

## City of Billings Zoning Commission Meeting September 7, 2010

**The City of Billings Zoning Commission met on Tuesday, September 7, 2010, 2010 in the 3<sup>rd</sup> Floor of the Parmly Billings Library located at 510 North Broadway, Billings, Montana.**

Chairman Leonard Dailey, Jr. called the meeting to order at 4:30 p.m. Chairman Dailey said the recommendations of the Zoning Commission on the items heard tonight will be forwarded to the City Council to be heard at their meeting during a public hearing scheduled for **September 27, 2010**, at 6:30 p.m. in the City Council Chambers.

| <b>Commission and Staff</b> |   | <b>01/05/2010</b> | <b>02/02/2010</b> | <b>03/02/2010</b> | <b>04/06/2010</b> | <b>05/04/2010</b> | <b>06/01/2010</b> | <b>07/06/2010</b> | <b>08/03/2010</b> | <b>09/07/2010</b> | <b>10/05/2010</b> | <b>11/02/2010</b> | <b>12/07/2011</b> |
|-----------------------------|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Leonard Dailey, Jr.         | Chairman                                      | 1                 | 1                 | 1                 | -                 | 1                 | 1                 | 1                 | 1                 | 1                 |                   |                   |                   |
| Matt Krivonen               | Commissioner                                  | 1                 | 1                 | 1                 | -                 | A                 | A                 | 1                 | 1                 | 1                 |                   |                   |                   |
| Barbara Hawkins             | Commissioner                                  | 1                 | E                 | E                 | -                 | 1                 | 1                 | E                 | 1                 | 1                 |                   |                   |                   |
| Dan Wagner                  | Commissioner                                  | -                 | -                 | 1                 | -                 | A                 | 1                 | 1                 | 1                 | 1                 |                   |                   |                   |
| Edward Workman              | Commissioner                                  | 1                 | 1                 | 1                 | -                 | 1                 | 1                 | 1                 | 1                 | 1                 |                   |                   |                   |
| Candi Beaudry               | Director,<br>Planning &<br>Community Services | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | 1                 |                   |                   |                   |
| Nicole Cromwell             | Planner II, Zoning<br>Coordinator             | 1                 | 1                 | 1                 | -                 | 1                 | 1                 | 1                 | 1                 | 1                 |                   |                   |                   |
| Tammy Deines                | Planning Clerk                                | 1                 | 1                 | 1                 | -                 | 1                 | 1                 | 1                 | 1                 | 1                 |                   |                   |                   |
| Wyeth Friday                | Planning Division<br>Manager                  | -                 | -                 | 1                 | -                 | -                 | -                 | -                 | -                 | 1                 |                   |                   |                   |
| Juliet Spalding             | Planner II                                    | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 |                   |                   |                   |
| Lora Mattox                 | Planner II                                    | 1                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 |                   |                   |                   |

| <b>Total Number of 2009 Applications</b> | <b>01/05/2010</b> | <b>02/02/2010</b> | <b>03/02/2010</b>     | <b>04/06/2010</b> | <b>05/04/2010</b> | <b>06/01/2010</b> | <b>07/06/2010</b> | <b>08/03/2010</b> | <b>09/07/2010</b> | <b>10/05/2010</b> | <b>11/02/2010</b> | <b>12/07/2010</b> | <b>Total</b> |
|--|-------------------|-------------------|-----------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------|
| <b>Zone Change</b>                       | 1                 | 2                 | 4<br>(2-return items) | 0                 | 0                 | 3                 | 0                 | 0                 | 2                 |                   |                   |                   | 10           |
| <b>Special Review</b>                    | 1                 | 0                 | 0                     | 0                 | 1                 | 0                 | 2                 | 2                 | 0                 |                   |                   |                   | 5            |

Chairperson Dailey introduced the Planning Department Staff and Commission:  
 Nicole Cromwell, Planner II/Zoning Coordinator  
 Tammy Deines, Planning Clerk

**Public Comments:**

Chairman Dailey called for public comment at 4:43 p.m. There was none. Chairman Dailey closed the public comment portion of the meeting.

**Approval of Minutes August 3, 2010**

**On a motion by Commissioner Wagner, seconded by Commissioner Workman and approved with a 5-0 voice vote, the minutes of August 3, 2010 are approved as submitted.**

**Disclosure of Conflict of Interest**

There was no disclosure of any conflict of interest by the members of the Commission.

**Disclosure of Outside Communication**

Chairman Dailey stated that he received a letter dated June 7, 2010 from a caregiver and it was noted by the Zoning Coordinator, who routed the letter to the members of the audience. Boardmember Hawkins stated that she also received a duplicate letter but did not have it available at tonight's meeting.

**Public Hearings:**

At 4:45 p.m. Chairman Dailey reviewed the rules and the procedures by which the City Zoning Commission public hearings are conducted.

**Item #1 City Zone Change #867 – 3333 Central Ave -** Chairman Dailey called for the staff

report. Ms. Cromwell read the legal description for this property. She opened her presentation with a review of the staff report and followed with a PowerPoint presentation.

## **REQUEST**

This is a zone change request from Residential 6,000 (R-60) to Neighborhood Commercial (NC) on Lot 6, Block 6, Central Acres Subdivision, 4<sup>th</sup> Filing located at 3333 Central Avenue. The property is owned by Paul and Sharon Allen. The owners conducted a pre-application neighborhood meeting on July 17, 2010, at the residence on the subject property. The pre-application meeting notes and attendance list are included as Attachment E.

## **RECOMMENDATION**

The Planning Division is recommending approval.

### **Discussion:**

At 4:50 p.m., Chairman Dailey asked the members of the Commission for questions and discussion. There was none.

### **Proponents:**

At 4:51 p.m., Chairman Dailey called for proponents for City Zone Change #867.

### **Applicant**

#### **Sharon Allen, 3333 Central Ave, Billings, Montana**

Ms. Allen stated that they are trying to align this property for the long term and possibly put it on the market for resale. She said that they are aware of the changes in this location with the surrounding developments on Shiloh Road and Central Avenue.

Chairman Dailey asked if there was anyone else wishing to speak in favor of City Zone Change #867. There was none. Chairman Dailey asked if there was anyone else wishing to speak against City Zone Change #867. There was none.

Chairman Dailey closed the public hearing at 4:52 p.m. and called for a motion.

### **Motion**

**Commissioner Wagner made a motion and it was seconded by Commissioner Hawkins to forward a recommendation to City Council of approval of City Zone Change #867 as presented by staff.**

### **Discussion**

Chairman Daily called for discussion on the motion. The members of the Board concurred that this seems to be a logical request.

**Motion carries, 5-0.**

The City Council has designated **Monday, September 27, 2010**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the above-mentioned item.

**Item #2-City Zone Change #868 – Text Amendment – Medical Marijuana** - Chairman Dailey called for the staff report. Ms. Cromwell read the legal description for this request. Ms. Cromwell stated that paper copies of the ordinance are available to the members of the audience on the entrance tables.

A City Council initiated amendment to the Unified Zoning Regulations to further regulate medical marijuana. The City Council initiated this amendment on Monday, August 9, 2010. Copies of the draft ordinance are available from the City Clerk, the Planning Division and on the Planning Division webpage at <http://ci.billings.mt.us>

Nicole Cromwell opened her staff presentation. She reviewed the proposed ordinance (Attachment E below), and clarified the proposed amendments to the Zoning Regulations. She stated most existing businesses would need to relocate under the proposed ordinance and most of those relocations would require special review approval. She pointed out potential allowable locations for MMBs as allowed by right or by special review under the proposed ordinance on a posted map. She stated that this is not meant to be definitive demonstration and an individual site would have to be evaluated on the best available current information on a location to determine if it would fit this type of request. She said that Staff's best estimate is that there is approximately 350 acres of land available for this type of use under the proposed ordinance.

## **REQUEST**

Section 27-306 of the Unified Zoning Regulations regulates where types of commercial and industrial uses may be located within the city limits by zoning district type. Medical Marijuana Businesses (MMB) are currently classified in the same category as other retail businesses and were generally allowed throughout all commercial or industrial zoning districts. In October 2009, U.S. Attorney General issued a memorandum to all federal prosecutors stating that enforcement of the Federal Controlled Substances Act (CSA) should not be focused on persons lawfully engaged in the growing, manufacturing distributing or use of marijuana for medical purposes in states where such activity has been allowed by state law (DOJ memorandum). Since October 2009, the growth in the number of registered patients and their medical marijuana providers has ballooned within Billings and throughout the state. In response to this industry growth, the City Council requested the Planning Division prepare an interim zoning ordinance in November 2009. The City Council considered the interim ordinance but chose not to adopt the ordinance and instead appoint an ad hoc committee to study the issue and bring forward options for local regulation. In January 2010, the ad hoc committee was appointed and began its work. On May 11, 2010, the City Council enacted a 6-month moratorium on any new MMB within the city limits. The ad hoc committee met once-a-week to consider regulatory options and presented its recommendation to the Council at a work session on July 19, 2010. On August 9, 2010, the Council initiated the proposed amendment to the Unified Zoning Regulations. The proposed amendment will apply only within the city limits. The County 4-1/2 mile jurisdictional zoning area will not be affected by this city text amendment.

Attachment E: Proposed Ordinance  
ORDINANCE NO. 10-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27- 201- DEFINITIONS; REVISING SECTION 27-306 DISTRICT REGULATIONS COMMERCIAL AND INDUSTRIAL USES; ADD A NEW SECTION 27-624 – MEDICAL MARIJUANA BUSINESSES (CITY ONLY); REVISING SECTION 27-405 NONCONFORMING USES OF STRUCTURES; AND BY REVISING SECTION 27-708 – PROHIBITED SIGNS AND SIGN STRUCTURES AND ADOPT THE REVISIONS AND ADDITIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

Section 1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC*, provide for amendment to the City Zoning Regulations from time to time. The City Council initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the proposed amendments to the City Zoning Regulations.

Section 2. DESCRIPTION. The zoning regulation shall apply to all land within the City of Billings.

Section 3. AMENDMENT. That the Billings, Montana City Code be amended by revising Section 27-201 by adding the following language:  
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 use" means:

(a) the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of marijuana or paraphernalia by a qualifying patient or a caregiver relating to the consumption of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition;

(b) the use of marijuana or paraphernalia by a qualifying patient to alleviate the symptoms or effects of the patient's debilitating medical condition; or

(c) the use of paraphernalia by a caregiver for the cultivation, manufacture, delivery, transfer, or transportation of marijuana for use by a qualifying patient.

MEDICAL MARIJUANA BUSINESS: includes the following definitions:

MEDICAL MARIJUANA GROWING OPERATION is the cultivation of medical marijuana, including harvesting and drying the plant 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 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.

Section 4. AMENDMENT. That the Billings, Montana City be amended by revising Section 27-306 as follows:

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

| 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<br>A - ALLOWED               |                          |                         |                      |                    |                           |                       |                  |        |                            |
| DIVISION A - AGRICULTURE, FORESTRY AND FISHING   |                          |                         |                      |                    |                           |                       |                  |        |                            |
| 01 AGRICULTURAL PRODUCTION - CROPS:              |                          |                         |                      |                    |                           |                       |                  |        |                            |
| – Offices only                                   | A                        | A                       | A                    | A                  | A                         | A                     | A                |        | A                          |
| – Production only                                | A                        | A                       | A                    | A                  | A                         | A                     | A                | A      |                            |
| – Sales  |                          | A                       | A                    | A                  | A                         | A                     | A                |        |                            |
| – <u>Medical Marijuana Growing Operations***</u> |                          |                         |                      |                    |                           | <u>A</u>              | <u>A</u>         |        |                            |

|   |  |  |  |  |  |  |  |  |  |
|---|--|--|--|--|--|--|--|--|--|
| <u>*** Medical Marijuana Growing Operations are regulated in Section 27-624</u> |  |  |  |  |  |  |  |  |  |
|---|--|--|--|--|--|--|--|--|--|

| TITLES AND DESCRIPTION OF INDUSTRIES<br><br>SR - SPECIAL REVIEW<br>A - ALLOWED  | Residential Professional | Neighborhood Commercial | Community Commercial | Highway Commercial | Central Business District | Controlled Industrial | Heavy Industrial | Public | South 27th Street Corridor |
|---|--------------------------|-------------------------|----------------------|--------------------|---------------------------|-----------------------|------------------|--------|----------------------------|
| 28 CHEMICALS AND ALLIED PRODUCTS:<br>– Offices only<br>– 2833-Medicinal & Botanical Products<br>– 2834 – Pharmaceutical Preparations<br>– <u>Medical Marijuana Manufacturing ***</u><br><u>*** Medical Marijuana Manufacturing is regulated in Section 27-624</u> | A                        | A                       | A                    | A<br>A<br>A<br>A   | A                         | A<br>A<br>A<br>A      | A<br>A<br>A<br>A |        | A                          |

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

Section 5. AMENDMENT. That the Billings, Montana City be amended by adding a new section, Section 27-624 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 providers of Medical Marijuana as provided in MCA 50-46-101 et seq. as currently existing or subsequently amended.

(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 uses 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 uses in 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:

- (1) The opening or commencement of any new Medical Marijuana Business;
  - (2) The conversion of an existing business to any Medical Marijuana Business;
  - (3) The addition of a Medical Marijuana Business to any other existing business;  
or
  - (4) 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 Growing Operation, Manufacturing and Retail 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 Growing Operation 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 Manufacturing 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.

(3) 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 Retail 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.
- (4) 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 Growing, Manufacturing or Retail 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.
- (5) 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.
- (6) Medical Marijuana Growing Operation are permitted in the following zones only:
- a. Controlled Industrial (CI) Zone;
  - b. Heavy Industrial (HI) Zone.
- (7) Medical Marijuana Manufacturing Businesses are permitted in the following zones only:
- a. Highway Commercial (HC) Zone;
  - b. Controlled Industrial (CI) Zone;
  - c. Heavy Industrial (HI) Zone.
- (8) Medical Marijuana Retail Businesses are permitted in the following zones by Special Review only. No waiver from the use separations shall be granted for Medical Marijuana Retail Businesses subject to Special Review:
- a. Central Business District (CBD)
  - b. Highway Commercial (HC) Zone;

c. Controlled Industrial (CI) Zone;

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. as currently existing or subsequently amended. Businesses or persons found in violation of MCA 50-46-101 et seq. as currently existing or subsequently amended, shall be deemed also in violation of this chapter.

Section 6. AMENDMENT. That the Billings, Montana City be amended by revising Section 27-405 as follows:

Sec. 27-405. Nonconforming Uses of Structures.

(h) Any Medical Marijuana Business, located within the limits of the City of Billings, existing upon passage of this chapter which does not comply with the requirements established herein shall be deemed a legal nonconforming use. All existing legal nonconforming Medical Marijuana Businesses, as of the effective date of this chapter, or any amendment hereto, shall comply with the provisions of this chapter within four (4) years from the date of the enactment of this section or any amendment hereto. (Refer also to BMCC Section 27-624.)

**Section 7. AMENDMENT.** That the Billings, Montana City be amended by revising Section 27-708 as follows:

**Sec. 27-708. Prohibited signs and sign structures.**

- (5) *Unclassified signs:* The following signs are also prohibited, which:
- a. Bear or contain statements, words, or pictures of an obscene, pornographic, immoral character, or which contain advertising matter which is untruthful;
  - b. Contain statements, words, pictures or symbols that depict a Schedule I controlled substance as listed by the Federal Controlled Substances Act;
  - ~~b.~~ c. Are painted on or attached to any fence or any wall which is not structurally a part of a building, except to identify a residence or residence structure by means of posting the name of the occupant or structure, and the street address;
  - ~~c.~~ d. Operate or employ visible moving parts or any portion of which moves, or give the illusion of motion except as permitted in this article;
  - ~~d.~~ e. Emit audible sound, odor or visible matter; or

- e. f. Signs which, by reason of their size, location, movement, content, coloring or manner of illumination, may be confused with or construed as a traffic control sign, signal or device, or the light of an emergency or road equipment vehicle, or which hide from view any traffic or street sign or signal or device.

**Section 8. REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 9. EFFECTIVE DATE.** This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading September 27, 2010.

PASSED, ADOPTED AND APPROVED on second reading October 12, 2010.

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Thomas W. Hanel, Mayor

ATTEST:

BY: \_\_\_\_\_  
Cari Martin, City Clerk

ZC #868 – Text Amendment Medical Marijuana

**RECOMMENDATION**

The Planning Division is recommending the Zoning Commission consider the Ad Hoc Committee and City Council recommendations, consider the staff suggestions for consolidation of the three business types and forward a recommendation to the City Council to approve the amendments to regulate medical marijuana businesses in the City.

Ms. Cromwell stated that staff has reviewed the ordinance, the ad hoc committee recommendations and the State Interim Committee’s proposed changes to the regulations and are making the recommendation below with an additional recommendation that the three categories in the definition be combined into one definition of a Medical Marijuana Business. She said that Staff does not believe that State Law allows someone to just grow marijuana; but instead requires that the person be a registered care giver, and in order to be a registered care giver, the person must

have patients. Along with this Staff is recommending that Medical Marijuana Businesses be allowed through special review approved in Highway Commercial (HC), the Central Business District (CBD), and in Controlled Industrial (CI) zones; and allowed by right in Heavy Industrial (HC) zones. Ms. Cromwell asked the members of the Board for questions.

**Discussion:**

At 5:06 p.m., Chairman Dailey asked the members of the Commission for questions and discussion. Chairman Dailey noted the staff report and the options for this Commission's recommendations, being: 1) approve the request as proposed; 2) approve the request with the modified language; or 3) deny the amendment. He asked for a brief profile of the members of the Ad Hoc committee. Nicole Cromwell acknowledged Councilman Dennis Pitman, who is the chairman of the Ad Hoc Committee and attending this evening. She stated that the committee consisted of nine members including a City Council member, a medical doctor, staff, and a cross section of the public. Chairman Dailey asked for clarification of the staff request for consolidation of the definition of Medical Marijuana Businesses (MMB). Nicole Cromwell said that the consolidation of the definition would encompass all of the three categories that the ad hoc committee recommended. Chairman Dailey asked if a situation could present itself in which those three operations of the business could be at different locations. Nicole Cromwell said that this situation could happen but it would still be considered as one business. She stressed that trading or selling between caregivers is not currently allowed. She stated that a medical marijuana grower must have patients, and would only be allowed a certain amount of plant material per patient. Nicole Cromwell stated that under the staff recommendation, changes in each location would have to have a special review. She explained the language in the original ordinance and said that it would be possible to have one business with separate locations. Commissioner Workman read aloud the staff proposal for consolidation of the definition of a MMB. He noted that the Human Services Interim Committee voted 7-0 to come forward with a number of proposals and suggested creation of new categories for marijuana dispensing and growing, but did not discuss the manufacturing. He asked about the manufacturing and if we are "at odds" with what is happening. Nicole Cromwell said that "at odds" may not be correct. She clarified and said Staff's opinion is that three different definitions in local zoning for different types of Medical Marijuana Businesses may give the unintended impression that a business entrepreneur could just be a grower; and under current Montana law this is not allowed. Commissioner Workman noted the amortization required in the proposed ordinance and that after four years, if a caregiver were dispensing in their home, they would have to relocate. Nicole Cromwell stated that under the current code, an MMB could have three different sites as long as each of them was conforming to the code as written. Under the proposed regulation most sites would require special review approval. She continued and gave further clarification on the review process for retail sales within Highway Commercial, (HC), Central Business District, (CBD), and Controlled Industrial, (CI), zones. In response to a question by Commissioner Wagner, Nicole Cromwell stated that providers are not limited to the number of patients allowed, but the amount of product per patient is limited. Commissioner Leonard inquired about the 4-year amortization schedule and a court case that was included in the packet. Nicole Cromwell explained that the previous amortization scheduled used for sexually oriented business was challenged and it did stand in Federal court. She said that there is no guarantee that this amortization would

withstand a challenge; but staff has shown through maps 350 acres of land that may be suitable for this use and could accommodate relocation. She stressed that the map does not depict this property is available for rent, for lease or for sale, but instead is available under the proposed regulations. Chairman Dailey noted the information provided on law enforcement concerns on pages 14, and pages 15-37 of the staff report. Nicole Cromwell said that this information was provided to help the members of the Commission understand the reasoning for the 1,000 foot separation requirement to residential zones, parks, libraries, schools and other sensitive land uses. She explained that this is included as there is concern there are negative affects whether it is property values, security concerns, or criminal activity in the area. She stated that this will be used as a buffer for all types of MMB businesses. She commented that there have been instances of burglaries and vandalism of these types of businesses prior to the enactment of the moratorium. Chairman Dailey pointed out that zoning violations are complaint driven. He asked if there will be a closer oversight for these types of businesses. Nicole Cromwell stated that the number of Code Enforcement Staff has not been increased since 1991 and there are no plans to change that. She stated that she believes the code is clearly written and code enforcement would not be a challenge for interpretation. She noted the only exception is that Staff has found that there are businesses that are not MMBs, such as testing companies or case management businesses related to MMBs. She said these businesses should not raise the same types of concerns and would not be regulated by the proposed ordinance as MMBs.

*\*\*Chairman Dailey recognized City Councilman Dennis Pitman, City of Billings Ward II, who requested to speak, as his schedule required him to leave this meeting soon.*

**Dennis Pitman, 726 Aquarius, Billings, Montana, 59105**

Councilman Pitman apologized for the interruption and stated the he is the Chairman of the Ad Hoc Committee. He stated that there are several members attending including Representative Cary Smith; Caregiver Mark Higgins; Dr. Stickney, representing the medical field; Pharmacist Gene Jurovich; Connie Wardell, representing rental property owners; and patient Anne Bustell. He asked for questions from the members of the Commission. Commissioner Workman asked about the limitation of patients per caregiver, and noted that at the State level it was suggested that five patients per provider be allowed. Councilman Pitman stated that currently there are no rules on this as these are all proposals that have not made it through the Legislature. He said that at this point, the City has the ability to do what we want. He commented that the space itself will limit the number of patients. He stressed that this request focuses on zoning issues and the location of the business and that the State focuses on the care giving, providers, and patients. He said that if the State does not do anything, the City still would then have the ability to put regulations in place. Commissioner Hawkins noted that the City of Helena is not issuing any MMB business licenses within the City, as it is not allowed within Federal law. She asked if this issue had come up in their meetings. Councilman Pitman stated that several licenses had been issued prior to the Ad Hoc Committee being formed; and City Council has discussed prohibition in the City as well. Commissioner Hawkins asked if there is any limitation on the distance between businesses. Nicole Cromwell stated that they did not recommend a separation between each MMB and it is possible that several of these businesses could be located in the same general location. Chairman Dailey



asked if this is a “work in futility”, understanding that the Legislature may take action. Nicole Cromwell said that many staff hours have been spent to address this issue within the current situation, with the understanding that the code may have to be amended if the state law changes in 2011.

**Mark Higgins, 814 Ahoy Ave, Billings, Montana**

Mr. Higgins said that he is a member of the Ad Hoc Committee. Mr. Higgins stated that he brought the moratorium idea to the Council in May of 2009 as he was aware of the trend that was happening. He stated that a moratorium was the responsible thing to do. In response to a question by Chairman Dailey, Mr. Higgins said that if this is approved in the way that it is written every business would be regulated and even his business would have to go through a special review. He said that this would create a hardship as he has already done everything to comply. He stressed that there is a need for this type of business for medical use. Nicole Cromwell clarified and said that special reviews are not allowed retroactively and his business would be considered a conforming location. Should Mr. Higgins move his business to a new location, the special review process would ensue.

**Representative Cary Smith, House District #55, 5522 Billy Casper Drive, Billings, Montana**

Representative Smith stated that he has served on a Health and Human Services Committee and on the Ad Hoc committee. He said that he feels that the membership of the Ad Hoc Committee was skewed to those that had a vested interest in seeing medical marijuana continued and it was not representative of a broad range of the community. He said that when the State passed the medical marijuana law this was based on a compassion issue for people suffering from debilitating diseases. He stated that it was not intended to regulate the set up and establishment of medical marijuana businesses. Representative Smith said that proposals from the interim committee will be forwarded as bills to the Legislature. He stated that the citizens’ initiative that was circulated to repeal the law generated 8,000 signatures in one week’s time. He said that all of the members of the Ad Hoc Committee voted for the current proposal except for him. He stated that he feels that this zone change is only putting the current problem in a finite location and does not address the other issues. In response to a question by Commissioner Hawkins, he stated that he feels that no medical marijuana businesses should be allowed in the City at all.

**Proponents:**

At 5:33 Chairman Dailey called for proponents for City Zone Change #868.

**Mark Higgins, 814 Ahoy Avenue, Billings, Montana**

Mr. Higgins stated that there is no support group in this industry, and “people are out for themselves”. He said that he seems to be the constant participant at all of these meetings as he is trying to do things the right way with the business. Mr. Higgins said his business accounts for all sales and medicines dispensed. He said they grow; produce and retail sell all of the medicine out of one business. He stated there is a need for regulations but they should not be so restrictive that everyone should be regulated to one area. He said that they have to have a place in order to do business and have a right by State Law to be compensated for the services they provide. He said

their patients tend to use this responsibly and take pride in dealing with somebody that is legitimate. Mr. Higgins stated the burglaries and vandalism have taken place at one facility as they do business in the wrong manner. Mr. Higgins stressed these businesses should have as much transparency as they could possibly have.

Mr. Chairman Dailey called for anyone else in favor of City Zone Change #868. No one else testified in favor.

### **Opponents**

Chairman Dailey asked if there was anyone wishing to speak against City Zone Change #868.

#### **Susan Smith, 5522 Billy Casper Drive, Billings, Montana**

Ms. Smith said she worked with the community group, "Safe Communities, Safe Kids" to get the petition signed. She stated they only had 1 week to obtain the signatures and were only 5,000 qualified votes short state wide of placing this on the ballot. She said many of this city's citizens are angry. She said when this law was passed it was done to tie the hands of law enforcement and not address the compassionate level. She stated this information is confusing and it should be addressed by banning these types of businesses from the city. She commented this is out of control in several other states. Ms. Smith said the concern is for families, our city, and the community. She stated it becomes a nightmare for cities as they are unable to enforce the law. She asked the members of the Commission to "Think this over as it is a problem and always will be a problem."

#### **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana**

Mr. Zurbuchen stated he had read this amendment and attended the Ad Hoc Committee's meetings, and that he feels that this is totally arbitrary and capricious. He pointed out that the zoning regulations for alcohol and gambling only require a 600-ft buffer and asked why the 1,000 feet buffer is warranted for medical marijuana. He stressed that these businesses are not for recreational uses but are available to dealing with sick people. He stated that this is nonsense and a bunch of "hooplala". He stated Mr. and Mrs. Smith testified that everyone who signed the petition wished to remove the law. He said he signed the petition to get it on the ballot and to show that the public does want it. Mr. Zurbuchen stated all of the facts were available in 2004 and discussed. He commented that American Pharmaceutical is creating pharmacy drugs and is closer than 300-feet to residential zoning and is "OK". Mr. Zurbuchen stated caregivers will be going to court and a judge will be deciding where medical marijuana will go within the City of Billings. He asked that guidelines should be put together to make it legal and proper. He commented on concerns with grow operations versus greenhouses and smells that "obstruct the neighborhood". Mr. Zurbuchen stated there has to be some common sense. He asked, "Do you want a judge to make your decisions?"

Chairman Dailey asked if there was anyone else wishing to speak in favor or against City Zone Change #868. There was none. Chairman Dailey closed the public hearing at 5:43 p.m. and called for discussion.

### Discussion

Commissioner Workman inquired of Representative Smith, and asked him to give a hypothetical motion in regard to zoning of medical marijuana Businesses in the City of Billings. Representative Smith stated there are no regulations in the State of Montana to regulate medical marijuana businesses we do not have the ability to put the enforcement structure in place. He stated his motion would be to not allow it in the City at all. Representative Smith said the City issued a large number of business licenses to proposed businesses in Billings which did not happen in other cities around the state. He stated we were trying to regulate businesses without the proper tools and to regulate a substance that is unregulated. He said zoning would only confine the problems into one finite area of the city. Commissioner Workman asked if this would manifest itself 100-feet outside of the borders of the city if it is taken out of the city. Representative Smith said the County will have to address what takes place in the County. He noted the Ad Hoc Committee was charged with what would take place in the City. Representative Smith said if reelected, he will work to repeal the medical marijuana law as it does not do what it was intended to do. He said we have to consider our turf first of all.

Chairman Dailey declared the public testimony time closed, and called for a motion.

### Motion

*Commissioner Workman made a motion to forward a recommendation to City Council that Medical Marijuana Businesses not be allowed within the Billings City limits.*

### Discussion

Chairman Dailey asked Ms. Cromwell for clarification on the motion. Ms. Cromwell noted that City Attorney Craig Hensel is present this evening. Ms. Cromwell stated what is being considered this evening is the proposed City Council initiated ordinance. She suggested that if this is the position that the Commission wishes to take it be worded similar to a proposal that has been considered by City Council to recommend denial of the proposed ordinance and adoption of a permanent moratorium of any new medical marijuana businesses within the City of Billings, and an amortization of all current businesses that exist currently within a short time frame. City Attorney Craig Hensel concurred that this would be the correct verbiage for a recommendation of denial and commented that this is one proposal that has been considered by City Council. Nicole Cromwell said a total prohibition was considered as one of the options by the City Council on August 9, 2010, but the Council forwarded this amendment. Craig Hensel said this statement is correct and the Zoning Commission is to consider the text amendments and City Council may consider options for a moratorium as well.

### Motion

**Commissioner Workman restated and clarified his original motion and it was seconded by Commissioner Wagner to recommend to City Council denial of the proposed amendments and to recommend adoption of prohibition of any new medical marijuana businesses within the City of Billings and an amortization of all those businesses that exist currently within 2 years.**

**Discussion**

Chairman Dailey called for discussion on the clarified motion. Commissioner Hawkins commented on a friend who was working in Federal law enforcement when the medical marijuana law was enacted in California. Ms Hawkins stated that there is no way of regulating this and it will ruin the city. She stressed this is still against Federal law and asked why something against Federal law would be allowed in the City. Chairman Dailey said that he believes that although City Council charged Staff and this Committee to look at this issue the amendment may have been ahead of its time. He commended Staff and the Ad Hoc Committee for their work. He said looking towards the upcoming legislative session for action on medical marijuana, he is not sure this is the right amendment at this time. At 5:54 p.m., Chairman Dailey called for a vote on the motion.

*Motion carried unanimously, 5-0.*

The City Council has designated **Monday, September 27, 2010**, at 6:30 p.m. in the City Council Chambers as the time and place to hear testimony for or against the above-mentioned item.

**Other Business:**

There was no other business.

**Announcements:**

- The next City Zoning Commission meeting will be held on Tuesday, October 5, 2010, at 4:30 p.m. in the City Council Chambers

**Adjournment:**

*The meeting was adjourned at 5:57 p.m.*

**ATTEST:**

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**Chairman Dailey, Chairman**

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**Tamara L. Deines, Planning Clerk**