

JOURNAL OF SPECIAL COMMISSION PROCEEDINGS
April 19, 2022

Special City Commission Meeting

Mayor Kelly presiding
Commission Chambers Room 206

CALL TO ORDER: 4:00 PM

PLEDGE OF ALLEGIANCE

ROLL CALL/STAFF INTRODUCTIONS: City Commission members present: Bob Kelly, Susan Wolff, Eric Hinebauch, Joe McKenney and Rick Tryon. Also present were (City Manager Greg Doyon and Deputy City Manager Chuck Anderson; Planning and Community Development Director Craig Raymond;) City Attorney Jeff Hindoien and Deputy City Attorney David Dennis; (Chief Prosecutor Neil Anthon; Deputy Prosecutor Mark Dunn; Prosecutor Jacob Walmsley; Paralegal Robin Beatty; Fire Chief Jeremy Jones and Fire Marshall Mike McIntosh; Park and Recreation Director Steve Herrig; Police Chief Jeff Newton;) and Deputy City Clerk Darcy Dea.

AGENDA APPROVAL: There were no proposed changes to the agenda by the City Attorney or City Commission. The agenda was approved as presented.

CONFLICT DISCLOSURE/EX PARTE COMMUNICATIONS: For transparency, Commissioner McKenney disclosed that Janelle and Dale Yatsko contacted him during his campaign for City Commission about his views on medical marijuana and zoning.

City Attorney Jeff Hindoien responded that a conversation during a campaigning season would not be considered ex parte communication.

PETITIONS AND COMMUNICATIONS

1. None.

NEW BUSINESS

2. **ADMINISTRATIVE APPEAL.**

Mayor Kelly asked for presentation of the staff report.

City Attorney Jeff Hindoien stated that this special meeting is to discuss an appeal from a City staff decision to not issue a Safety Inspection Certificate (SIC) to Janelle and Dale Yatsko for the proposed operation of an adult-use marijuana dispensary within the City of Great Falls.

The City is operating under Ordinance 3054, which prohibits medical marijuana operations in the City of Great Falls. Since that time, I-190 and HB 701 were passed that allow certain activities relating to adult-use marijuana within the City. Staff continues to view the already existing ordinance as still precluding those activities.

Prior to the passage of I-190 and the enactment of HB 701, Kalispell and Billings were the only two other large Montana cities that had not previously allowed medical marijuana activities.

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Kalispell has since enacted a change to their zoning ordinance to allow and regulate adult-use and medical marijuana activities in certain limited zoning districts. Billings took action to refer the question of allowing or prohibiting adult-use marijuana activities within the City to the voters in November of 2021. The voters enacted an ordinance via that referendum to ban such activities.

The options available to the Commission in addressing the current SIC appeal include the following:

OPTION 1: Deny the appeal and uphold the decision of the City Manager affirming the actions of City Staff to not process or issue an SIC to the Appellants for the operation of an adult-use marijuana dispensary within the City of Great Falls, with no further directive to staff.

OPTION 2: Grant the appeal and reverse the decision of the City Manager, and direct City staff to process and issue an SIC to the Appellants for the operation of an adult-use marijuana dispensary within the City of Great Falls.

OPTION 3: Deny the appeal and uphold the decision of the City Manager affirming the actions of City Staff to not process or issue an SIC to the Appellants for the operation of an adult-use marijuana dispensary within the City of Great Falls, and direct staff to:

- A. Prepare and bring forward to the Commission proposed changes to the City's zoning ordinance that would allow for the operation of adult-use marijuana-related activities within the City of Great Falls, and thus allow for the prospective issuance of SICs to operations to be established in compliance with those zoning regulations; or
- B. Prepare and bring forward a proposed referendum package to refer an ordinance prohibiting adult-use medical marijuana-related activities to the voters of the City of Great Falls in November of 2022.

Raph Graybill, Attorney representing Appellants Janelle and Dale Yatsko, provided and discussed a handout of Montana Code Annotated (MCA) 16-12-301. He explained that the issuance of a SIC is not a policy or political decision and that the legislature made a decision that governs how adult-use marijuana is sold in "green" counties. The legislature foreclosed the political discussion and made it a legal decision.

Mr. Graybill explained that the Yatskos have operated a successful medical marijuana dispensary in the county for approximately 14 years and are currently licensed to conduct adult-use sales at that location. Recently, the Yatskos secured a location within the City to operate an adult-use dispensary. A State of Montana inspector confirmed that the proposed location complies with state law requirements, other than securing a SIC.

The issue is not about the denial of a SIC, the issue is about the refusal to process a SIC in the first place because of a City zoning law. Mr. Graybill referred to page 2, section 1(e) of his handout

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that indicates what local governments can do with regard to the regulation, sale and use of adult-use marijuana. Marijuana businesses located in “green” counties, in which the majority of voters voted at the general election to approve HB 190, are not subject to the local government approval process under sections 3 through 6 on page 2 of his handout. He further explained that page 2, section 2(a) indicates that a local government may by ordinance or otherwise regulate a marijuana business located in a “green” county. The legislature provided a mechanism where a “green” county could change to a “red” county by having a referendum. The Legislature’s specific decision to allow adult-use sales in a “green” county overrides any generic self-government authorities that the City might rely on to ban adult-use marijuana sales. Mr. Graybill stated that general powers are given to a City under state law and Cities must follow state requirements.

Mayor Kelly asked if the Commission members had any questions.

Commissioner Tryon inquired about the clearances that the state provided the Yatskos, as well as Mr. Graybill’s interpretation of section 1(e) of MCA 16-12-301.

Mr. Graybill responded that the Yatskos followed all of the state requirements that are imposed on businesses in the county and that the state regulatory structure indicates that local approval is required. A City could encumber the manner of restrictions on future adult-use marijuana dispensaries in the City; however, it cannot regulate them out of existence. If a City has a zoning regulation that prohibits processing this SIC request, then that is the same as banning the operation of adult-use marijuana dispensaries.

Commissioner Tryon further received clarification that Ordinance 3054 would continue to exist if the Commission grants the appeal; however, the ordinance would not apply to an adult-use marijuana dispensary. Commissioner Tryon inquired what would happen to the Yatskos’ proposed business if the Commission grants the appeal but the voters opted to prohibit the sale of marijuana within the city limits.

Attorney Graybill responded that it would be up to the Yatskos to make that determination if it would be worth the risk for their business.

City Attorney Hindoién added that when Billings sent the issue to the voters, the sale of recreational marijuana had not opened yet; however, since it is now available, it has opened the door for applications by current medical licensees to move forward in Great Falls.

Commissioner Wolff commented that page 2, sections 1(e) and 2 of the handout are conflicting.

Mr. Graybill responded that 1(e) refers to a City’s limitation with regard to banning adult-use marijuana dispensaries and 2 (a) gives a City flexibility with regard to doing inspections of licensed adult-use marijuana dispensaries. The Legislature chose a broad policy that stated cities have to allow adult-use marijuana dispensaries to operate in a “green” county unless a referendum indicates otherwise.

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City Attorney Hindoien added that the statutory language in the handout has nothing to do with the Charter statutory status of a local government and it just sets apart the “red” and “green” counties.

Mayor Kelly inquired if there were other local governments that had to decide whether it should allow businesses that the Federal government considers illegal and state government does not.

Mr. Graybill responded that marijuana regulations are unusual. States have ignored federal law by allowing it and a City should follow state statute first. This is state policy that the City is being asked to follow and implement.

Mayor Kelly received clarification that the reason adult-use marijuana dispensaries want to be in the City limits is because of the legislature.

Mayor Kelly asked if there were any comments from the public in favor of the appeal to have the City staff decision overturned.

Ben Thompson, City resident, commented that citizens had previously voted for allowing adult-use marijuana dispensaries to operate in the City.

Greg Duncan, commented that he has known the Yatskos for many years and has had many business deals with them. The Yatskos are honest, trustworthy, they follow rules and regulations and they would be a good example for other dispensaries.

Mayor Kelly asked if there were any comments from the public in opposition of the appeal to have the City staff decision overturned.

Written correspondence in opposition of the appeal to have the City staff decision overturned was received from City residents **Bill Bronson** via April 17, 2022 email; **Lewis and Kandy Zanto** via April 19, 2022 email and **Carolyn Sluys** via April 19, 2022 email.

Julie Bass, Mental Health Counselor, explained that a petition will be filed with the Cascade County Elections Office to put recreational marijuana on the November ballot in hopes of prohibiting it in the City. She commented that she has seen the effects that marijuana and THC has on young people.

Cheryl Scheer, City resident, commented that Great Falls High School SRO Detective Houston spoke about drug issues and the negative effects of marijuana. Ms. Scheer commented that marijuana use causes students’ academic performance to go down, they lose motivation, have depression and other emotional issues. She explained that studies indicate that pot is a gateway drug and she has witnessed firsthand the effects that marijuana use has on people. Ms. Scheer questioned if the welfare of the young people is more important than those profiting from harming the young and vulnerable.

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Beth Morrison, Substance Abuse Prevention Specialist, requested that, if the Commission considers a referendum, it provide time to create zoning regulations. Ms. Morrison stated that she would be devastated to see marijuana dispensaries in the City because of issues that the youth in the community already face.

Arvid Johnson, City resident, commented that he is a chemically dependent alcoholic who sobered up in 1980 and has worked with many alcoholics and chemically dependent citizens. He explained that marijuana is so much stronger now and is a gateway drug. He suggested that the Commission give more thought to allowing a marijuana dispensary in the City. He urged the community to fight tooth and nail to not allow marijuana dispensaries to operate in the City.

Gaye Lynn Johnson, City resident, concurred with previous opponents and she commented that she has lost several family members due to drug use. She and her husband have volunteered for the past 40 years to help families involved in marijuana and other drug use and have seen the devastation drugs cause.

Nancy Donovan, City resident, concurred with previous opponents and she commented that the community needs more time to think about this. She explained that studies indicate that high levels of THC taken daily can cause severe, irreversible psychosis. She expressed concern with regard to Mr. Graybill's opinion and perception of the MCA. She concluded that the City should not be a more open and accessible community for drugs.

Shane Etzweiler, President/CEO of the Great Falls Area Chamber of Commerce, commented that there are concerns for workforce development and drug use is a factor in that effort. He discussed reports with regard to black market activity and illegal dispensaries in other states that have legalized marijuana.

Steve Zabawa, SafeMontana, Billings, Montana, via cell phone, suggested adding it to the November ballot to opt out of recreational marijuana activities in the City and holding off on everything else until then. He explained that the decision of whether or not to allow marijuana dispensaries in the City should be the voters' decision and not the Commission's. Mr. Zabawa concluded that people who use marijuana are more likely to use stronger drugs.

Mayor Kelly closed the public hearing and asked if there was any comments from the Appellants or Mr. Graybill.

Mr. Graybill commented that the Legislature and I-190 provided time for local governments to plan for the zoning process when recreational marijuana laws would not go into effect until January 2022.

City Attorney Hindoien concurred with Mr. Graybill that this is a legal decision rather than a public policy decision.

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Mayor Kelly asked the will of the Commission.

Mayor Kelly moved, seconded by Commissioner Hinebauch, that the City Commission grant the appeal and reverse the decision of City staff to not process or issue a Safety Inspection Certificate to the Appellants for the operation of an adult-use marijuana dispensary within the City of Great Falls.

Mayor Kelly asked if there was any discussion amongst the Commissioners.

Commissioner Wolff commented that this is a difficult decision because of the reports from the Crime Task Force about drug issues in the community. The only way she could support the motion on the table would be to have a referendum in November 2022.

Commissioner Hinebauch expressed support of granting the appeal because of state law; however, he would like to know more about the timeline with regard to determining zoning requirements.

Mayor Kelly inquired about the process of putting in place some of the rules and regulations that Mr. Graybill had discussed in section 2(a) of his handout.

City Attorney Hindoien responded that City staff could provide a proposed framework for regulating adult-use marijuana-related activities in the City and a proposed amendment to the City's zoning ordinance to the Commission.

Commissioner Hinebauch expressed support of granting the appeal and moving forward with the zoning and regulatory process as soon as possible.

Commissioner Tryon commented that the Commission is deciding something simple, to grant or not grant a SIC; however, the decision is difficult because of state and federal laws. He expressed support of not granting the appeal and moving forward with a referendum to let the voters decide.

Commissioner McKenney explained that he is divided because of his conservative principles. He expressed opposition to granting the appeal, but agreed that the voters should reconsider the issue with a referendum.

Mayor Kelly expressed concern for families affected by drugs and is moved by the community effort to prevent young people access to drugs. He commented that the issue is not a debate about the merits of marijuana itself, it is about following the directive of the law. Mayor Kelly concluded that he respects the Yatskos for the business they are trying to bring to the community and that he is not personally against what they do; however, the community is dealing with a highly emotional issue.

After a brief parliamentary discussion, Mayor Kelly withdrew his main motion and made the following new motion.

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Mayor Kelly moved, seconded by Commissioner McKenney, that the City Commission deny the appeal and uphold the decision of the City Manager affirming the actions of City staff to not proceed within the City of Great Falls and direct staff to prepare and bring forward a proposed referendum package to refer an ordinance prohibiting adult-use and medical marijuana-related activities to the voters of the City of Great Falls in November of 2022, and along with that referendum package, include the rules and regulations that the City would propose going forward so that those businesses would be aware of what those restrictions or regulations would be.

Mayor Kelly asked if there was any further discussion amongst the Commissioners. Hearing none, Mayor Kelly called for the vote.

Motion carried 4-1 (Commissioner Hinebauch dissenting)

ADJOURNMENT

There being no further business to come before the Commission, **Mayor Kelly moved, seconded by Commissioner Wolff, to adjourned the special meeting of April 19, 2022, at 5:40 PM.**

Motion carried 5-0.

Mayor Bob Kelly

Deputy City Clerk Darcy Dea

Minutes Approved: May 3, 2022