

Ordinance #167

**AN ORDINANCE OF THE TOWN COUNCIL AMENDING THE
TOWN CODE TO PROVIDE FOR RULES AND REGULATIONS OF
MARIJUANA BUSINESSES LOCATED IN THE TOWN OF DARBY.**

WHEREAS; the State of Montana adopted MCA 16-12 for rules and regulations for marijuana use and businesses, and

WHEREAS; the Town was advised by attorney Ben Burns the Town Code needed to be amended to provide for regulation of the newly State approved business type, and

WHEREAS; registered voters of the Town of Darby chose a Commission-Executive with a Charter form of government, giving the local government authority to enact laws not prohibited by the State and may adopt laws and regulations stronger than State law and regulations, and

WHEREAS; Emergency Ordinance #165 was approved on December 28, 2021 with an expiration date of March 28, 2022, and

WHEREAS; the Darby Planning & Zoning Board was asked to review the new State regulations, and make a recommendation to the Council to formulate new regulations for the Town Code, and

WHEREAS; the Planning & Zoning Board submitted a recommendation to the Council after their meeting held on February 1, 2022, and

WHEREAS; text in **bold** font shall be added to the Town Code, text in ~~strike through~~ font shall be removed from the Town Code, and

WHEREAS; a duly noticed public hearing is scheduled for February 25, 2022 where public comment shall be received orally or in writing regarding the new regulations, and

WHEREAS; this ordinance shall be incorporated by reference in Town Council meeting minutes at two separate presentations at least 12 days apart, and

WHEREAS; this ordinance shall be posted for the public upon approval of the first presentation, the second presentation and for 30 days thereafter when it shall become effective.

NOW THEREFORE BE IT ORDAINED BY THE DARBY TOWN COUNCIL to amend the Town Code as follows for regulations for businesses selling marijuana in the Town of Darby.

**TITLE 2
CHAPTER 9
BUSINESS AND LICENSE REGULATIONS**

MARIJUANA BUSINESSES

SECTION:

2-9-1 License Required

2-9-2 Application and Issuance

2-9-3 License fee

2-9-4 Business Hours

2-9-5 Minors

2-9-6 Requirements

2-9-4 Penalty

2-9-1 LICENSE REQUIRED: No person to whom a retail license has been issued under the Montana Code Title 16 Chapter 12 shall engage in any activity for which he is so licensed without having also obtained a local municipal license from the Town.

2-9-2: APPLICATION AND ISSUANCE; The Town Clerk-Treasurer shall issue a local license to any person to whom a license has been issued under the Montana State Code for like purpose (dispensaries, manufacturing, testing laboratory, cultivation or transporters), when application is made upon a form to be provided by the Clerk-Treasurer, documentation of current license with the State of Montana, license application has been submitted to the Town Council as per Town Code 2-1-6, and the required fee has been paid.

- a. Only one (1) marijuana related business license will be issued per individual
- b. Only one (1) marijuana related business license will be issued per physical location

2-9-3: LICENSE FEE; An annual fee as established by a Town Council resolution is required for issuance of a municipal business license providing for marijuana related businesses including; dispensaries, manufacturer, testing laboratories, cultivation and transporters.

2-9-4: BUSINESS HOURS; All dispensaries or medical marijuana may be open to for public access and or use during the hours of 9AM and 8 PM daily.

2-9-5: MINORS: No person under the age of 21 years of age is permitted inside a marijuana business unless the person is a registered cardholder.

2-9-6: REQUIREMENTS: All business involved with the marijuana industry shall adhere to the following requirements:

- a. May be established 1200 feet or more from a school or place of worship (church)
 - 1. Measurement shall be established by measuring in a direct line from the center of the nearest doorway of each establishment (MCA 16-12-301).
- b. Cannot be established on Main Street / Highway 93.
- c. May be located in areas that are zoned Commercial or Light Industry but no other areas.

2-9-7: POSTING NOTICES REQUIRED: Dispensaries shall post the following notices at the entrance of the business, in plain view, for the public to see:

- a. The Federal Gun Control Act of 1968 and the Federal Omnibus Consolidated Appropriations Act of 1997 make it illegal for a person who uses or is addicted to Marijuana to possess firearms or ammunition. (Regardless of whether the State has passed legislation authorizing marijuana use, as marijuana is considered a controlled substance.
- b. Question 21.e on ATF Form 4473 (Revised May 2020) “Are you an unlawful user or, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? “Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.
- c. “Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.”

2-9-8: PHYSICAL BUILDING: Each physical business can be no larger than 1000 square feet and must be secured when not occupied.

2-9-9 PENALTY: Any person violating this chapter is punishable as provided in Section 1-4-2 of the Town code.

TITLE 9
CHAPTER 2
DEFINITIONS

9-2-2 GENERAL DEFINITIONS: For the purpose of this title, certain terms and words are hereby defined:

ACCESSORY BUILDING: A subordinate building or structure on the same lot, or part of main building, exclusively occupied by or devoted to a use incidental to those of the main use.

ACCESSORY USE: A use subordinate to the main use on a lot and used for purposes customarily incidental to those of the main use.

AGRICULTURE: Art and science of cultivation of the ground, including harvesting of crops, tillage, farming, horticulture; the art and science of the production of plants useful to man.

APARTMENT: A room or suite of rooms Located in a one-, two-, or multiple-family structure, which shall include a bath and kitchen accommodations, intended or designed for use as an independent residence by an individual or single family,

APARTMENT BUILDING:

A multiple-family dwelling originally designed and constructed to accommodate three (3) or more apartments, designed with more than one dwelling unit connecting to a common corridor or entranceway, in contrast to single- or two-family dwellings converted for multiple-family use or "attached dwellings" (party wall type) as defined herein.

AUTOMOTIVE SERVICE STATION:

Any building or premises used for the dispensing or sale of automotive fuels, lubrication oil or grease, tires, batteries, or minor automobile accessories. Services offered may include the installation of tires, batteries, and minor automobile repairs; and greasing or washing of individual automobiles. When sales, services and repairs as detailed here are offered as incidental to the conduct of a public garage, the premises shall be classified as a public garage.

BLOCK:

The property abutting on one side of a street and lying between the two (2) nearest intersecting streets and railroad right of way, waterway, or other barrier to, or gap in, the continuity of development along such street.

BUILDING:

Any structure, or part thereof, built for support, shelter, or enclosure of persons, animals, chattels, or property of any kind-

BUILDING AREA:

That portion of the lot that can be occupied by structures, excluding the front, rear and side yards.

BUILDING, MAIN:

A structure in which is conducted the principal use of the lot on which the structure is located.

BUILDING SITES:

A parcel of land occupied or intended to be occupied by uses and buildings permitted thereon and which includes such size, dimension, open space, and parking as are required in the zoning district in which such site is located; and which site abuts a public street, road or highway, or which abuts a private road conforming to approved standards.

CONDITIONAL USE:

A use which is not allowed in the zone as a matter of right, but which is permitted upon findings of the town council that under the particular circumstances present, such use is in harmony with the principal permitted uses of the zone. Allowable conditional uses are specifically listed under the district regulations. Uses not so listed shall not be allowed as conditional uses.

DWELLING:

A building, or portion thereof, designed or used exclusively for residential occupancy, including one-family, two-family, and multiple-family units, but not including hotels, motels, boarding or lodging houses.

DWELLING,
ATTACHED (GROUP,
ROW OR
TOWN HOUSE):

A dwelling joined to other dwellings by a party wall or walls.

DWELLING,
DETACHED:

A dwelling entirely surrounded by open space, said open space being on the same lot as the dwelling.

DWELLING, MOBILE
HOME:

A detached residential dwelling unit designed for transportation on streets or highways on its own wheels or upon a flatbed or other trailer, and arriving at the site where it is to be occupied as a dwelling, complete and ready for occupancy except for minor and incidental unpacking and assembly operations, i.e., location on jacks or other temporary or permanent foundation, connections to utilities and the like. A "travel trailer" is not to be considered as a mobile home.

DWELLING,
MULTIPLE-FAMILY:

A dwelling containing three (3) or more dwelling units designed with more than one dwelling unit connecting to a common corridor or entrance-way, originally constructed for said purpose; and not including converted dwellings or "attached row dwellings" (party wall type) as defined herein,

DWELLING,
SINGLE-FAMILY:

A detached dwelling containing accommodations for and intended for occupation by one family only.

DWELLING,
TWO-FAMILY:

A dwelling designed exclusively for occupancy by two (2) families living independently of each other.

FAMILY:

One or more persons occupying a single dwelling unit; provided, that unless all members are related by blood or marriage, no such family shall contain over five (5) persons; but further provided, that domestic servants employed on the premises may be housed on the premises without being counted as a family or families.

GARAGE, PRIVATE:

An accessory building or portion of a main building on the same lot and used for the storage only of private passenger motor vehicles, not more than two (2) of which are owned by other than the occupants of the main building.

GARAGE, PUBLIC:

A building or portion of a building, except any herein defined as a "private garage" or as a "repair garage", used for the storage of motor vehicles, or where any such vehicles are kept for remuneration or hire, in which any sale of gasoline, oil and accessories is only incidental to the principal use.

GARAGE, REPAIR:

A building or space for the repair or maintenance of motor vehicles, but not including factory assembly of such vehicles, auto wrecking establishments, or junkyards.

HOME OCCUPATION:

An occupation conducted in a dwelling unit, provided that:

A. No person other than members of the family residing on the premises shall be engaged in such occupation;

B. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty five percent (25%) of the floor area of the dwelling shall be used in the conduct of the home occupation;

C. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding three (3) square feet in area, nonilluminated, and mounted flat against the wall of the principal building;

D. No home occupation shall be conducted in any accessory building except with permission from the town council;

E. There shall be no sales room in connection with such home occupation;

F. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard;

G. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises,

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| HOTEL: | A building occupied as the more or less temporary abiding place of individuals who are lodged with or without meals in which there are more than ten (10) sleeping rooms usually occupied singly and no provision made for cooking in any individual room or apartment. |
| JUNKYARD: | Land or buildings where waste, discarded or salvaged materials are bought, sold, stored, exchanged, cleaned, packed, disassembled or handled, including, but not limited to, scrap metal, rags, paper, hides, rubber products, glass products, lumber products and products resulting from the wrecking of automobiles or other vehicles. |
| KENNEL: | A place where three (3) or more dogs or cats are kept, whether as pets or commercially. |
| LODGING HOUSE: | A building or place where lodging or lodging and boarding is provided (or equipped to provide lodging regularly) by prearrangement for definite periods of time, for compensation, for three (3) or more persons in contradistinction to hotels open to transients. |
| LOT: | Land occupied or to be occupied by a building and its accessory buildings together with such open spaces as are required under these regulations and having its principal frontage upon a street or officially approved place. |
| LOT, CORNER: | A lot located at the intersection of two (2) streets or a lot bounded on two (2) sides by a curving street, two (2) cords of which form an interior angle of one hundred thirty five degrees (135°) or less. |
| LOT COVERAGE: | The area of a zoning lot occupied by the principal building or building and accessory buildings. |

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| LOT DEPTH: | The mean horizontal distance between the front and rear lot lines. |
| LOT, DOUBLE FRONTAGE: | An interior lot having frontage on two (2) parallel or approximately parallel streets. |
| LOT, INTERIOR: | A lot other than a corner lot. |
| LOT WIDTH: | The horizontal distance between the side lot lines measured at right angles to the lot depth at the established front building line. |
| MARIJUANA DISPENSARY: | As per Montana Code Annotate Title 16-12-102 |
| MARIJUANA TESTING LABORATORY: | As per Montana Code Annotate Title 16-12-102 |
| MARIJUANA CULTIVATOR: | As per Montana Code Annotate Title 16-12-102 |
| MARIJUANA TRANSPORTER: | As per Montana Code Annotate Title 16-12-102 |
| MARIJUANA MANUFACTURER: | As per Montana Code Annotate Title 16-12-102 |
| MOBILE HOME PARK: | Any plot of ground upon which two (2) or more mobile homes occupied for dwelling or sleeping purposes are located; regardless of whether a charge is made for such accommodation. |
| MOTEL: | A group of attached or detached buildings containing individual sleeping units where a majority of such units open individually and directly to the outside, and where a garage is attached to or a parking space is conveniently located to each unit, all for the temporary use by automobile tourists or transients, and such term shall include tourist courts, motor courts, automobile courts and motor lodges. |

NONCONFORMING
USE:

Any building or land lawfully occupied by a use at the time of passage of these regulations or amendment thereto, which does not conform after the passage of these regulations or amendment thereto with the use regulations of the district in which it is situated.

PARKING SPACE:

A land area of not less than one hundred eighty (180) square feet exclusive of driveways and aisles, of such shape and dimensions and so prepared as to be usable for the parking of a motor vehicle off of, but so located as to be readily accessible to, a public street or alley.

REST HOME,
NURSING HOME, OR
CONVALESCENT
HOME:

A private home for the care of children or the aged or infirm, or a place of rest for those suffering bodily disorders. Such home does not contain equipment for surgical care or for treatment of disease or injury.

SIGNS:

Any outdoor advertising having a permanent location on the ground, or attached to or painted on a building, including bulletin boards, billboards, and poster boards, or any device designed to inform or attract attention,

STORY:

That portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it; or, if there is no floor above it, then the space between the floor and the ceiling next above it.

STRUCTURAL
ALTERATIONS:

Any change in the supporting members of a building such as bearing walls, columns, beams, or girders, or any substantial changes in the roof and exterior walls.

STRUCTURE:

Anything constructed or erected, the use of which required permanent location on the ground or attached to something having a permanent location on the ground. When a structure is divided into separate parts by an unpierced wall, each part shall be deemed a separate structure.

TRAVEL TRAILER:

A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel and recreational purposes, having a body width not exceeding eight feet (8') while in transit.

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| USE: | The purpose for which land or premises or a building structure thereon is designed, arranged, intended or maintained, or for which it is or may be occupied or maintained. |
| USE, ACCESSORY: | A use incidental or accessory to the principal permitted use of a lot or building located on the same lot as the accessory use. |
| VARIANCE: | The relaxation of the terms or the zoning regulations in relation to height, area, size, and open spaces where specific physical conditions, unique to the site, would create an unreasonable hardship in the development of the site for permitted uses. |
| WATER AND SEWER SYSTEMS, CENTRAL: | Utility systems serving a group of buildings, lots, or areas, all connected to the same source of supply or discharge point. |
| WORKSHOP, PRIVATE: | An accessory building or portion of a main building on the same lot and for the use of the occupants only. |
| YARD: | An open space on the same lot with a building, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used. |
| YARD, FRONT: | A yard extending across the front of the lot between the side lot lines and lying between the front property line of the lot and the nearest line of the building. |
| YARD, REAR: | An open space unoccupied except for accessory buildings on the same lot with a building between the rear line of the building and the rear line of the lot, for the full width of the lot. |
| YARD, SIDE: | An open, unoccupied space on the same lot with a building between the building and the side line of the lot and extending from the front lot line to the rear yard, |

ZONING MAP:

The map incorporated into this title as a part hereof, designating the zoning districts. (Ord. 11.01, 6-25-1981; amd. 2006 Code)

Title 9
Chapter 3
DISTRICTS ESTABLISHED; REGULATIONS
ARTICLE C. C-1 COMMERCIAL DISTRICT

9-3C-2 USES AND STRUCTURES:

A. Permitted principal uses and structures.

Auto and truck repair garages.

Bowling alleys.

Churches.

Clinics.

Commercial uses necessary to neighborhood.

Community centers.

Dry cleaning.

Food services.

Hospitals.

Hotels and apartments.

Laundromats.

Libraries.

Marijuana Dispensaries.

Motels.

Offices.

Parks.

Playgrounds.

Private clubs and lodges.

Rental shops.

Repair shops.

Residences.

Schools.

Service stations.

- Stores.
- Taverns.
- Theaters.

Title 9
Chapter 3
DISTRICTS ESTABLISHED; REGULATIONS
ARTICLE D. M-1 LIGHT INDUSTRY

9-3D-2: USES AND STRUCTURES:

- A. Permitted principal uses and structures: Uses as permitted in the C-1 district and industries, **Marijuana Manufacturer, Marijuana Testing, Marijuana Cultivator (indoor or outdoor) and Marijuana Transporter** and not objectionable because of smoke, dust, odor or noise and are compatible to adjoining district.
- B. Permitted accessory uses and structures: Accessory buildings and uses customarily to incident to uses permitted in this district.
- C. Special exceptions: Same as R-1.
- D. Prohibited uses and structures: Same as C1. (Ord. 11.01, 6-25-1981)

Title 9
Chapter 6
OFF STREET PARKING AND LOADING

9-6-4 OFF STREET PARKING SPACE REQUIREMENTS:

B. Spaces Required:

| <u>Use</u> | <u>Required Spaces</u> |
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| Banks, offices and research facilities | 1 space per 300 square feet. |
| Bowling alleys | 4 spaces per alley. |
| Community centers, recreation buildings, private clubs, lodges, churches, theater, auditoriums, stadiums, and areas of open assembly, and mortuaries | 1 space per 30 square feet of assembly area, or 1 space per 4 fixed seats in the assembly area. |
| Daycare | 1 space per 3 employees and 1 space per 5 children |
| Drive-through eating establishments | 3 spaces per service window, plus 2 spaces. |

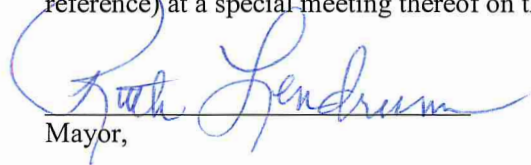
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| Dwellings: | |
| Single-family | 2 spaces |
| Two-family | 2 spaces |
| Multiple-family: | |
| 1 bedroom | 1.50 spaces per dwelling unit. |
| 2 bedroom | 1.75 spaces per dwelling unit. |
| 3+ bedroom | 2.00 spaces per dwelling unit. |
| Studio | 1.25 spaces per dwelling unit. |
| Furniture and appliance stores, machinery and motor vehicle sales, wholesale stores, and related services and repair shops | 1 space per 400 square feet of floor area. |
| Gasoline station | 1 parking space per 2 employees, plus 2 spaces. |
| High schools | 1 per certified or noncertified employee, plus 2 spaces. |
| Hospitals, nursing homes, group care facilities | 1 space per 3 beds, plus 1 per staff doctor and 1 per staff employee, plus 1 space per office and examining room. |
| Hotels and motels | 1.1 space per room for rent |
| Libraries, art galleries, museums | 1 space per 300 square feet of floor area. |
| Medical clinics, outpatient clinics and healthcare offices | 1 per staff employee, plus 1 space per office and examining room. |
| Motor freight establishments, warehouse and storage buildings and other light and heavy industrial uses | 1 parking space per 400 square feet of office space, plus 1 space per 600 square feet of accessory space. |
| Personal service establishments including shoe repair, barber and beauty shops, and self-service laundries. | 1 parking space per 200 square feet of floor area. |
| Plumbing and building supply | 1 space per 300 square feet of office space, plus 1 space per 400 square feet of interior sales space, plus, 1 space per 1,000 square feet of storage/warehousing space. |
| Restaurants, taverns, cocktail lounges, or other eating and dining establishments | 1 parking space per 50 square feet of public service area, plus 10 percent. |
| Retail sales, and shopping center, marijuana dispensaries, marijuana testing and marijuana manufacturing | 1 space per 250 square feet. |

Marijuana cultivator and marijuana transporter

1 space per staff employee and 1 space per 600 square feet of gross floor area.

Effective Date: This ordinance will be in full force and effect thirty (30) calendar days after Town Council approval of the second and final reading (by reference).

PASSED by the Town Council of the Incorporated Town of Darby, Darby, Montana on first reading (by reference) at a special meeting thereof on this 11th day of February, 2022.

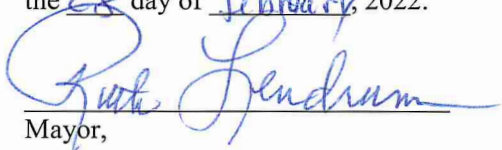


Mayor,



Attested by Clerk

PASSED, ADOPTED AND APPROVED by the Town Council of the Incorporated Town of Darby, Darby, Montana on second and final reading (by reference) at a special public hearing meeting thereof on the 28 day of February, 2022.



Mayor,



Attested by Clerk

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| Effective Date: March 30, 2022 |
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