

ORDINANCE 21-5777

**AN INTERIM ZONING ORDINANCE OF THE CITY
COUNCIL OF THE CITY OF BILLINGS, MONTANA,
IMPOSING A MORATORIUM ON THE OPENING OF NEW
ESTABLISHMENTS THAT GROW, MANUFACTURE,
SELL, TEST OR DISTRIBUTE MARIJUANA, AND
DIRECTING THE STUDY OF NEW PROPOSED
ORDINANCES TO REGULATE SUCH
ESTABLISHMENTS.**

WHEREAS, Montana voters adopted Initiative Measure 190 (I-190) on November 3, 2020, statewide, in Yellowstone County, Montana, and in the City of Billings, Montana, legalizing adult-use marijuana and providing for approval of certain marijuana businesses within the State of Montana; and

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; and

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; and

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; and

WHEREAS, the City Council of the City of Billings previously passed Ordinance 11-5545 which prohibits any storefront medical marijuana business within the city limits under the authority of Senate Bill (SB) 423, passed by the 2011 Montana Legislature, and later codified at MCA section 50-46-328(2); and

WHEREAS, the City Council of the City of Billings previously passed Ordinance 12-5587 which requires all businesses, occupations, and professions to comply with local, state, and federal law. 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; and

WHEREAS, establishments that grow, manufacture, test, sell or distribute marijuana are not currently permitted in any zoning district established by the City of Billings; and

WHEREAS, establishments that grow, manufacture, test, sell, transport or distribute marijuana could have a blighting or detrimental effect on neighborhoods or on nearby schools, recreational facilities, or other uses, and can through such blighting create a public nuisance; and

WHEREAS, §76-2-306, MCA, permits a city to adopt an interim zoning ordinance for the preservation of the public peace, property, health, or safety, which may take effect immediately upon passage at one reading; and

WHEREAS, this statute allows the City to adopt an interim zoning ordinance to protect public safety, health, and welfare without following the procedures otherwise required preliminary to the adoption of zoning ordinances, and such interim zoning ordinances may prohibit uses that may be in conflict with a contemplated zoning proposal, which the legislative body is considering or intends to study within a reasonable amount of time; and

WHEREAS, the City Council of the City of Billings has determined that additional investigation, consideration, and public input is required to decide whether the operation of establishments that cultivate, manufacture, test, sell, transport or distribute marijuana within the City limits of Billings, could be immediately detrimental to, harmful to, and a threat to the peace, property, health, safety, and welfare of the City and its inhabitants, and the City needs an opportunity to further study such issue and if so determined to adopt appropriate ordinances, zoning or otherwise, to appropriately deal with any such establishments.

WHEREAS, after first having provided lawful public notice, as required by Section §76-2-306 (2), MCA the City Council conducted a public hearing on September 13, 2021, with respect to this proposed Ordinance, and invited public comment;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Billings, Montana, as follows:

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

Section 2: The terms "marijuana business," shall have the meaning provided to such terms by HB 701.

Section 3: The City Council of the City of Billings hereby directs the City Administrator, presumably with the assistance of the City-County Planning Division, the Billings Police Department and the City Legal Department, to investigate and study the effect of the opening of establishments that grow, manufacture, test, sell, transport or distribute marijuana and to make recommendations concerning new zoning ordinances that could be adopted to better regulate and/or deal with such establishments, to limit, prohibit, or abate any negative effect implicating the health, safety and/or welfare of the citizenry of the City of Billings, Montana, or blight, upon the City (and its entire zoning jurisdiction and its inhabitants), or the schools, recreational facilities, other uses or neighborhoods located therein.

Section 4: The City Council of the City of Billings directs the City Administrator, presumably with the assistance of the City-County Planning Division, the Billings Police Department and the City Legal Department, to present the findings of its investigation and its recommendations to the City Zoning Commission, who in turn will provide its recommendations to the City Council, so that the Council may consider the issue within approximately three (3) months 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 marijuana businesses, including new establishments attempting to grow, manufacture, test, sell, transport or distribute marijuana are hereby prohibited from being opened within the City of Billings.

Section 6: Any individual, entity, or establishment that violates the terms of the restrictions set forth above shall be deemed to be creating a public nuisance, and shall be subject to criminal penalties as provided in B.M.C.C. Sec. 1-110, and shall further be subject to such civil action to restrain or abate as provided in B.M.C.C. Sec. 18-301 et. seq., as the City deems appropriate. Such ability of the City to prosecute and/or enjoin or abate is in addition to any other remedies available to the City, at law or in equity. Any land use approval or other permit inadvertently granted or issued in conflict with this ordinance shall be deemed void ab initio, and any monies collected shall be immediately refunded to the payor upon written request.

Section 7: This Ordinance is expressly made immediately effective, and shall apply to all pending applications of business licenses, business taxes or fees, 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 City of Billings 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. This Ordinance shall take effect immediately upon its adoption by the City Council of the City of Billings, Montana, and signing of the Mayor thereof. No second reading shall be required.

PASSED, ADOPTED and APPROVED on this 13th day of September, 2021.

CITY OF BILLINGS



BY: William A Cole
William A. Cole, Mayor

Attest:

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk