

**ORDINANCE NO. 165**

**AN EMERGENCY ORDINANCE OF THE TOWN OF DARBY, MONTANA,  
AS AUTHORIZED BY MONTANA CODE ANNOTATED SECTION 7-5-104,  
IMPOSING A TEMPORARY SUSPENSION OF THE LICENSING OF  
MARIJUANA BUSINESSES FOR NINETY (90) DAYS**

**RECITALS**

**WHEREAS**, Montana voters adopted Initiative Measure 190 (I-190) on November 3, 2020, statewide, in Ravalli County, Montana, and in the Town of Darby, Montana, legalizing adult-use marijuana and providing for approval of certain marijuana businesses within the State of Montana.

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

**WHEREAS**, HB 701 defines "marijuana businesses" as a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, combined-use marijuana licensee, testing laboratory, marijuana transporter, or any other business or function that is licensed by the department of revenue under HB 701.

**WHEREAS**, the concerns of local governments about HB 701's application in their communities and the parameters under which a local government has authority to regulate its effects are still being understood.

**WHEREAS**, the Town Council of the Town of Darby previously passed an Ordinance, codified at Section 2-1-3, Darby Town Code, which requires all businesses, occupations, and professions to comply with local, state, and federal law. Likewise, Section 2-1-16 of the Darby Town Code permits the revocation or suspension of licenses for a violation of any federal or state statute. Marijuana is currently defined as a Schedule 1 controlled substance under federal law, specifically 21 USC §812, the Controlled Substances Act, and as such the use, possession, or sale of marijuana remains a violation of federal law.

**WHEREAS**, based on Sections 2-1-3 and 2-1-16 of the Darby Town Code, business licenses have not been issued for any sale of marijuana within town limits. However, with the passage of HB 701, the Town Council of the Town of Darby is considering regulations as allowed under HB 701 to regulate the sale of medical and recreational marijuana and other marijuana businesses as defined under HB 701.

**WHEREAS**, businesses that cultivate, manufacture, dispense, test, or transport marijuana are not currently permitted in any zoning district established by the Town of Darby.

**WHEREAS**, businesses that cultivate, manufacture, dispense, test, or transport marijuana could have negative impacts on neighborhoods or on nearby schools, recreational facilities, or other uses and can through such effect create a public nuisance.

**WHEREAS**, the Town Council of the Town of Darby has determined that the operation of establishments that cultivate, manufacture, test, sell, transport or distribute marijuana within the Town limits of Darby, could be immediately detrimental to, harmful to, and a threat to the peace, property, health, safety, and welfare of the Town and its inhabitants, until such time as the Town has had an opportunity to further review the issue and an opportunity to adopt appropriate ordinances, zoning or otherwise, to appropriately deal with any such establishments.

**WHEREAS**, in a legitimate exercise of its legislative power to preserve the public peace, health, safety, and welfare of the Town, the Town Council is considering a number of potential regulations, including a cap on the number of each category of marijuana business licenses allowed in the Town, with such cap necessitating implementation of a process for the allocation of a limited number of licenses.

**WHEREAS**, allowing marijuana businesses to be licensed prior to ordinances being enacted may provide an unfair advantage over other businesses if the Town Council subsequently imposes a cap on the number of marijuana business licenses allowed in the Town.

**WHEREAS**, in order to protect and preserve the public peace, health, safety and welfare, the Town Council of the Town of Darby has determined an immediate, emergency ordinance is necessary to implement regulations authorized by HB 701 for marijuana businesses.

**WHEREAS**, MCA section 7-5-104 permits the Town to waive the second reading and adopt an ordinance in the event of an emergency. An ordinance passed in response to an emergency requires a two-thirds vote of the Town Council for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

**WHEREAS**, after first having provided lawful public notice, the Town Council conducted a public hearing on November 23, 2021, with respect to this proposed Ordinance, and invited public comment;

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Darby, Montana, as follows:

Section 1: All of the Recitals set forth above are hereby adopted as Findings of Fact.

Section 2: The terms "marijuana businesses" shall have the meaning provided to such term by HB 701 passed by the 2021 Montana Legislature.

Section 3: The Town Council of the Town of Darby hereby directs the Darby Planning and Zoning Board to study and review the effect of the licensing and operation of establishments that cultivate, manufacture, test, sell, transport and/or distribute marijuana and to make recommendations concerning the licensing and zoning thereof.

Section 4: The Town Council of the Town of Darby directs the Darby Planning and Zoning Board to present the findings of its review and its recommendations to the Town Council, so that the Council may consider the issue within approximately ninety (90) days of the date of the enactment of this Ordinance.

Section 5: Until such new ordinances, zoning or otherwise, are adopted and in order to deal with the issues described above, any new establishments attempting to cultivate, manufacture, test, sell, transport or distribute marijuana are hereby prohibited from being opened within the Town of Darby and no new business licenses for such businesses shall be issued for the next ninety (90) days.

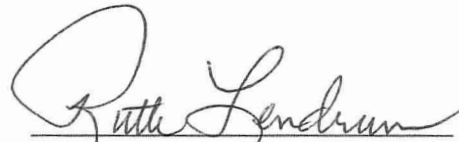
Section 6: Any individual, entity or establishment that violates the terms of this ordinance shall be deemed to be creating a public nuisance and shall be subject to criminal penalties as provided in Darby, Town Code Chapter 3 and section 1-4-2, and shall further be subject to civil action to restrain or abate as the Town deems appropriate. Such ability of the Town to prosecute and/or enjoin or abate is in addition to any other remedies available to the Town at law or in equity.

Section 7: This Ordinance is expressly made immediately effective, and shall apply to all pending applications of business licenses, building permits, zoning variances, special review permits, zoning changes and all other applications for building and land use permits, developmental activity, land use activity, land use changes, and any other applications or licenses for approval of any type or nature, which have been received by the Town of Darby and not yet granted as of the effective date of this Ordinance.

Section 8: In the event any word, phrase, clause, sentence, paragraph, section or other part of the ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid and the remaining provisions thereof shall continue in full force and effect.

Section 9: Pursuant to MCA section 7-5-104, upon its adoption at First Reading by a two-thirds vote of the entire Town Council of the Town of Darby, Montana, and signing of the Mayor thereof, this Ordinance shall take effect immediately upon passage and approval and shall expire Ninety (90) calendar days thereafter. No second reading shall be required.

**PASSED AND ADOPTED** by the Town Council of the Town of Darby, Montana, this 28<sup>rd</sup> day of December, 2021.

  
Ruth Lendrum, Mayor

Attest:

  
Town Clerk