

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to licensed premises) PROPOSED ADOPTION
proximity requirements to places of)
worship or schools)

TO: All Concerned Persons

1. On May 9, 2022, at 3:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on April 22, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I DETERMINATION OF PROXIMITY TO PLACE OF WORSHIP OR SCHOOL (1) In order to apply the provisions of 16-12-207(3), MCA, to a cultivator licensee, manufacturer licensee, adult-use dispensary licensee, or medical marijuana dispensary licensee, the department must find:

(a) the entrance doors of the premises proposed for licensing and the entrance doors of the place of worship or school are situated on the same street; and

(b) the physical address of the premises proposed for licensing is designated as the same street as the physical address of the place of worship or school; and

(c) the distance, measured in a straight line from the entrance doors of the business proposed for licensing, and the entrance doors of the place of worship or school is 500 feet or less.

(2) If the above three-part test is not met in its entirety, the provisions of 16-12-207, MCA, do not apply.

(3) The distance between entrance doors is measured by a geometric straight line, regardless of intervening property and buildings. An entrance is considered to be a means of ingress to the premises generally used by the public. This does not include egress-only doors, delivery, or service entrances.

(4) In the event that a county or city government should enact an ordinance or resolution supplanting the provisions of 16-12-207, MCA, the restriction shall not apply.

(5) A conformed copy of such supplanting ordinance or resolution must be submitted to the department by an applicant or a licensee, in the case where a local government adopts an ordinance or resolution regarding the premises location after the department approves the premises.

AUTH: 16-12-112, MCA

IMP: 16-12-207, MCA

REASONABLE NECESSITY. The department proposes to adopt New Rule I which is necessary to implement 16-12-207(3), MCA, and specify the factors reviewed by the department in determining the street location of a premises proposed for licensure, and the method of determining proximity to places of worship or schools as required by 16-12-207(3), MCA.

The department notes that the proposed text in New Rule I is substantively the same as that found in ARM 42.12.129, which applies to an alcoholic beverage premises location's proximity to places of worship or schools, because the requirements of 16-12-207(3), MCA, are substantively the same as that found in 16-3-306, MCA, the implementing authority for ARM 42.12.129. Further, the proposed text in New Rule I complies with the Montana Supreme Court's opinion in *Hovey v. Department of Revenue*, 203 Mont. 27, 659 P.2d 280 (1983), which analyzed the plain and clear meaning of 16-3-306, MCA, and required the department's modification of ARM 42.12.129 consistent with its holding.

New Rule I also proposes to reiterate deference to local government authority to supplement or supplant 16-12-207, MCA, by ordinance should it choose. In those instances where a local government has not adopted any zoning ordinances, the requirements of New Rule I will govern.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m. May 16, 2022.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule may significantly and directly impact small businesses, but any such significant or direct small business impact is attributable to the department only through the implementation of 16-12-207, MCA.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State April 5, 2022