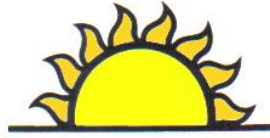


# City of Sidney



**Montana's Sunrise City**  
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**Mayor**  
RICK NORBY  
**Aldermen:**  
**First Ward**  
JOE STEVENSON  
KEN KOFFLER  
**Second Ward**  
KYSA RASMUSSEN  
KALI GODFREY  
**Third Ward**  
TAMI CHRISTENSEN  
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**City Clerk/Treasurer**  
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**Director of Public Works**  
JEFF HINTZ  
**City Attorney-Kalil Law Firm**  
Thomas Kalil  
**Deputy City Clerk/Treasurer**  
BREEANN SHANKS  
**Utilities Manager**  
GREG ANDERSON  
**Water Commissioner**  
JASON ELLETSON

January 17, 2022

## ZONING COMMISSION RECOMMENDATION

Zoning Text Amendment - Marijuana Dispensaries.

Applicant: Application Submitted: October 11, 2021  
City of Sidney Zoning Commission Date: January 12, 2022  
115 – 2<sup>nd</sup> Street East  
Sidney MT 59270 City Council First Reading: February 22, 2022

### LEGAL DESCRIPTION:

The proposed regulations will be applicable to and affect all lands located within the Corporate Limits of the City of Sidney.

### GENERAL INFORMATION

The specific text of the Zoning Regulations to be amended:

- 11.17.022(C)(1) Home Occupations, Purpose and Intent  
The purpose and intent of these standards are to provide for limited commercial uses on the site of a residential dwelling unit. Home occupations provide for businesses that are carried out by residents of the dwelling and are incidental and subordinate to the residential use. Home occupations provide a place for businesses to start but do not permit their continued existence once the business has grown beyond the size that can maintain the residential character and scale of the residential property. It also is the purpose of these standards to provide peace, quiet and tranquility in residential neighborhoods and to guarantee all residents freedom from excessive noise, traffic, nuisance, fire hazard and other deleterious effects of commercial uses.  
**A Marijuana Dispensary, by definition, is not an allowable Home Occupation.**
  - ❖ Codification Note, This addition shall remain bolded and underlined in future versions of the Sidney Zoning Regulations
- 11.17.022(H)(2) Sexually Oriented Business - Separation from Other Uses  
A building containing a Sexually Oriented Business shall be setback a minimum of 1,000 feet from the boundary of a lot or a parcel that contains a church, public or private school, Public Park or a ~~Medical~~ Marijuana Dispensary.

- 11.17.022(H)(5) Sexually Oriented Business – Measurement  
For the purpose of determining compliance with Subsection 11.17.22.H.2, Separation from Other Uses, above, measurement shall be made in a straight line measured from the lot line of the Sexually Oriented Business to the lot line containing a church, school, public park, ~~Medical~~ Marijuana Dispensary or another Sexually Oriented Business.
  
- 11.23.40 (35) Definition: Home Occupation  
A commercial or light industrial activity conducted by the resident(s) of a dwelling as an accessory use to their dwelling. *Due to the potential deleterious effects on surrounding properties, as discussed in the Purpose and Intent associated with Home Occupations coupled with the inability to mitigate anticipated impacts, the term Home Occupation does not include a Marijuana Dispensary.*
  - ❖ Codification Note, This addition shall remain bolded and underlined in future versions of the Sidney Zoning Regulations
  
- 11.23.40 (56) Definition: Pharmacy  
A retail establishment where prescription drugs and medicine are sold. A pharmacy can be a standalone facility or combined with an establishment that sells other retail items. A *The term* pharmacy does not include a ~~Medical~~ Marijuana Dispensary.

## FINDINGS OF FACT

The City of Sidney is an incorporated City within the State of Montana with powers established by the City Charter. The power and processes for the City to establish zoning regulations are found in §76-2-301 et. seq. M.C.A.

In the State of Montana, all jurisdictions proposing to zone or rezone property or to adopt or revise their zoning regulations must issue findings of fact on a twelve-point test that constitutes the rational nexus/legal basis for the adoption of or amendments to a zoning district or zoning regulations.

- I. Is the zoning in accordance with the growth policy;
  - The proposed zoning text amendment is designed to clarify the regulations, address changes to State Law, and ease administrative provisions as discussed in the 2015 Growth Policy.
  - The Growth Policy encourages the grouping together of like and compatible land uses and imposing performance standards to ensure future compatibility.
  - The text amendments are intended to reflect changes to potentially allowable uses of private property via the Initiative process as modified during the Montana 2021 Legislative session.
  - The text amendments are primarily to ease the administration of the regulations, to clarify the legislative intent of the governing body with respect to certain uses. The existing sections has been deemed less than clear and therefore inconsistent with the intent of the City Council and the Growth Policy.

Finding: The existing zoning as well as the proposed amendments are in accordance with the Growth Policy and other adopted rules and regulations of the City of Sidney.

II. Is the zoning designed to lessen congestion in the streets;

- The proposed text amendment deals exclusively with one new use and performance standards for said use within the city.
- The impacts to traffic and congestion associated with Home Occupations are intended to be minimal and in keeping with the residential character of neighborhoods. Marijuana Dispensaries are expected to generate elevated levels of traffic with flows and volumes that are inconsistent with the characteristics of a residential neighborhood.
- The existing zoning encourages compact urban scale development in all the residential districts. The inclusion of controversial commercial operation that in many cases already has traffic and parking concerns is incompatible with the prevailing land uses.
- The existing zoning encourages compact urban development and multi-modal approaches to travel.
- The City of Sidney is undertaking a more detailed analysis of the marijuana issue including but not limited to expanded areas where sales are permissible subject to performance standards to deal with the anticipated impacts of the use. Through the hearings and review processes it has been determined that the traffic impacts associated with a Marijuana Dispensary are inconsistent with and cannot be mitigated to the level where it can be deemed an acceptable Home Occupation.

Finding: The proposed amendment to EXCLUDE Marijuana Dispensaries as an allowable use as a Home Occupation will lessen congestion in the streets.

III. Is the zoning designed to secure safety from fire, panic, and other dangers;

- The proposed amendments are intended to clarify standards related to the specific uses within the city. These performance standards ensure consistency and compatibility within and external to our existing zoning districts.
- The existing zoning provides for consistency in development along with provision of police and fire protection.
- Where marijuana is still a Federally regulated item that is primarily a cash only business, concerns have been expressed that both violent and property crimes could increase if the use is allowed. The potential for increased crime is not a desirable outcome in the city as a whole and is even less desirable in our residential or transitional neighborhoods.
- The existing zoning regulations incorporates enforcement of development standards, setbacks and compliance with the Building Code program adopted by the City of Sidney. In residential and transitional neighborhoods these standards are not satisfactory to ensure safety when applied to a new use with unanticipated or unintended impacts.

- existing zoning has restrictions on lot coverage, grading and development on steep slopes and other areas that are potentially hazardous.

Finding: The proposed amendment to EXCLUDE marijuana sales as home occupations is intended to provide safety to residents and visitors to the city from fire, panic and other dangers.

IV. Is the zoning designed to promote health and the general welfare;

- The recreational marijuana issue was approved in Richland County by a handful of votes and to implement the new use, the Zoning Regulations must be amended to address the newly allowed use.
- The decision to regulate the sales of marijuana and impose reasonable restrictions and setbacks from certain uses is within the police power of the city and is tied directly to the general welfare.
- The existing zoning groups together like and consistent uses within existing neighborhoods and this amendment is consistent with the intent of the Zoning.
- The proposed text amendments implement the legislative intent of the City Council, provide consistency in the administration of the regulations, and make the regulations easier to understand.

Finding: The proposal to EXCLUDE the sale of marijuana as a Home Occupation is in the best interest of the health and general welfare of the city.

V. Is the zoning designed to provide adequate light and air;

- The proposed amendment does not impact this specific criterion.
- The existing zoning imposes building setbacks, height limits, limits on the number of buildings on a single parcel, and reasonable area limits on new development.

Finding: The proposed amendments to EXCLUDE the sale of marijuana as a Home Occupation do not have an impact on this specific criterion. The existing zoning however ensures the provision of adequate light and air to residents of the City through various development limitations.

VI. Is the zoning designed to prevent the overcrowding of land;

- The zoning regulations impose minimum lot size, setbacks, and use regulations and other limitations on development.
- Commercial activities in Residential areas can be detrimental to neighboring properties via unmitigable impacts.
- During the review process associated with this proposed text amendment several owners and members of the Zoning Commission expressed concerns that the impacts associated with the sale of recreational marijuana were not consistent with the presumptions surrounding allowable Home Occupations.

Finding: The development standards in each prevailing zoning district will prevent the overcrowding of land. However, the inclusion of the sale of recreational marijuana as a Home Occupation is an untested use of property with unknown impacts that may adversely affect this review criterion.

VII. Is the zoning designed to avoid undue concentration of population;

- The proposed amendment will not have a direct impact on the concentration of population.
- The existing zoning is part of the holistic approach to land use regulation for the entirety of the City of Sidney and is not focused on any single special interest.
- The existing zoning takes advantage of areas that were created and intended as suitable for a healthy mixture of uses. During the review process associated with this proposed text amendment several owners and members of the Zoning Commission expressed concerns that the impacts associated with the sale of recreational marijuana were not consistent with the presumptions surrounding allowable Home Occupations.
- The existing zoning imposes minimum lot sizes, reasonable use restrictions on the subject property, fencing limitations and setback standards.

Finding: The development standards in each prevailing zoning district will prevent the overcrowding of land. However, the inclusion of the sale of recreational marijuana as a Home Occupation is an untested use of property with unknown impacts that may adversely affect this review criterion.

VIII. Is the zoning designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;

- The proposed amendment does not impact this specific criterion.
- The prevailing zoning and other regulations established by the City Council establish minimum standards for the provision of infrastructure such as roads, sidewalks, water sewer, wire utilities and storm water management.
- There was discussion that the tax revenue generated by allowing the sale in appropriate locations in the city may benefit the extension of infrastructure and public services.
- The prevailing zoning encourages compact urban scale development and groups together similar uses that will not detract from the quality of life expected in Sidney while providing the economies of scale to extend water, sewer, streets, parks, quality schools and other public requirements.
- . During the review process associated with this proposed text amendment several owners and members of the Zoning Commission expressed concerns that the impacts associated with the sale of recreational marijuana were not consistent with the presumptions surrounding allowable Home Occupations.

Finding: The standards of the existing zoning and other adopted standards of the city will ensure the adequate provision of transportation, water, sewerage, school, parks

and other public requirements. However, the inclusion of the sale of recreational marijuana as a Home Occupation is an untested use of property with unknown impacts that may adversely affect this review criterion.

IX. Does the zoning give reasonable consideration to the character of the district and its peculiar suitability for particular uses;

- The proposed text amendments accommodate the passage of the recreational marijuana initiative in Richland County and make provisions for buffers from certain types of uses.
- The recreational marijuana
- The proposed changes do not impact any of the adopted district standards that were established to ensure that the regulations provide for land uses that are compatible with existing uses and neighborhood characteristics.
- The existing zoning groups together like and consistent uses and is consistent with the existing zoning in the neighborhoods.

Finding: The existing zoning gives due consideration to the character of the existing neighborhoods, within the City as well as suitability for the particular uses. Additionally, the clarifications related to the construction of sidewalks are intended to provide consistency across all of the various zoning districts within the City of Sidney.

X. Does the zoning give reasonable consideration to the peculiar suitability of the property for its particular uses;

- The proposed amendments are intended to implement the passage of the recreational marijuana initiative in Richland County.
- The existing zoning amendment is designed to further implement the decisions made by the City Council with respect to appropriate locations for the sale and distribution of Medical Marijuana.
- The proposed amendments can be revisited and the performance criteria and use locations modified to reflect the actual impacts experienced by the city.

Finding: The recommended zoning gives reasonable consideration to the peculiar suitability of the property for its particular uses. However, the inclusion of the sale of recreational marijuana as a Home Occupation is an untested use of property with unknown impacts that may adversely affect this review criterion.

XI. Will the zoning conserve the value of buildings;

- The decision to include or exclude specific uses has the potential to serious positive and negative impacts on the value of buildings within the city. The city has chosen to take a conservative approach to the introduction of a new and potentially volatile use within the city. Where vast portions of Richland County do not have land use restrictions a conservative approach is wise by not creating

the potential for several non-conforming uses should the use prove to be incompatible in another specific zoning district.

- The existing zoning groups together like and consistent uses and is consistent with the existing zoning in the various neighborhoods of the City of Sidney.
- The sale of recreational marijuana as a Home Occupation has the potential to have adverse impacts on the value of surrounding residential properties.
- The Sidney Police Department expressed concerns about the potential adverse impacts associated with inclusion of the sale of recreational marijuana as a Home Occupation during the review process of the text amendment.

Finding: The recommended zoning along with the other protections afforded in the balance of the Sidney Zoning Regulations will conserve or in many cases enhance the value of buildings. However, the inclusion of the sale of recreational marijuana as a Home Occupation is an untested use of property with unknown impacts that may adversely affect this review criterion.

XII. Will the zoning encourage the most appropriate use of land throughout the municipality?

- The proposed amendments represent a conservative approach to the introduction of a use that has previously been excluded within the city limits. This approach provides the test case that the use can be a good neighbor while providing land owners an expanded use regimen.
- The existing zoning provides for grouping like and compatible uses.
- The city recognizes that the impacts of certain land uses stretch well beyond property boundaries and that the benefits of the new use may be offset by adverse impacts to other properties. We believe that these regulations accomplish this delicate balancing act.

Finding: The proposed text amendments will implement new land use opportunities within the city while providing reasonable performance standards to ensure that this review criterion is addressed.

**RECOMMENDATION:**

The Zoning Commission recommends that the City Council find that the proposed Zoning Text Amendments reflects the 2015 Growth Policy; that the rational nexus for the adoption of zoning has been met or exceeded by the proposed amendments; and that the citizens of Sidney have participated in the amendment of the Zoning Regulations.

Reviewed and submitted by:

Forrest Sanderson, AICP, CFM  
City of Sidney, Contract Planner