND VOTING

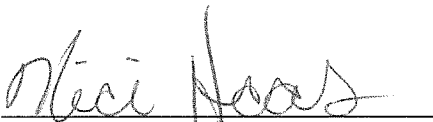
Date of First Public Reading: June 23, 2022.

Date of Second Public Reading: July 14, 2022.


Record of vote of First and Second Public Reading at scheduled duly noticed public meeting held at Ennis Town Hall, 328 West Main Street, Ennis, Montana, the following Commissioners being present voted as follows:

Commissioner	Present/Absent	Vote 06/23/22	Vote 07/14/22
Allison	P	yes	yes
Hankins	P	yes	yes
Hardy	P	yes	yes
Palmerton	P/A	yes	ABSENT
Ranson	P	yes	yes

PASSED, ADOPTED AND FINALLY APPROVED by the Town of Commission of the Town of Ennis, Montana, at a regular session thereof held on the 14th day of July, 2022.



 Nici Haas, Mayor

ATTEST: 

 Ginger Ginn, Clerk/Treasurer