

# LOCAL ORDINANCES & OPTION TAXES

**November 2021**

**Economic Affairs Interim Committee**

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**MONTANA STATE LEGISLATURE**

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# UPDATE ON LOCAL ELECTIONS & ORDINANCES

Voters approved Initiative 190 (I-190) during the November 2020 election to allow recreational marijuana sales in Montana. The 2021 Montana Legislature passed House Bill 701 (HB701) as the implementation bill of I-190 with a January 1, 2022 effective date for recreational marijuana sales. HB701 includes provisions that allow for local counties and municipalities to regulate how marijuana businesses operate in order to protect public health, safety, and welfare. The manner in which the options for regulation go into an ordinance or onto a ballot depends on if a county voted "green" or "red" on I-190.

## GREEN COUNTY OPTIONS

A "green" county is a county in which the majority of the voters **approved** I-190. Green counties, and municipalities within them, fall under the provisions of [16-12-301\(2\)](#), (7), and (8)<sup>1</sup>, MCA. These sections allow city councils and county commissions the ability to pass ordinances and add issues to a ballot for voters to approve or disapprove.

## ORDINANCES & BALLOT MEASURES

To protect public health, safety, or welfare, city councils and county commissions may pass ordinances, for example zoning regulations for types of businesses, distances from churches and schools, and smoking in public places ([16-12-301\(2\)](#)). They may also ask whether voters want to prohibit specific categories of businesses, like dispensaries, cultivators, or manufacturers ([16-12-301\(7\)](#)).

City ordinances include:

- **Billings:** Cultivators are capped at 7,500 square feet, or Tier 4 operation. Approved marijuana businesses allowed only in industrial and heavy commercial zones, and sit at least 1,000 feet from neighborhoods, schools, churches, parks, addiction recovery centers and youth centers. Medical marijuana dispensaries limited to eight in city limits with applicants entering a lottery for licenses.
  - Dispensary Ordinance Proposition: 2021 ballot measure asking voters to approve or disapprove adult-use marijuana dispensaries within city limits. The proposition failed, so only medical marijuana dispensary licenses are allowed in city limits:

DISPENSARY ORDINANCE BILLINGS	
Vote For 1	
	TOTAL
AGAINST	18,045
FOR	14,696

- **Bozeman:** Updated ordinance to implement 500 feet between dispensaries and schools and places of worship (current ordinance is 400 feet). Existing dispensaries are grandfathered in. New ordinance requires cultivation, manufacturing, and testing facilities to have an air vent system to control discharge of particulates and odors.

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<sup>1</sup> Section (8) applies to all counties and states that no local government can prohibit the transportation of marijuana within or through its jurisdiction on public roads by a licensed marijuana transporter.

- **Columbia Falls:** Proposing an "Adult Use Marijuana Business zoning overlay" within the commercial Business-2 zoning designation for dispensaries, cultivators, and manufacturers.
- **Helena:** Dispensaries allowed in commercial and industrial areas; city ordinance for smoking in public places; cultivators can be in industrial zones, but only with a conditional use permit.
- **Kalispell:** Restricting dispensaries, cultivators, manufacturing to industrial zones.
- **Missoula:** Updated ordinance includes a 500-foot buffer between dispensaries, ban on non-transparent glass storefronts; ban on home cultivation or manufacturing as a legally allowed home occupation.

## LOCAL OPTION TAX

Additionally, counties can choose to ask voters to approve a local excise tax of up to 3% on recreational marijuana, medical marijuana, or both. If approved, 50% of the added revenue goes to the county, 45% to cities and towns in the county, and the remaining 5% to the state for administrative costs.<sup>2</sup>

Three counties had measures on this year's November ballot:

### MISSOULA COUNTY

Missoula County passed a 3% tax for non-medical marijuana and non-medical marijuana products and killed the option for local tax on medical marijuana. The county is considering using the tax revenue to help minimize increases to property taxes and address housing issues.

Missoula Co. Medical Marijuana Tax			
100% OF PRECINCTS REPORTING			
> Against	19,969	52%	
For	18,752	48%	

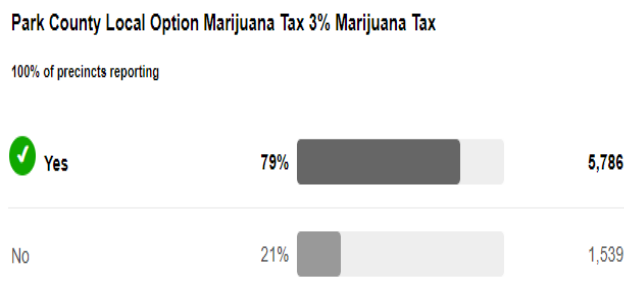
  

Missoula Co. Non-medical Marijuana Tax			
100% OF PRECINCTS REPORTING			
> For	30,249	78%	
Against	8,556	22%	

### PARK COUNTY

Park County passed a 3% tax on the retail value of all marijuana and marijuana products sold. The distribution of funds is:

- 50% to Park County, with 50% going to the general fund and 50% going to county law enforcement
- 45% going to incorporated municipalities, apportioned to each municipality by the percentage of their population compared to the aggregated population of all municipalities. In each municipality, the funds are split with 50% to the general fund and 50% to law enforcement
- 5% to the state for administration of the program



<sup>2</sup> 16-12-309 through 16-12-312, MCA (2021)

## YELLOWSTONE COUNTY

Yellowstone County passed separate options for a 3% tax for medical and non-medical marijuana and marijuana products. The county did not indicate how the funds will be used.

RECREATIONAL MARIJUANA TAX Vote For 1		MEDICAL MARIJUANA TAX Vote For 1	
	TOTAL		TOTAL
FOR	37,185	FOR	27,176
AGAINST	8,048	AGAINST	18,268

## FUTURE CONSIDERATIONS

While not on the November 2021 ballot, at least three counties are considering future ballot initiatives:

- Granite County: May have marijuana issues on the June 2022 primary ballot
- Hill County: Considering a repeal of recreational marijuana
- Lewis & Clark County: Considering the local option tax in 2022

## RED COUNTY OPTIONS

A "red" county is a county in which the majority of the voters **did not approve** I-190. Red counties, and municipalities within them, fall under the provisions of [16-12-301](#)(1) through (6) and (8), MCA. These sections generally state that since the county did not initially approve recreational marijuana, the county must "opt-in" to the new licenses formed under HB701, including: cultivator, manufacturer, new medical marijuana dispensary, adult-use dispensary, combined-use marijuana licensee, testing laboratory, and transporter.

Marijuana businesses licensed in good standing, or in the application process, prior to the passage of I-190, are "grandfathered in" and can remain in operation in red counties, but dispensaries remain medical-only. If a medical marijuana dispensary was licensed, or applied for a license, after the passage of I-190 (November 3, 2020), and the county does not opt-in, then the dispensary's license is suspended on January 1, 2022 until either the county opts in or the dispensary relocates to a green county. As of November 2021, there are seven medical marijuana dispensary licenses scheduled for suspension.

To opt-in to one or more of the recreational marijuana licenses, a county or local election must be held, and can be a regular election of the governing body, general election, regular local, or special election. The election must be requested and held in accordance with Titles 7 and 13, which means the initiative is voter driven and must include canvassing and signature collecting (unlike green county ballot measures which need only a majority vote from city council or the county commission.) If the measure is approved, the results of the election are reported to the Department of Revenue so the department can adjust its licensing and tax reporting systems accordingly.

Of the 28 red counties, only one is currently considering the opt-in process. Dawson County is processing signatures for a proposed local special election in December for the sale of recreational marijuana. Dawson County contains three of the seven dispensaries whose licenses will be suspended in January. County commissioners are also reviewing the possibility of adding a local option tax to the ballot with the proposal.

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