

ORDINANCE NO. 11-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS MONTANA CITY CODE BE AMENDED BY ADDING A NEW ARTICLE 7-1700 TITLED "MEDICAL MARIJUANA", ADDING NEW CODE SECTIONS, DEFINING MEDICAL MARIJUANA STOREFRONTS, AND PERMANENTLY PROHIBITING THE OPERATION OF MEDICAL MARIJUANA STOREFRONTS, PURSUANT TO SB 423 PASSED BY THE 2011 MONTANA LEGISLATURE.

RECITALS

WHEREAS, the 2011 Montana Legislature passed the Montana Marijuana Act, Senate Bill (SB) 423, with most sections effective July 1, 2011, which extensively changes, restricts and regulates the use and prohibits the sale for profit of medical marijuana, including the option granted to local governments to prohibit storefront medical marijuana facilities to operate beyond July 1, 2011; and

WHEREAS, the City Council of the City of Billings previously enacted emergency ordinance No. 11-5537 pursuant to the statutory authority conferred by MCA Sec. 7-5-104 and BMCC 2-235, prohibiting storefront medical marijuana businesses for a 90 day period effective July 5th, 2011; and

WHEREAS, in order to protect and preserve the public peace, health, safety, and welfare, the City Council of the City of Billings wishes to permanently prohibit storefront medical marijuana businesses, pursuant to the explicit authority granted by SB 423, Section 13(2) codified at Montana Code Annotated (MCA) Section 50-46-328(2)(2011);

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

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

Section 2: New Article. That the Billings Montana City Code be amended to add a new article, Article 7-1700 MEDICAL MARIJUANA, and new sections BMCC Section 7-1701, 7-1702, 7-1703.

BMCC Section 7-1701 Definitions.

The terms "marijuana", "provider", "marijuana-infused product", "marijuana-infused product provider", "registered cardholder" or "cardholder" shall have the meaning

provided to such terms by the Montana Marijuana Act, Section 2, (SB 423) passed by the 2011 Montana Legislature. Now codified at MCA section 50-46-302(2011).

The term “Storefront Business” means any commercial establishment, structure or building that is openly accessible by members of the general public. Storefront Business does not include a commercial establishment, structure, or building that is inaccessible to the general public, which only provides access to Cardholders registered with that Provider by the Montana Department of Health and Human Services or other persons, by appointment, who are intending to establish a bona fide Provider/Cardholder relationship with that Provider.

BMCC Section 7-1702 Storefronts Prohibited.

(1) As authorized by Senate Bill (SB) 423, Section 13(2) or the Montana Marijuana Act, MCA section 50-46-328(2), passed by the 2011 Montana Legislature, no “Provider” of marijuana or marijuana-infused products shall be permitted to open or operate a “Storefront Business” within the Billings City Limits. “Providers” who are in full compliance with the Montana Marijuana Act of 2011 shall be permitted to dispense medical marijuana and marijuana infused products to “Cardholders” who are registered with that Provider by the Montana Department of Health and Human Services, provided that access to the Storefront Business is limited to Cardholders registered with that Provider and other persons, by appointment, who are intending to establish a bona fide Provider/Cardholder relationship with that Provider.

(2) As authorized by Senate Bill (SB) 423, Section 13(1) of the Montana Marijuana Act, passed by the 2011 Montana Legislature, MCA section 50-46-328 (1), “Providers” permitted to dispense medical marijuana and medical marijuana infused products under Section (1) above are prohibited from displaying, in an open or visible manner to the general public, any medical marijuana plant, marijuana infused product, or any depictions, caricatures, or other artistic renditions of a marijuana plant, leaf, bud or parts in a manner visible from the exterior of the establishment, structure or building in which the “Provider” does business.

BMCC Section 7-1703 Penalties.

Any individual, entity or establishment that violates the terms of this ordinance set forth above shall be deemed to be creating a public nuisance and shall be subject to criminal penalties as provided in Billings, Montana City Code (BMCC) Section 1-110 and shall further be subject to civil action to restrain or abate as authorized in B.M.C.C. Section 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.

It shall be a defense to a violation of B.M.C.C. Sec. 7-1703 that a Provider did not allow members of the general public, who were not registered Cardholders with that Provider or persons seeking, by appointment, to establish a bona fide Provider/Cardholder relationship with that Provider, to access the Provider's place of business.

Section 3: Severability: 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 4: Effective Date: This ordinance shall become effective 30 days after passage and approval upon second reading of the Billings Montana City Council.

PASSED by the City Council on first reading this 11th day of October, 2011.

PASSED, ADOPTED and APPROVED on second reading this 24th day of October, 2011.

CITY OF BILLINGS

BY: _____
Thomas W. Hanel, Mayor

Attest:

Cari Martin, City Clerk