

ORDINANCE NO. 10-5523

AN INTERIM ZONING ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, EXTENDING THE MORATORIUM ENACTED BY ORDINANCE 10-5512, CONTINUING THE PROHIBITION ON THE OPENING OF ANY NEW ESTABLISHMENTS THAT GROW, SELL OR DISTRIBUTE MEDICAL MARIJUANA FOR AN ADDITIONAL TWELVE (12) MONTH PERIOD.

RECITALS

WHEREAS, on November 2, 2004, through Initiative 148 that placed the issue on the state-wide ballot, Montana voters adopted the Medical Marijuana Act, (the Act) which is codified at §50-46-101, MCA, et seq; and at that time and in subsequent legislative sessions the legislature failed to include language or authorize State agencies to promulgate administrative rules concerning a multitude of logistical issues about the Act; and

WHEREAS, the concerns of local governments about the Act's application in their communities and the parameters under which a local government has authority to regulate its effects remain unresolved; and

WHEREAS, the Act permits the cultivation, manufacture, delivery, transfer, and transportation of marijuana or paraphernalia by a qualifying patient or a caregiver, as those terms are defined in the Act; and

WHEREAS, establishments that grow, sell or distribute medical marijuana or paraphernalia which opened prior to May 11, 2010 are currently operating within certain zoning districts established by the City of Billings; 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 the operation of establishments that grow, sell or distribute medical marijuana or paraphernalia 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, until such time as the City has had an opportunity to further study such issue and an opportunity to adopt more permanent appropriate ordinances, zoning or otherwise, to appropriately deal with any such establishments; and

WHEREAS, after first having provided lawful public notice, as required by §76-2-306 (2), MCA the City Council conducted a public hearing on May 10, 2010, with respect to this proposed Ordinance, and invited public comment; and

WHEREAS, the City adopted the proposed six month interim Ordinance on May 11, 2010, which will expire on November 11, 2010; and

WHEREAS, the City intends to further study this issue, and ultimately adopt more permanent appropriate ordinances, zoning or otherwise, to appropriate deal with such establishments; and

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,” “paraphernalia,” “qualifying patient,” and “caregiver” have the meaning attributed to those terms by the Medical Marijuana Act, MCA § 50-46-102.

Section 3: The City Council of the City of Billings hereby directs City Administration, the City-County Planning Division, the Billings Police Department and the City Legal Department to continue to investigate and study the effect of the opening of establishments that grow, sell or distribute medical marijuana or paraphernalia 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, or neighborhoods located therein.

Section 4: Until such new ordinances, or similar state laws, zoning or otherwise, are adopted and in order to deal with the issues described above, any new establishments attempting to grow, sell or distribute medical marijuana or paraphernalia are hereby prohibited from being opened within the City of Billings. The prohibition in the preceding sentence shall not apply to a qualifying patient who possesses not more than six (6) marijuana plants and one (1) ounce of usable marijuana solely for that patient’s own use, nor shall it apply to a caregiver, already licensed by the City of Billings and in operation at their designated commercial business location on the date of this Ordinance, who possesses not more than six (6) marijuana plants and one (1) ounce of usable marijuana solely for each of his or her qualifying patient’s use.

Section 5: 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. §1-110, and shall further be subject to such civil action to restrain or abate as provided in B.M.C.C. §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.

Section 6: This Ordinance is expressly made effective November 11, 2010, to run immediately consecutive to Ordinance No. 10-5512, and shall apply to all pending applications of 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 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. Existing medical marijuana providers already licensed by the City of Billings and in operation at their designated commercial business location on the date of enactment of Ordinance No. 10-5512 will be permitted to continue operations at that location during the period of this interim Ordinance extension.

Section 7: 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 8: Upon its adoption by the City Council of the City of Billings, Montana and signing of the Mayor thereof, this Ordinance shall take effect November 11, 2010. Pursuant to MCA §76-2-306, no second reading shall be required.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 27th day of September, 2010.



CITY OF BILLINGS

BY: Thomas W. Hanel
Thomas W. Hanel, Mayor

Attest:

Cari Martin
Cari Martin, City Clerk