

CITY OF BILLINGS

CITY OF BILLINGS VISION STATEMENT:

**“THE MAGIC CITY – A VIBRANT, WELCOMING PLACE WHERE
PEOPLE FLOURISH AND BUSINESS THRIVES.”**

SPECIAL SESSION AGENDA

COUNCIL CHAMBERS

July 5, 2011

5:30 P.M.

CALL TO ORDER – Mayor Hanel

ROLL CALL

SPECIAL AGENDA:

- 1. EMERGENCY ORDINANCE BANNING MEDICAL MARIJUANA STOREFRONTS** in the City of Billings (delayed from 6/27/11). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item #1 ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard **ONLY** during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the podium.)

ADJOURN

Additional information on any of these items is available in the City Clerk's Office.

Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please notify Cari Martin, City Clerk, at 657-8210.

Special Session

Meeting Date: 07/05/2011

TITLE: Emergency Ordinance Banning Medical Marijuana Storefronts

PRESENTED BY: Tina Volek

Department: City Hall Administration

PROBLEM/ISSUE STATEMENT

The City Council held a public hearing at its meeting June 27, 2011, on an emergency ordinance to ban the sale of medical marijuana in storefronts in the City of Billings and postponed action for the second time. Such a ban is permitted by Section 13 Local government authority to regulate of Senate Bill 423, the Montana Marijuana Act, which was adopted by the Legislature in its 2011 session.

Judge James P. Reynolds of the Lewis and Clark County District Court issued a preliminary injunction June 30, 2011, preventing the State of Montana from enforcing sections of the statute that prohibited advertising; allowed unannounced inspections of marijuana businesses; required the Board of Medical Examiners to be notified of the name of any physician who certified 25 or more patients in 12 months; and that limited caregivers on the number of clients they could serve, prevented them from selling or being paid for marijuana-related products, or using marijuana products. The Judge's ruling said remaining provisions of the statute, including Section 13, could go into effect as scheduled on July 1, 2011.

Staff had recommended the Council's postponement of the ordinance, pending the outcome of the Lewis and Clark County case. Since the injunction did not prohibit enforcement of Section 13, it appears the Council may proceed with adoption of an emergency ordinance prohibiting providers of marijuana or marijuana-infused products from operating as storefront businesses.

A two thirds vote of the entire City Council is required for passage of an emergency ordinance. It could become effective upon passage.

ALTERNATIVES ANALYZED

The City Council may:

- Approve an emergency ordinance banning marijuana and marijuana-infused products providers from operating as storefront businesses in Billings;
- Take no action, relying instead on the City's current moratorium until it needs to be renewed in November 2011; or
- Postpone action to another time.

FINANCIAL IMPACT

Enforcement of SB 423 will likely have an impact on law enforcement, although the exact costs cannot be defined.

SB 423 also requires the City to accept and destroy any marijuana plants, unusable marijuana or marijuana-related products in a caregiver's possession at the time the bill becomes effective July 1. It additionally requires law enforcement agencies contacted by health care facilities to remove and destroy marijuana found in a registered card holder's possession upon admittance to a health care facility. These are unfunded State mandates that have not previously been required of local government.

BACKGROUND

The Council approved an initiative directing staff to present the emergency ordinance. Section 13 of the Medical Marijuana Act states "A local government may adopt an ordinance or resolution prohibiting providers and marijuana-infused product providers from operating as storefront businesses." It also allows local governments to regulate a provider or marijuana-infused products provider who operates within its jurisdiction to ensure compliance with public health, safety and welfare requirements established by the Montana Department of Public Health and Human Services, or the local government.

Montana Code Annotated 7-5-104 and BMCC 2-235, Emergency ordinance, allow the Council to adopt an emergency ordinance that is effective for no more than 90 days, after the Council outlines the reasons for an emergency. The Council also may waive the second reading of an emergency ordinance, putting it into place immediately.

STAKEHOLDERS

Stakeholders include opponents of the sale of medical marijuana and cardholders and caregivers operating under the current emergency ordinance that placed a moratorium on additional sales of marijuana in Billings. Speakers from both groups testified at a public hearing June 13 regarding the ban on medical marijuana storefronts. That public hearing was closed, and no new public hearing has been scheduled for July 5.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The proposed emergency ordinance is consistent with Section 13 Local government authority to regulate of SB 423, the Montana Marijuana Act. If an emergency ordinance is adopted and the Council wishes to create a permanent storefront ban, it would have to adopt a permanent ordinance within a 90-day period.

If a permanent ban on medical marijuana storefronts is approved, the Council may consider rescinding another interim City ordinance prohibiting any new medical marijuana businesses from opening from May 11, 2010, to present. The moratorium ordinance is in effect through Nov. 11, 2011, and can be extended for an additional year.

RECOMMENDATION

It is recommended that the Council approve the emergency ordinance banning the sale of medical marijuana or marijuana-infused products in Billings storefronts.

APPROVED BY CITY ADMINISTRATOR

Attachments

Marijuana Storefront Ordinance

ORDINANCE NO. 11 _____

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS AUTHORIZED BY MONTANA CODE ANNOTATED SECTION 7-5-104, DEFINING MEDICAL MARIJUANA STOREFRONTS AND PROHIBITING THE CONTINUED OPERATION OF MEDICAL MARIJUANA STOREFRONTS BEYOND JULY 1, 2011, 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;

WHEREAS, the City Council of the City of Billings has deemed it appropriate to use its legislative discretion under Section 13(2) of SB 423 to immediately prohibit medical marijuana providers and marijuana-infused providers from operating as storefront businesses beyond July 1, 2011, which have previously been allowed to continue operating under Section 6 of Interim Ordinance No. 10-5523 pending action by the 2011 Montana Legislature;

WHEREAS, in order to protect and preserve the public peace, health, safety and welfare, the City Council of the City of Billings has determined that because of the July 1, 2011, effective date of SB 423, an immediate, emergency ordinance is necessary to implement the storefront prohibition authorized by SB 423 Section 13(2).

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”, “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. The term “storefront” shall mean any commercial establishment, structure, vehicle, or building that is accessible from a public right-of-way by the general public or sectors of the public for the purpose of obtaining marijuana or marijuana-infused product.

Section 3: As authorized in Section 13(2) of the Montana Marijuana Act, passed by the 2011 Montana legislature, no provider of marijuana or marijuana-infused products shall be allowed to open and operate a storefront business within the Billings City Limits on and after July 5, 2011.

Section 4: As authorized in Section 13(2), of the Montana Marijuana Act, passed by the 2011 Montana Legislature, no individual, entity, establishment, group or company previously granted a business license to operate a medical marijuana business within the Billings City limits shall operate a storefront to provide marijuana or marijuana-infused products to registered cardholders. Such individuals, entities, establishments, groups or businesses shall cease operating any storefront facility that provides marijuana or marijuana-infused products to registered cardholders on and after July 5, 2011.

Section 5: 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.

Section 6: 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 7: Pursuant to MCA section 7-5-104, upon its adoption at First Reading by a two-thirds vote of the entire City Council of the City of Billings, Montana, and signing of the Mayor thereof, this Ordinance shall take effect 12:00 a.m. July 1, 2011, and expire Ninety (90) calendar days thereafter.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 5^h day of July, 2011.

Thomas W. Hanel, Mayor

Attest:

Cari Martin, City Clerk