

EXHIBIT A

ORDINANCE NO. 10 ____

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, SELL OR DISTRIBUTE MEDICAL MARIJUANA, AND DIRECTING THE STUDY OF NEW PROPOSED ORDINANCES TO REGULATE SUCH ESTABLISHMENTS.

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 are currently permitted within certain zoning districts established by the City of Billings; and

WHEREAS, establishments that grow, sell or distribute medical marijuana or paraphernalia could have a blighting or detrimental effect on neighborhoods or on nearby schools or recreational facilities, 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 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 appropriate ordinances, zoning or otherwise, to appropriately deal with any such establishments; and

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 May 10, 2010, 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,” “paraphernalia,” “qualifying patient,” and “caregiver” have the meaning attributed to those terms by the Medical Marijuana Act, MCA section 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 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: The City Council of the City of Billings directs the City Administration, 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 six (6) 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 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 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.

Section 7: This Ordinance is expressly made immediately effective, 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 this Ordinance will be permitted to continue operations at that location during the period of this interim 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 AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, THIS 10TH DAY OF MAY, 2010.

Thomas W. Hanel, Mayor

Attest:

Cari Martin
City Clerk

EXHIBIT B

ORDINANCE NO. 10-

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-201 AND SECTION 27-306 AND ADD A NEW SECTION 27-624 – MEDICAL MARIJUANA BUSINESS; SETTING DEFINITIONS FOR MEDICAL MARIJUANA BUSINESS, ADOPT THE REVISIONS AS AN INTERIM ZONING REGULATION AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. **RECITALS.** *Title 76, Chapter 2, Part 3, MCA*, provides for the enactment as a matter of urgency an interim zoning regulation. The City Council, City Attorney and staff have reviewed the proposed interim zoning regulation and determined there is a matter of urgency to be addressed by the interim zoning regulation. The City Council, in due deliberation, has considered the interim zoning regulation.
2. **DESCRIPTION.** The interim zoning regulation shall apply to all land within the City Of Billings.
3. **INTERIM ZONING REGULATION.** That Section 27-201 and 27-306 of the BMCC be amended to read as follows:

SEC. 27-201. DEFINITIONS.

MEDICAL CORRIDOR: The area defined by the Billings Medical Corridor Study as the medical development impact area. This area is of special concern to the city as a potential location for medical or medically related uses, as well as, supporting uses and residential development. See BMCC Sections 27-901, et seq.

MEDICAL MARIJUANA: means all plant material from the genus *cannabis* containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination that is grown, sold or administered for medical use.

MEDICAL MARIJUANA BUSINESS: includes the following definitions:

MEDICAL MARIJUANA GROWING OPERATION is the cultivation of medical marijuana for the purposes of possessing, manufacturing, selling, or consuming in accordance with MCA, 50-46-201, et. seq.

MEDICAL MARIJUANA MANUFACTURING is the process of rendering a natural cannabis plant into a product that can be consumed for medicinal purposes pursuant to MCA, 50-46-201, et seq.

MEDICAL MARIJUANA RETAIL BUSINESS means a commercial operation that sells medical marijuana products for medical purposes in accordance with MCA, 50-46-201, et seq.

MERCHANDISE: All items of movable personal property offered for sale to the public for which no title is required to be registered with or issued by the state.

SEC. 27-306. District Regulations: COMMERCIAL & INDUSTRIAL USES.

<p>TITLES AND DESCRIPTION OF INDUSTRIES</p> <p>SR - SPECIAL REVIEW A - ALLOWED</p>	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
<p>DIVISION A - AGRICULTURE, FORESTRY AND FISHING</p> <p>01 AGRICULTURAL PRODUCTION - CROPS:</p> <ul style="list-style-type: none"> - Offices only - Production only - Sales - Medical Marijuana Growing Operations*** <p>*** <u>Medical Marijuana Businesses are regulated in Section 27-624</u></p>	A A	A A A	A A A	A A A	A A A	A A A	A A A	A	A
<p>TITLES AND DESCRIPTION OF INDUSTRIES</p> <p>SR - SPECIAL REVIEW A - ALLOWED</p>	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
<p>28 CHEMICALS AND ALLIED PRODUCTS:</p> <ul style="list-style-type: none"> - Offices only - 2833-Medicinal & Botanical Products - 2834 - Pharmaceutical Preparations - Medical Marijuana Manufacturing*** <p>*** <u>Medical Marijuana Businesses are regulated in Section 27-624</u></p>	A	A	A	A A A	A	A A A	A A A		A

TITLES AND DESCRIPTION OF INDUSTRIES	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
SR - SPECIAL REVIEW A - ALLOWED									
59 Miscellaneous Retail (Strictly Carryout), (Except Below): – 598 Fuel dealers – <u>Medical Marijuana Retail Business***</u> * Fireworks stands shall comply with BMCC Section 27-614. ** Sexually oriented business, as classified and defined in BMCC Section 27-611. *** <u>Medical Marijuana Businesses are regulated in Section 27-624</u>		A*	A A	A A	A A	A A	A A		A A

4. INTERIM ZONING REGULATION.

That a new Section 27-624 be added as follows:

Section 27-624. Medical Marijuana Businesses. (CITY ONLY)

(a) Purpose and Intent. It is the purpose of this section to regulate Medical Marijuana Businesses to promote the health, safety, morals, and the general welfare of the citizens of the City of Billings, and to establish reasonable uniform regulations to prevent the deleterious location of Medical Marijuana Businesses within the City jurisdiction. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the availability of Medical Marijuana. Similarly it is not the intent or effect of these regulations to restrict or deny access by adults to distributors and providers of Medical Marijuana as provided in MCA 50-46-101 et seq.

(b) Findings and Determinations. The Billings City Council hereby finds and determines that:

(1) The growing, manufacturing and sale of Medical Marijuana in locations which are immediately adjacent to and which serve residential neighborhoods has a deleterious effect on both the business and residential segments of the neighborhood, causing or contributing to blight and a downgrading of property values.

(2) Concern for, and pride in, the orderly planning and development of a neighborhood should be encouraged and fostered in those persons comprising residential and business segments of that neighborhood.

(3) Medical Marijuana is regulated and controlled through Montana Code Annotated 50-46-101 et seq. but local regulation of Medical Marijuana business

locations is important for the preservation of residential neighborhoods and protection of the quiet enjoyment of public and private locations for civic and social gatherings.

(c) Definitions. Terms used in this section, that are not specifically defined below, may be found in Section 27-201 BMCC. Where other definitions are necessary and are not defined in this Section or Section 27-201, the dictionary may define such terms.

Church or Other Place of Worship means a building which is used primarily for religious worship and related religious activities, including but not limited to churches, convents, monasteries, shrines, and temples.

City means the City of Billings, Montana.

Establishment means and includes any of the following:

- a. The opening or commencement of any new Medical Marijuana Business;
- b. The conversion of an existing business to any Medical Marijuana Business;
- c. The addition of a Medical Marijuana Business to any other existing business;
or
- d. The relocation of a Medical Marijuana Business to a location within the City of Billings whether in a commercial or industrial zoning district or as a home occupation.

(d) Location of Medical Marijuana Businesses.

(1) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate a Medical Marijuana Business in a residential zone or within one thousand (1,000) feet of the following residential zones:

- a. Agriculture Open-Space (A-1) Zone;
- b. Agricultural Suburban (A-S) Zone;
- c. Residential 15,000 (R-150) Zone;
- d. Residential 9,600 (R-96) Zone;
- e. Residential 8,000 (R-80) Zone;
- f. Residential 7,000 Restricted (R-70R) Zone;
- g. Residential 7,000 (R-70) Zone;
- h. Residential 6,000 Restricted (R-60R) Zone;
- i. Residential 6,000 (R-60) Zone;
- j. Residential 5,000 (R-50) Zone;
- k. Residential Multi-Family (RMF) Zone;
- l. Residential Multi-Family - Restricted (RMF-R) Zone;
- m. Residential Manufactured Home (RMH) Zone; or
- n. Entryway Mixed Use (EMU) Zone. Or

- o. Any Planned Development Zone that allows residential uses unless such zone is separated from the location of a business providing Medical Marijuana by an Interstate Highway.

(2) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate a Medical Marijuana Business within one thousand (1,000) feet of the following land uses:

- a. Public library;
- b. Public playground or park (for purposes of this section, publicly owned multiuse trails shall be deemed to be a park);
- c. Public or private school and its grounds, from pre-school through twelfth grade;
- d. A state licensed community residential facility, family day care home, group day care home, or day care center;
- e. Church or other place of worship; or
- f. A cemetery.

(3) For purposes of this section, specified distances will be measured in a straight line, without regard to intervening structures, from the property line of Medical Marijuana Business to the property line of the preceding land uses or zoning districts.

(4) In addition to the preceding requirements, Medical Marijuana Businesses are permitted in the following zones only:

- a. Central Business District (CBD) Zone;
- b. Highway Commercial (HC) Zone;
- c. Controlled Industrial (CI) Zone;
- d. Heavy Industrial (HI) Zone. or
- e. Community Commercial (CC) Zone.

(5) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate Medical Marijuana Business in violation of MCA 50-46-101 et seq. Businesses or persons found in violation of MCA 50-46-101 et seq, shall be deemed also in violation of this chapter.

5. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

6. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid

provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

7. EFFECTIVE DATE. This ordinance shall be effective immediately upon first reading and up to six (6) months and as provided by law.

PASSED AND ADOPTED by the City Council on first reading May 10, 2010.

CITY OF BILLINGS:

BY: _____
Thomas W. Hanel, Mayor

ATTEST:

BY:
Cari Martin, City Clerk

Interim Zoning Regulation, Medical Marijuana, BMCC 27-201, 27-306 & 27-624

EXHIBIT C

ORDINANCE NO. 10 ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AMENDING CHAPTER 27, ARTICLE 27-100 OF THE BILLINGS MUNICIPAL CODE, AND ADDING A NEW SECTION NUMBERED 27-104 TO PROHIBIT ALL LAND USES THAT ARE IN VIOLATION OF LOCAL, STATE, OR FEDERAL LAW.

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 are currently permitted within certain zoning districts established by the City of Billings; and

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

WHEREAS, §76-2-301, MCA, permits the City of Billings to regulate land uses within the City for the purpose of promoting health, safety, morals or the general welfare of the community; 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, as such conduct is in violation of Federal Law, specifically 21 USC §812, as marijuana remains a Schedule 1 Substance under the Controlled Substances Act, and the U.S. Department of Justice defines Schedule 1 Substances as "having a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use of the drug or other substance under medical supervision."

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. That the Billings, Montana City Code be amended by adding a new section to Chapter 27, Article 27-100, Numbered 27-104, titled:

Section 27-104. LAND USES IN VIOLATION OF LOCAL, STATE, OR FEDERAL LAW PROHIBITED.

No use of land shall be permitted or conditionally permitted within the City of Billings that is in violation of local, state, or federal law.

Section 3. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 4. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 5. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.
PASSED by the City Council on first reading this ___ day of _____, 2010.

PASSED, ADOPTED and APPROVED on second reading this ___ day of _____, 2010.

CITY OF BILLINGS

By _____
Thomas W. Hanel, Mayor

ATTEST:

By _____
Cari Martin, City Clerk