

ORDINANCE 3049

{AS AMENDED}

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, IMPOSING A TEMPORARY MORATORIUM ON THE OPENING, OPERATION, AND LICENSING OF ANY ESTABLISHMENTS THAT GROW, SELL, OR DISTRIBUTE MEDICAL MARIJUANA, AND DIRECTING THE STUDY OF NEW PROPOSED ORDINANCES TO REGULATE SUCH ESTABLISHMENTS

WHEREAS, on November 2, 2004, Montana voters adopted the Medical Marijuana 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 surrounding the Act and the concerns of local governments about its application in their communities and the parameters under which a local government has authority to regulate its effects; and,

WHEREAS, the Medical Marijuana Act permits the cultivation, manufacture, delivery, transfer, and transportation of marijuana or paraphernalia by a qualified 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 Great Falls; 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 effect create a public nuisance; and,

WHEREAS, section 76-2-306, MCA, permits a city to adopt an interim zoning ordinance for the immediate preservation of the public peace, property, health, or safety, which interim zoning ordinance may take effect immediately; and,

WHEREAS, State law 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 ordinances may prohibit uses that may be in conflict with a contemplated zoning proposal, which the legislative body is considering within a reasonable time; and,

WHEREAS, the City Commission of the City of Great Falls has determined that the licensing, opening, or operation of any establishments that grow, sell, or distribute medical marijuana or paraphernalia within the City limits of the City of Great Falls, 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 Commission conducted a public hearing on February 2, 2010, with respect to this proposed Ordinance, and invited public comment.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Great Falls, Montana, as follows:

Section 1: All 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.

Section 3: The City Commission hereby directs the Great Falls Planning and Community Development 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 Great Falls, Montana, or blight, upon the City of Great Falls, Montana (and its entire zoning jurisdiction and its inhabitants), or the schools, recreational facilities, or neighborhoods located therein.

Section 4: The City Commission hereby directs the Great Falls Planning and Community Development Department to present the findings of its investigation and its recommendations to the Great Falls Planning Advisory Board, and that the Board shall then provide its recommendation to the City Commission, so that the City Commission may consider the issue within approximately three (3) 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 establishments attempting to grow, sell, or distribute medical marijuana or paraphernalia are hereby prohibited from being opened, operated, or licensed within the City of Great Falls. 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 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. During the period of this interim ordinance, the number of plants in a caregiver’s possession may not exceed the number of plants allowed under the Medical Marijuana Act for the number of qualifying patients, which were registered to him or her on the effective date of this ordinance.

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 prosecution in the same manner as one who violates City ordinances, and shall be subject to the general penalty section set forth in section 1.4.070 of the City Code of Great Falls, and shall further be subject to such civil action to enjoin or abate the public nuisance, 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 equity.

Section 7: This Ordinance is made expressly retroactive and shall apply to all applications for building permits, zoning variances, conditional use permits, zoning changes, and all other applications for building and land use permits, business licenses, safety inspections certificates, development activity, land use activity, land use changes, and any other applications for approval or any type or nature, which have been received by the City of Great Falls and not yet granted as of the effective date of this Ordinance.

Section 8: In the event any word, phrase, clause, sentence, paragraph, section, or other part of this 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 Commission of the City of Great Falls, Montana, and signing by the Mayor thereof.

APPROVED by the City Commission on first reading January 19, 2010.

PASSED, APPROVED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on second reading February 2, 2010.

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Michael J. Winters, Mayor

ATTEST:

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Lisa Kunz, City Clerk

(Seal of the City)

APPROVED FOR LEGAL CONTENT:

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Chad Parker, Acting City Attorney

State of Montana     )

County of Cascade   : ss

City of Great Falls   )

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that I did post, as required by law and as prescribed and directed by the City Commission, Ordinance 3049 in three places within the limits of said City to-wit:

On the Bulletin Board, first floor, Civic Center Building;

On the Bulletin Board, first floor, Cascade County Court House;

On the Bulletin Board, Great Falls Public Library

(Seal of the City)

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Lisa Kunz, City Clerk