

Formal Agenda
Bainville Town Council Meeting
Town Hall
211 Clark Avenue East
Monday November 8, 2021 at 7:30 PM

I. Call to Order

II. Pledge of Allegiance

III. Roll Call—Establish a quorum

___ Mayor, Dennis Portra
___ Councilman, Matt Giese

___ Councilman, Ron Butikofer
___ Councilman, (TBD)

IV. Approve Agenda

V. Approval of Minutes dated October 11, 2021

[Recommended Motion: I move to approve the minutes dated October 11, 2021.]

VI. Public Comments or Formal Complaints on items not on agenda.

VII. Department or Committee Reports

A. Public Works Report:

- Review and approve Gracie's plan for the low-pressure sanitary sewer service connection to the Town of Bainville's public sanitary sewer force main
- Discuss Water Loss Summary

B. Roosevelt County Sheriff's Department Update

C. Court Report –9 Citations

D. Legal Issues

E. Policy/Ordinance Review

F. Local Emergency Planning Committee

LEPC meeting held: November 9, 2021 at 2:00 PM

VIII. Old Business

IX. New Business

A. New Permits:

B. **Resolution**—A resolution declaring an emergency regarding voting rights within the Town of Bainville.

C. Treasurer's Report:

- Approve claims with checks dated November 8, 2021.
- Approve JV, UB Vouchers, Payroll slips.
- Review delinquent accounts.
- Update on the American Rescue Plan Act of 2021.
 - Discussion on possible projects for the ARPA Funding

X. Adjourn

Next Meeting will tentatively be December 13, 2021 at 7:30 PM

Regular Meeting Minutes of October 11, 2021 Bainville Town Council

The Regular meeting of the Bainville Town Council was called to order at 7:30 p.m. by Mayor Dennis Portra at the Bainville Town Hall, 211 Clark Avenue East. Present were: Ron Butikofer, Dennis Portra and Matt Giese. A **quorum** was established. Also present were Clerk, Nikki Rogers; Public Works Director, Lyle Lambert; and City Attorney, Greg Hennessey was absent. Guests included: Bernie Popp, Diane Panasuk, Jess Malkuch, Patti Malkuch, and Eric Newton

Matt Giese moved to approve the agenda with the addition of New Business Letter A Number 1 Diane Panasuk—Hot tub shed at 108 Rhea Avenue East. Ron Butikofer seconded the motion. All voted in favor and motion carried.

Matt Giese moved to approve the minutes dated September 13, 2021 as submitted. Ron Butikofer seconded the motion. All voted in favor and motion carried.

Public Comment

Clerk Rogers stated the town of Bainville mail ballots will be mailed out on October 18, 2021 for the general municipal election.

A web complaint was sent in regarding nuisance dogs and a rooster that crows at all hours of the day. Clerk Rogers forwarded the complaint to the Sheriff's Office to handle.

Public Works Report

Lyle Lambert, Public Works, gave the following report:

- Interstate Engineering created a plan for the Mayor and Council to review Gracie's low-pressure sanitary sewer service connection to the Town of Bainville's public sanitary sewer force main. Language on the plan indicated the contractor will determine the size of the pipe which the Mayor suggested the contractor go with what pipe is already there. Mr. Lambert will get back to the engineer on the project to make it known. Mayor and Council agreed the language needed to change but the rest of the plan looked good.
- Public works will be building weirs in the lagoon to assure water flow to all cells.
- Mr. Lambert asked to purchase the following equipment:
 - Broom— He feels a broom would be helpful in clearing sidewalks and parking lot at the post office, especially at Simard Park and the Senior Center. Council members were not in favor of purchasing one now.
 - Snow Blower— Mr. Lambert indicated repairs were made to the snow blower last year and they barely made it through the winter. Council members asked for an estimate on the cost of replacing the snow blower
 - Lift—Mr. Lambert stated it was nice to rent a lift to work on the light poles down Clinton Street/Highway 327. To rent it costs 1013.00 or they could purchase the machine for approximately \$16,000. He stated the lift would be used for many different tasks around Bainville like working on the top of the gazebo, cutting trees in alley ways for the garbage truck, and working in the buildings at the lagoon. Council members did not make a decision at this time.

Roosevelt County Sheriff's Report—None

Court Report—1 Citation dismissed by the court

Legal Issues—None

Policy/Ordinance Review--None

Local Emergency Planning Committee

The Committee will be meeting in Poplar on October 12, 2021 at 2:00 PM. They have been discussing the siren project.

Old Business

- A. Discuss the next step in clean up nuisances.—No Discussion waiting to hear back from the attorney.
- Council review of nuisance violations

New Business

A. New Permits:

1. Diane Panasuk—Hot tub shed at 108 Rhea Avenue East

Mayor and Council reviewed the permit. Permit was approved pending property line location.

B. Annual Financial Report FY2020

Clerk Rogers gave the Mayor and Council members a copy of the Annual Financial Report for FY 20. She is currently working on FY 2021. Mayor and Council gave consent to have Chet McLean work on the FY 2021 report. They also would like a report from Valli at Sidney Tax Service.

C. Montana League of Cities and Towns Conference Update.

Clerk Rogers attended the League conference virtually. The conference was very informative. Next year the conference is in Kalispell, then in Helena in 2023 and West Yellowstone in 2024.

D. Treasurer's Report:

- Approve claims with checks dated October 11, 2021 in the amount of \$23,134.20.
- Approve JV, UB Vouchers, Payroll slips in the amount of \$10,495.83.
- Review delinquent accounts.
- Update on the American Rescue Plan Act of 2021.

➤ Discussion on possible projects for the ARPA Funding—Did not discuss

➤ Update on Computer Services:

- New Email Rollout for the Town of Bainville

Clerk Rogers stated the new email addresses are created and the Mayor/Council will need to come in to set up their email on their phones.

dportra@townofbainville.com
rbutikofer@townofbainville.com
mgiese@townofbainville.com
councilperson@townofbainville.com
nrogers@townofbainville.com
llambert@townofbainville.com

Shared email group:

council@townofbainville.com

cityclerk@townofbainville.com

Matt Giese moved to approve the claims in the amount of \$23,134.20 and payroll slips in the amount of \$10,495.83.

Matt Giese approved the Treasurer's Report. Ron Butikofer seconded the motion. All voted in favor and motion carried.

Matt Giese moved to adjourn the meeting at 8:45 PM.

Attest:

Approved By:

Nikki Rogers, CMC
Clerk-Treasurer

Dennis Portra
Mayor

Agency: Bainville Police Department

Finding: Transferred to Another Court

Citation	Issued	Charge	Plea	Fine	Case
A31141	10/1/2021	45-5-207 Criminal Endangerment Officer: O'Connor, Patrick Sgt, BVPD	None	0.00	TK-755-2021-0000300
A31142	10/1/2021	45-7-302(1) Obstructing A Peace Officer Or Other Public Servant Officer: O'Connor, Patrick Sgt, BVPD	None	0.00	TK-755-2021-0000300
A31143	10/1/2021	61-3-312 Operating With Expired Registration - Failure to Reregister Officer: O'Connor, Patrick Sgt, BVPD	None	0.00	TK-755-2021-0000300
A31144	10/1/2021	61-8-301(1)(a) [1st] Reckless Driving - 1st Offense Officer: O'Connor, Patrick Sgt, BVPD	None	0.00	TK-755-2021-0000300
A31145	10/1/2021	61-6-301(1) [1st] Owner Permitting Operation Of Vehicle Without Liability Insurance - 1st Offense Officer: O'Connor, Patrick Sgt, BVPD	None	0.00	TK-755-2021-0000300
A31146	10/1/2021	61-9-109(1) [1] Operate a Vehicle In Unsafe Conditions W/O Proper Lights/Equip Officer: O'Connor, Patrick Sgt, BVPD	None	0.00	TK-755-2021-0000300
A31147	10/1/2021	61-9-206(2) [1] Insufficient Visibility Of Stop Lamps Officer: O'Connor, Patrick Sgt, BVPD	None	0.00	TK-755-2021-0000300
A31903	10/1/2021	61-8-346(1) ROW Violation - Fail To Yield To Authorized Emergency Vehicle/Police Vehicle Officer: O'Connor, Patrick Sgt, BVPD	None	0.00	TK-755-2021-0000300
A31904	10/1/2021	61-8-316(1) Fleeing From Or Eluding Peace Officer Officer: O'Connor, Patrick Sgt, BVPD	None	0.00	TK-755-2021-0000300

Finding Totals: Transferred to Another Court	Citations:	9	Fines:	0.00
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Totals for: Bainville Police Department	Citations:	9	Fines:	0.00
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Report totals:	All Citations:	9	Fines:	0.00
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RESOLUTION NUMBER XXX

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAINVILLE, MONTANA,
DECLARING AN EMERGENCY REGARDING VOTING RIGHTS WITHIN THE TOWN.**

WHEREAS, on or about October 27, 2021, the Mayor for the Town of Bainville, Montana declared an emergency regarding the omission and preclusion of certain city residents from receiving municipal election ballots due to an error of mapping in the county election office in denial of the constitutional right of one man one vote and equal protection of those rights under the state and federal Constitution: and

WHEREAS, the Town Council desires to ratify the Declaration.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Bainville, Montana, to wit:

1. The Town Council hereby agrees with the findings stated in the Declaration and ratifies the same in its entirety.
2. The town officers are here by directed to re-send the correct and current election map, attached hereto and incorporated by reference, showing the boundaries of the municipal electors which have been in place since 1970 to the Roosevelt County election officials in order that they may conform and correct their records regarding municipal elections so that citizens currently denied a ballot will be able to vote in the pending municipal election.
3. This Resolution is effective upon passage and approval.

ADOPTED by a unanimous vote of the Town Council of the Town of Bainville, Montana on the 8th day of November, 2021.

Dennis Portra
Mayor
Town of Bainville, Montana

ATTEST:

By: _____
Nikki Rogers, CMC-CMMC
Town Clerk

BAINVILLE, MT WARD BOUNDARY 2021



WARD 1

ROAD-2057

ROAD-1009

ROAD-2057

405N

ROAD-1007

2

WK 1 DR

HIGHWAY AVE

WARD 1

HILL AVE W
MAIN ST
FLYNN AVE E
7TH AVE
3RD ST
2ND ST
1ST ST
7TH AVE

327 W

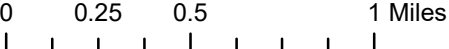
The City of Bainville & Roosevelt County
do not assume any liability for errors
or omissions.

This is a visual representation only.
NOT SURVEY GRADE
BAINVILLE, MT BOUNDARY 2021

Legend

 CORPORATE_LIMITS_2021

1:33,085



Montana League of Cities and Towns (MLCT)
700 W Custer Ave (59602)
PO Box 7388
Helena MT 59604-7388



Phone: (406) 442-8768
FAX: (406) 442-9231
Email: info@mtleague.net
mtleague.org

MEMORANDUM

Via Electronic Mail Only

TO: District 3 Communities

FROM: Tim Burton, Executive Director on behalf of President Rick Norby
Tim Burton

DATE: November 2, 2021

RE: District 3 Vacancy for League Board of Directors

The League has an opening on the Board of Directors as of November 1, 2021. The open seat is from District 3, which includes the cities and towns of Bainville, Culbertson, Dodson, Flaxville, Fort Peck, Froid, Glasgow, Malta, Medicine Lake, Nashua, Opheim, Outlook, Plentywood, Poplar, Saco, Scobey, Westby, and Wolf Point.

If an elected or appointed official from your city or town has an interest in serving on the League Board of Directors, please have them submit a letter of interest to the League office PO Box 7388, Helena 59604-7388, or email the letter of interest to Sandy Lang, Executive Assistant at slang@mmia.net. Please submit your letter of interest to the League by close of business **Friday, November 12, 2021**.

In line with the Montana League of Cities and Towns Bylaws, ARTICLE IV – OFFICERS, Section 7, “Director vacancies will be filled by appointment by the President”.

The next board meeting is January 20, 2021, in Helena. Ideally, the new appointee would be available to attend that meeting.

Please contact me with any questions concerning the Board openings at 442-8768 or tim.burton@mtleague.org.

From: [City Clerk](#)
To: [Attorney Hennessy](#)
Subject: FW: Webex meeting invitation: MLCT/MACo Townhall Meeting: MT Marijuana Regulation and Taxation
Date: Tuesday, November 2, 2021 10:54:00 AM
Attachments: [Webex Meeting.ics](#)

Did you get an invite to this town hall meeting?

Nikki

From: Clark, Daniel <daniel.clark@montana.edu>
Sent: Monday, November 1, 2021 9:13 PM
To: 'mmctfoa@sympa.montana.edu' <mmctfoa@sympa.montana.edu>; mtcityhr@sympa.montana.edu; 'mtmayors@sympa.montana.edu' <mtmayors@sympa.montana.edu>; cmanagers@sympa.montana.edu
Cc: Tim Burton <tim.burton@mtleague.net>; Kelly Lynch <kelly.lynch@mtleague.net>; Alan Hulse <ahulse@mmia.net>; Shantil Siaperas <shantil@mtcounties.org>; Kent, Ashley <ashleykent@montana.edu>; MacDonald, Jane <jane.macdonald@montana.edu>; Sandy Lang <slang@mmia.net>
Subject: Webex meeting invitation: MLCT/MACo Townhall Meeting: MT Marijuana Regulation and Taxation

Good Day!

I would like to invite you to participate in a combined MLCT/MACo Townhall Meeting on Montana Marijuana Regulation and Taxation. This is a topic of great interest for local governments across the State and this Townhall Meeting will explain the new law and how it is being implemented by different jurisdictions.

Please join in the discussion and come with questions!!

MLCT/MACo Townhall Meeting: MT Marijuana Regulation and Taxation

Hosted by Dan Clark

<https://montana.webex.com/montana/j.php?MTID=m2f3dd6c99d40ed74b8443a28b9fe1549>

Friday, Nov 12, 2021 9:00 am | 1 hour | (UTC-06:00) Mountain Time (US & Canada)

Meeting number: 2626 361 1797

Password: PpBce9MSx57

Join by video system

Dial [26263611797@montana.webex.com](tel:26263611797)

You can also dial 173.243.2.68 and enter your meeting number.

Join by phone

+1-855-797-9485 US Toll free
+1-415-655-0002 US Toll
Access code: 262 636 11797

See you all **next** Friday at 9:00am!

Dan

Dan Clark
Director
MSU Local Government Center
Culbertson Hall 235-A
P.O. Box 170535
Bozeman, MT 59717
Office: 406-994-7756
Cell: 406-570-4259
FAX: 406-994-1905
email: daniel.clark@montana.edu
Website: msulocalgov.org

The Montana State University Extension
is an ADA/EO/AA/Veteran's Preference
Employer and Provider of Educational Outreach

Montana Marijuana Regulation and Taxation Act (MMRTA) Penalty and Prohibited Conduct Guide (2021)

References:

1 oz. = 28.3495 grams 2 oz. = 56.699 grams

- THC limits:**
1. No more than 35% for marijuana flower
 2. 100 milligrams per capsule (800 mg per package)
 3. Tincture (liquid) 800 milligrams per package
 4. Food product (edible) 10 milligrams per single serving (100 mg)
 5. No more than 6% for topical product (800 mg)
 6. Suppository or transdermal patch 100 milligrams each (800 mg)

* Medical may have higher THC limits. Dispensary cannot provide more than allowed to consumer.

Definitions: MCA 16-12-102

Offenses & Penalties:

Unlawful possession of marijuana in a motor vehicle

HB 701 Section 8: A person may not knowingly possess marijuana, marijuana products, or marijuana paraphernalia within the passenger area of a motor vehicle on a highway. **Exceptions:** Does not apply to marijuana from a dispensary that is unopened in storage compartment, trunk, cargo area, truck bed, behind last upright seat in a vehicle, or closed container in area not normally occupied by passengers.

Penalty: \$100 fine. *Not a criminal offense to be recorded or charged against a person's driving record. May not count against insurance.

Fraudulent representation

HB 701 Section 19(1): An individual who fraudulently represents to a law enforcement official that the individual is a registered cardholder.

Penalty: \$1000 fine, up to 1 year in jail

HB 701 Section 19(2): A physician who purposely or knowingly misrepresents any information required under (Section 13-Written physician certification required for registry card).

Penalty: \$1000 fine, up to 1 year in jail

Confidentiality of registry information

HB 701, Section 20: Except as provided by MCA 37-3-203 (HB 701, Section 64) a person, including employees or officials of DOR, commits the offense of disclosure of confidential information if the person knowingly or purposely discloses confidential information (cardholder registry information).

Penalty: \$1000 fine, up to 6 months jail

Personal use and cultivation of marijuana

MCA 16-12-106(1):

An adult 21 YOA or older may possess, purchase, obtain, use, ingest, inhale or transport:

1. 1 oz or less of usable marijuana, or
2. 8 grams or less of concentrated marijuana, or
3. 800 mg of less of THC in edible product; eaten or swallowed

An adult 21 YOA or older may transfer, deliver, or distribute without consideration to an adult 21 YOA or older:

1. 1 oz or less of usable marijuana, or
2. 8 grams or less of concentrated marijuana, or
3. 800 mg of less of THC in edible product; eaten or swallowed

An adult 21 YOA or older may on the grounds of a private residence possess, plant, cultivate up to 2 marijuana mature marijuana plants and 2 seedlings. 4 plants if 2 adults at residence

A registered cardholder, may on the grounds of a private residence, possess, plant, or cultivate 4 mature marijuana plants and 4 seedlings. 8 plants if 2 cardholders live at residence

An adult 21 YOA or older and a registered cardholder may process, harvest, manufacture marijuana provided that marijuana plants and marijuana produced by plants in excess of 1 oz must be kept in locked space in residence and may not be visible from a public place

The private cultivator must own residence or have written permission from owner to cultivate

Private cultivator may not share residence or portion of residence with marijuana business required to be licensed by DOR

Anyone 18 YOA or older may possess, use, deliver, sell, manufacture marijuana paraphernalia.

MCA 16-12-106(2): A person may not cultivate marijuana at a private residence visible, without aid, from a public place

Penalty: Civil fine up to \$250 and forfeiture of marijuana

MCA 16-12-106(3): A person may not cultivate or store marijuana outside of a locked space

Penalty: Civil fine up to \$250 and forfeiture of marijuana

MCA 16-12-106(4): A person may not smoke marijuana in a non-designated public place.

Penalty: Civil fine not to exceed \$50

MCA 16-12-106(5) *as changed by HB 517: A person under 21 YOA, not a registered cardholder, may not possess, use, deliver without consideration, or distribute without consideration any amount of marijuana. Work exception.

Penalty: Per 45-5-624 Possession of intoxicating substance. Sentencing framework based on age of offender and number of offenses

MCA 16-12-106(6) *as changed by HB 517: A person under 18 YOA, not a registered cardholder, may not possess, use, transport, or deliver without consideration, marijuana paraphernalia.

Penalty: 8 hours of drug education or counseling

MCA 16-12-106(7): A person may not, unless permitted by medical marijuana provisions, possess, produce, deliver without consideration, or possess with intent to deliver to someone 21 YOA or older marijuana in an amount greater than 1 oz but less than 2 oz (more than 8 grams but less than 16 grams). *Greater than 2 oz would be considered a felony under Title 45, Chapter 9.*

Penalty (person's choice):

1st offense: Civil fine up to \$200 or 4 hrs comm. service

2nd offense: Civil fine up to \$300 or 6 hrs comm. service

3rd offense+: Civil fine up to \$500 or 8 hrs comm. service

Limitations of Act MCA 16-12-108(7): Unless specifically exempted by chapter, the provisions of Title 45 apply.

Montana Marijuana Regulation and Taxation Act (MMRTA) House Bill 701

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MMRTA 2021

- ▶ House Bill 701: 151 pages
- ▶ Provides of legal possession and use of limited amounts of marijuana, if 21 YOA
- ▶ Repeals Initiative Measure 190
- ▶ Repeals Montana Medical Marijuana Act (Title 50)
- ▶ Places regulatory authority of both medical and recreational marijuana with DOR
- ▶ Creates license categories for cultivation, manufacturing, dispensing, testing, and transporting marijuana
- ▶ Sets limits on THC concentration of marijuana products

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MMRTA continued

- ▶ Creates opt in and opt out procedures for local governments
- ▶ Provides for appropriation, marijuana sales tax, local excise tax if approved by electors
- ▶ Provides for an expungement court or sentence reduction
- ▶ Provides penalties for licensee violation
- ▶ Allows for personal use and personal cultivation
- ▶ Provides framework for criminal and civil penalties
- ▶ HB 517: Minor in Possession
- ▶ MMRTA codified in Title 16, chapter 12

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Marijuana Definitions: Section 16-12-102 MCA

- ▶ **Adult-use dispensary:** licensed premises for which a person licensed by DOR may obtain marijuana from licensed cultivator, manufacturer, dispensary or other licensee approved by DOR and sell marijuana to registered cardholders or adults that are 21 YOA or older, or both
- ▶ **Marijuana:** all plant material from the genus Cannabis containing THC or seeds capable of germination. Does not include hemp.
- ▶ **Marijuana product:** a product that contains marijuana and is intended for use by a consumer by mean other than smoking. Includes, but not limited to edible products, ointments, tinctures, marijuana concentrates
 - ▶ Marijuana and marijuana products are not considered agricultural products, and production is not considered agricultural

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Department of Revenue (DOR)

- ▶ Employees of DPHHS who worked with licensing of medical dispensaries and cardholders now work for DOR
- ▶ DOR will collect fees and taxes from marijuana business
- ▶ DOR will license everyone involved in marijuana business
- ▶ DOR will create rules for licensees
- ▶ DOR will track from seed to sale
- ▶ DOR shall conduct fingerprint background checks for initial applications and every 5 years after
 - ▶ current employees of medical marijuana business (within 90 days of effective date (January 1, 2022))
 - ▶ those with minimal financial interests in marijuana business must be checked

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Marijuana transporters: “Uber pot”

- ▶ License good for 2 years
- ▶ Can contract with multiple marijuana businesses
- ▶ May store marijuana for a period of time
 - ▶ Only in approved counties or with local government approval
- ▶ Transport license for cardholder or consumer not required

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Marijuana cultivators

- ▶ Licensed per a canopy tier license system
 - ▶ Tier micro, 1 to 12. 1 is 100 sq. ft. 12 is the biggest at 50K sq. ft.
 - ▶ Annual fees: Micro-\$1000, Tier 1-\$2500, Tier 12-\$37,000
 - ▶ Canopy is defined as amount of sq. ft. dedicated to plant production
- ▶ Must be cultivated indoors
 - ▶ Exception for medical marijuana licensee who was cultivating outdoor before November 3, 2020

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Marijuana Dispensaries

- ▶ Licensee for adult use may operate a shared location with medical marijuana dispensary if both owned by same person
- ▶ Licensee fee is \$5000 for either type
- ▶ Adult use dispensary can sell marijuana, marijuana products, marijuana plants to consumers and registered cardholders
- ▶ Licensee may dispense marijuana with regulated THC content; sold by content, not weight

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Marijuana Dispensaries

- ▶ Content limits for adult use:
 - ▶ 1 oz. of marijuana flower, THC may not exceed 35%
 - ▶ Marijuana product as capsule, no more than 100 mg THC per capsule; no more than 800 mg per package
 - ▶ Marijuana tincture, no more than 800 mg of THC
 - ▶ Tincture: “liquid pot”
 - ▶ Marijuana topical product, no more than 6% THC and no more than 800 mg of THC per package
 - ▶ Marijuana suppository or transdermal patch no more than 100 mg per and no more than 800 mg total

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Dispensaries cont.

- ▶ May sell marijuana or marijuana products with higher THC potency levels to cardholders
- ▶ May not sell more than what a consumer or cardholder can legally have
 - ▶ 1 ounce at a time
- ▶ Marijuana business worker
 - ▶ Must be licensed by DOR
 - ▶ 18 YOA or older
 - ▶ Must have training to identify and report human trafficking
 - ▶ Shall deny license if violated any provision of MMRTA or previously been revoked for rule violation

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Marijuana sales tax, Section 15-64-102

- ▶ Adult use dispensary must charge 20% on retail price of marijuana, marijuana products
- ▶ Medical dispensary must charge 4%
- ▶ Retail tax imposed on purchaser and must be collected at time of sale and paid to DOR by dispensary
- ▶ Dispensary must provide quarterly report to DOR of all sales
- ▶ Tax is separate and in addition to any general or local taxes that may apply to retail sales
- ▶ Taxes must be used as specifically designated. Section 16-12-111

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Tax distribution

- ▶ \$6 Million to Marijuana Healing and Ending Addiction Through Recovery and Treatment (HEART)
 - ▶ HEART will be run by DPHHS who will set up programs
- ▶ Balance of tax will then be distributed as follows:
 - ▶ 20% to Fish and Game for wildlife habitat
 - ▶ 4% to State Parks
 - ▶ 4% to trails and recreation
 - ▶ 4% to non-game wildlife
 - ▶ 3% or \$200,000 whichever less to veterans
 - ▶ \$300,000 for drug dogs
 - ▶ \$150,000 to board of crime control. Balance if any to general fund.

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What is legal and what is not?

- ▶ Section 16-12-106 personal use and cultivation
- ▶ Section 16-12-107 legal protections for licensees
- ▶ Section 16-12-108 limitations of act (must be read in conjunction with other sections)
- ▶ Section 16-12-109 unlawful conduct by licensees

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Section 16-12-106, MCA

- ▶ *“Subject to the limitations in 16-12-108, the following acts are lawful and may not be an offense under state law or the laws of any local government within the state, be a basis to impose a civil fine, penalty, or sanction, or be a basis to detain, search, or arrest, or otherwise deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local government for a person who is 21 years of age or older.”*
- ▶ **Permitted acts:**
 - ▶ *Possess, purchase, obtain, use, ingest, inhale, transport 1 oz or less of usable marijuana or up to 8 grams of marijuana in concentrated form, or up to 800 mg of THC in edible products*
 - ▶ *Transfer, deliver or distribute without consideration 1 oz or less, 8 grams in concentrate or up to 800 mg of THC in edible products*

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Section 16-12-106 permitted acts cont.

- ▶ **In or on the grounds of a private residence:** possess, plant, cultivate up to 2 mature marijuana plants and two seedlings or 4 mature marijuana plants and 4 seedlings for a registered cardholder *and*,
- ▶ Possessing, harvesting, drying, processing, or manufacturing if,
 - ▶ Marijuana plants and marijuana produced in excess of 1 oz must be kept in a locked space in or on the grounds of residence and may not be visible (unaided) from public place
- ▶ No more than 4 marijuana plants may be cultivated at one private residence; 2 people over 21
 - ▶ Must own the residence or the person growing and storing must have written permission from owner
- ▶ A private residence cannot be rented, leased, or portioned to cultivate or manufacture by a marijuana business; DOR to regulate all marijuana business

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Section 16-12-106 permitted acts cont.

- ▶ Assisting another person in any of the acts permitted in 16-12-106 is legal including use of a personal residence
- ▶ Possessing, purchasing, using, delivering, distributing, manufacturing, transferring, or selling to 18 YOA or older marijuana paraphernalia
 - ▶ Paraphernalia is still defined in Title 45

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Section 16-12-106 penalties for non permitted acts related to marijuana

- ▶ Cultivation of marijuana in public view, 16-12-106(2)
 - ▶ Civil fine of \$250 and forfeiture of visible marijuana
- ▶ Cultivation of marijuana plants or marijuana storage outside of locked space, 16-12-106(3)
 - ▶ Civil fine of \$250 and forfeiture of visible marijuana outside of locked space
- ▶ Smoking marijuana in public place, not licensed by DOR for that activity, 16-12-106(4)
 - ▶ Civil fine \$50; no forfeiture provision

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Section 16-12-106 penalties if under 21 YOA; partially amended by HB 517

- ▶ If not a registered cardholder (18 YOA or older for medical), possess, use, deliver without consideration, or distribute without consideration marijuana punishable in accordance with 45-5-624 (marijuana added to minor in possession); added drug information course or drug treatment program for over 18 YOA penalties
 - ▶ Not an MIP if in course of employment if necessary to possess marijuana
 - ▶ HB 517 eliminated all the 1-2 oz penalty considerations in 16-12-102 and penalties originally listed in I-190
 - ▶ Inconsistencies in 16-12-106 and HB 517
- ▶ Under 18 YOA in possession, use, transport, delivery, or distribution of marijuana paraphernalia penalized by forfeiture and 8 hours drug education or counseling

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Section 16-12-106 penalties for more than 1 oz but less than 2 oz; more than 8 grams but less than 16 grams

- ▶ Except if permitted under medical marijuana provisions possession, production, delivery without consideration to a person 21 YOA or older or possession with intent to distribute more than 1 oz or more than 8 grams but less than 2 oz or 16 grams punishable by:
 - ▶ Forfeiture of marijuana
 - ▶ 1st violation: Person's choice: \$200- or 4-hours community service
 - ▶ 2nd violation: Person's choice: \$300- or 6-hours community service
 - ▶ 3rd or subsequent: Person's choice: \$500-or 8-hours community service

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Additional provisions of Section 16-12-106

- ▶ "A person may not be denied adoption, custody or visitation rights relative to a minor solely for conduct permitted by this chapter" 16-12-106(8)
- ▶ "A person may not be denied access or priority for an organ transplant or denied access to health care for conduct permitted by this chapter" 16-12-106(9)

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Legal protections for licensee, Section 16-12-107

- ▶ “Except as provided in 16-12-108, a person licensed under this chapter may not be arrested, prosecuted, penalized, or denied any right or privilege, including but not limited to civil fine or disciplinary action by a professional licensing board or the department of labor and industry, solely because the person cultivates, manufactures, possesses, or transports marijuana in the amounts and manner allowed under this chapter.”
 - ▶ No arrest or prosecution for possession if a person is in the presence or vicinity of the use of marijuana
 - ▶ Application for a DOR license does not solely constitute probable cause for a search
 - ▶ Legal protections do not arise unless the person has obtained a license prior to arrest or filing of a criminal charge. Not a defense to get a license after the fact

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Section 16-12-108 limitations

- ▶ *First 3 sections of 16-12-108 do not permit*
 - ▶ *Operation or actual physical control of motorized transport while under the influence of marijuana or marijuana products*
 - ▶ *Consumption of marijuana while operating or being in physical control of motorized transport*
 - ▶ *Smoking or consuming marijuana while being a passenger in motorized transport*

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Section 16-12-108 limitations cont.

- ▶ Cannot deliver or distribute marijuana or marijuana products *with or without consideration* to a person under 21 YOA
 - ▶ Fixed I-190 problem
- ▶ Cannot purchase, consume, use, possess, or transport marijuana if under 21 YOA
 - ▶ Already spelled out in 16-12-106 and HB 517
 - ▶ Transport and possession is allowed if person is 18 YOA and employee of marijuana business engaged in the business
- ▶ Location prohibitions, cannot possession or consume marijuana
 - ▶ Private or public school grounds or property; owned or leased
 - ▶ School bus or other public transportation

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Section 16-12-108 limitations cont.

- ▶ Health care facilities
- ▶ Correctional facilities
- ▶ Hotel or motel rooms
- ▶ May not use in a location where smoking tobacco is prohibited
- ▶ May not use or consume in a public place, except if DOR allows
- ▶ Conduct that endangers others
- ▶ Any task while under the influence of marijuana that would constitute negligence or professional malpractice
- ▶ May only extract marijuana using solvents approved by DOR or water, glycerin, propylene glycol, vegetable oil, or food grade ethanol

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Section 16-12-108 limitations cont.

- ▶ May not cultivate marijuana in a manner that is visible from the street or other public area
- ▶ An employer is not required to permit conduct allowed by the chapter in any workplace or on the employer's property
- ▶ Prohibit an employer from disciplining, declining to hire, or an adverse employment action against employee for a violation of drug policy or working while intoxicated by marijuana
- ▶ An employer may contract prohibiting use of marijuana for debilitating medical condition
- ▶ Nothing in the chapter prevents a person from prohibiting marijuana use, except a lease agreement after January 1, 2021 may not prohibit a tenant from possession or consumption of marijuana, by means other than smoking

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Section 16-12-106 and Section 16-12-108 problem

108(7) "Unless specifically exempted by this chapter, the provisions of Title 45, chapter 9, apply to the conduct of consumers, licensees and registered cardholders"

Section 45-9-102 possession-"except as provided in Title 16, chapter 12 a person commits the offense of criminal possession of dangerous drugs in an amount greater than permitted for which a penalty is not specified under Title 16, chapter 12"

No misdemeanor in 45-9-102 anymore so are a lot of small amounts of marijuana possession cases now felonies?

Economic affairs committee responsible for legislative monitoring

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Section 16-12-109 unlawful conduct of licensees

- ▶ DOR needs reasonable cause to believe a licensee has violated any part of chapter 12 to impose penalties
 - ▶ Reprimand, revocation, suspension, denial of renewal, up to a \$3000 fine
- ▶ DOR must consider mitigating and aggravating circumstances
 - ▶ Examples of circumstances are listed
- ▶ DOR is considered a criminal justice agency under 44-5-103 for purpose of obtaining confidential criminal justice information regarding licensees and applicants
- ▶ DOR shall revoke or deny license to person:
 - ▶ Whose controlling beneficial owner is convicted of felony drug offense
 - ▶ Who allows another person to be in possession of their license

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Unlawful conduct cont.

- ▶ Transports marijuana outside of Montana, unless authorized by federal law
- ▶ Does extractions of marijuana without a manufacturing license
- ▶ Purchases marijuana from an unauthorized source
- ▶ Sells, distributes, or transfers marijuana to a person the licensee knows or should know is under 21
- ▶ If licensee is revoked may not reapply for 3 years
- ▶ Review of DOR action is conducted pursuant to Montana Admin. Procedure Act
- ▶ A person may appeal decisions of DOR to district court in the county where operating or wanting to operate

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Section 16-12-113, Expungement

- ▶ A person currently serving a sentence, or completed a sentence for an act that is permitted under this chapter or is punishable by a lesser sentence under this chapter than the person was awarded may petition for an expungement of the conviction or resentencing.
- ▶ If petition filed with expungement court presumption for expungement or reduction
 - ▶ County attorney to provide a reasonable basis on which petitioner does not satisfy criteria
 - ▶ County attorney's might be needing your records
 - ▶ Remember the problem with 16-12-106, 16-12-108, 45-9-102?
- ▶ Court shall grant unless danger to public safety
- ▶ A hearing is not required unless requested
- ▶ Does not invalidate expungement process under Title 46

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Restrictions on sentences, 45-10-107

- ▶ A sentencing judge may require a defendant to surrender a medical marijuana registry card and a marijuana license under Section 16-12-203
 - ▶ Judge may order surrender of cultivator, manufacturer, medical dispensary, adult-use dispensary, or testing lab issued by DOR under 16-12-203
 - ▶ If ordered to surrender license the court shall return licensee to DOR (not DPHHS) and provide information of the sentence
 - ▶ DOR determines what ultimately happens to license 203(3)

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Section 8 Unlawful possession of marijuana or paraphernalia in a motor vehicle on highway

- ▶ New violation, not a misdemeanor; to be codified. Section 8, pg. 12, HB 701
- ▶ Person may not knowingly possess marijuana, marijuana products, or marijuana paraphernalia within the passenger area of a motor vehicle on a highway
 - ▶ Does not apply to marijuana purchased from a dispensary that is unopened in locked glove or storage compartment, trunk, luggage compartment, cargo compartment, or truck bed
 - ▶ Does not apply to marijuana behind the last upright seat in vehicle that does not have a trunk or in a closed container in vehicle in area that is not normally occupied by passengers
- ▶ Punishable by a fine up to \$100. See (3)(b). Court may not impose surcharges for this violation and is not recorded against driving record or increase premiums.

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Questions?

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