

ORDINANCE 21-5778

**AN EMERGENCY ORDINANCE OF THE CITY OF BILLINGS,
MONTANA, AS AUTHORIZED BY MONTANA CODE ANNOTATED
SECTION 7-5-104, IMPOSING A TEMPORARY SUSPENSION OF THE
LICENSING OF MARIJUANA BUSINESSES FOR NINETY (90) DAYS**

RECITALS

WHEREAS, Montana voters adopted Initiative Measure 190 (I-190) on November 3, 2020, statewide, in Yellowstone County, Montana, and in the City of Billings, Montana, legalizing adult-use marijuana and providing for approval of certain marijuana businesses within the State of Montana.

WHEREAS, the 2021 Montana Legislature passed House Bill (HB) 701, with most sections effective January 1, 2022, which extensively changes and regulates the use, possession, and sale for profit of medical and adult-use (recreational) marijuana and modifies I-190.

WHEREAS, HB 701 defines "marijuana businesses" as a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, combined-use marijuana licensee, testing laboratory, marijuana transporter, or any other business or function that is licensed by the department of revenue under HB 701.

WHEREAS, the concerns of local governments about HB 701's application in their communities and the parameters under which a local government has authority to regulate its effects are still being understood.

WHEREAS, the City Council of the City of Billings previously passed Ordinance 11-5545 which prohibits any storefront medical marijuana business within the city limits under the authority of Senate Bill (SB) 423, passed by the 2011 Montana Legislature, and later codified at MCA section 50-46-328(2).

WHEREAS, the City Council of the City of Billings previously passed Ordinance 12-5587 which requires all businesses, occupations, and professions to comply with local, state, and federal law. Marijuana is currently defined as a Schedule 1 controlled substance under federal law, specifically 21 USC §812, the Controlled Substances Act, and as such the use, possession, or sale of marijuana remains a violation of federal law.

WHEREAS, based on Ordinances 11-5545 and 12-5587, business licenses have not been issued for any sale of medical marijuana within city limits. However, with the passage of HB 701, the City Council of the City of Billings is considering regulations as allowed under HB 701 to regulate the sale of medical and recreational marijuana and other marijuana businesses as defined under HB 701.

WHEREAS, businesses that cultivate, manufacture, dispense, test, or transport marijuana are not currently permitted in any zoning district established by the City of Billings.

WHEREAS, businesses that cultivate, manufacture, dispense, test, or transport marijuana could have a deleterious effect on neighborhoods or on nearby schools, recreational facilities, or other uses and can through such effect create a public nuisance.

WHEREAS, the City Council of the City of Billings has determined that additional investigation, consideration, and public input is required to decide whether the operation of establishments that cultivate, manufacture, test, sell, transport or distribute marijuana within the City limits of Billings, could be immediately detrimental to, harmful to, and a threat to the peace, property, health, safety, and welfare of the City and its inhabitants, and the City needs an opportunity to further study such issue and if so determined to adopt appropriate ordinances, zoning or otherwise, to appropriately deal with any such establishments.

WHEREAS, in a legitimate exercise of its legislative power to preserve the public peace, health, safety, and welfare of the City, the City Council is considering a number of regulations, including restrictions on the location of marijuana businesses and a cap on the number of each category of marijuana business licenses allowed in the City, with such cap necessitating implementation of a process for the allocation of a limited number of licenses.

WHEREAS, allowing marijuana businesses to be licensed prior to ordinances being enacted may create adverse impacts on neighbors of marijuana businesses and the community as a whole or provide an unfair advantage over other businesses if City Council subsequently imposes a cap on the number of marijuana business licenses allowed in the City.

WHEREAS, licensing marijuana businesses prior to enactment of a comprehensive licensing program may result in such businesses incurring substantial startup expenses, only to have them become illegal or non-conforming once the final program is implemented, leading to possible economic losses and the possibility of litigation.

WHEREAS, the voters of the City shall, on November 2, 2021 be asked to decide on whether dispensaries of adult-use marijuana, commonly referred to as recreational use marijuana, shall be permitted within the limits of the City of Billings.

WHEREAS, in order to protect and preserve the public peace, health, safety and welfare, the City Council of the City of Billings has determined an immediate, emergency ordinance is necessary to implement regulations authorized by HB 701 for marijuana businesses.

WHEREAS, MCA section 7-5-104 permits the City to waive the second reading and adopt an ordinance in the event of an emergency. An ordinance passed in response to an emergency requires a two-thirds vote of the City Council for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

WHEREAS, after first having provided lawful public notice, the City Council conducted a public hearing on September 13, 2021, with respect to this proposed Ordinance, and invited public comment;

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 businesses" shall have the meaning provided to such term by HB 701 passed by the 2021 Montana Legislature.

Section 3: The City Council of the City of Billings hereby directs the City Administrator, presumably with the assistance of the City-County Planning Division, the Billings Police Department and the City Legal Department, to investigate and study the effect of the licensing and operation of marijuana businesses, including establishments that cultivate, manufacture, test, sell, transport or distribute marijuana and to make recommendations concerning new business license regulations 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 Billings, Montana, upon the City.

Section 4: The City Council of the City of Billings directs the City Administrator, presumably with the assistance of the City-County Planning Division, the Billings Police Department and the City Legal Department, to present the findings of its investigation and its recommendations to the City Council, so that the Council may consider and effectuate regulations addressing this issue within approximately ninety (90) days 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 new marijuana businesses, including establishments attempting to cultivate, manufacture, test, sell, transport or distribute marijuana are hereby prohibited from being opened within the City of Billings and no new business licenses for such businesses shall be issued or business fees or taxes accepted for the next ninety (90) days.

Section 6: Any individual, entity or establishment that violates the terms of this ordinance 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. Any business license inadvertently issued or business taxes inadvertently accepted in conflict with this *ordinance shall be deemed void ab initio*, and any monies collected shall be immediately refunded to the payor upon written request.

Section 7: This Ordinance is expressly made immediately effective, and shall apply to all pending applications of business licenses, business taxes or fees, building permits, zoning variances, special review permits, zoning changes and all other applications for building and land use permits, developmental activity, land use activity, land use changes, and any other applications or licenses for approval of any type or nature, which have been received by the City of Billings 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 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 9: 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 immediately upon passage and approval and shall expire Ninety (90) calendar days thereafter. No second reading shall be required.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 13th day of September, 2021.

CITY OF BILLINGS



BY: William A Cole
William A. Cole, Mayor

Attest:

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk