

ORDINANCE 21-5788

AN ORDINANCE OF THE CITY OF BILLINGS PROVIDING THAT THE BILLINGS MONTANA CITY CODE BE AMENDED TO ADD NEW ARTICLE 7-1700 DEFINING MARIJUANA BUSINESSES AND PERMANENTLY PROHIBITING DISPENSARIES THAT SELL ADULT-USE MARIJUANA IN THE CITY OF BILLINGS.

RECITALS

WHEREAS, the Initiative Measure 190 (I-190) passed by popular vote on November 2, 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; and

WHEREAS, the 2021 Montana Legislature passed House Bill (HB) 701, with most sections effective January 1, 2022, extensively changing provisions of the I-190 and the Montana Medical Marijuana Act; and

WHEREAS, HB 701 provides an option for the electors of the City of Billings to consider prohibition of any or all of the seven categories of marijuana businesses defined in the I-190 and HB 701 within the limits of the City of Billings; and

WHEREAS, an adult-use dispensary is one of the seven categories defined in HB 701 that electors may consider whether to prohibit; and

WHEREAS, the City Council of the City of Billings submitted to the electors of the City of Billings the determination of whether to permanently prohibit the category of marijuana businesses that sell adult-use marijuana in accordance with the will of the electors as provided by HB 701; and

WHEREAS, the ordinance was referred to a vote of the people at an election held on November 2, 2021; and

WHEREAS, a majority of the electors voting on this question voted against permitting dispensaries of adult-use marijuana in the City of Billings; and

WHEREAS, the Billings Montana City Code must be amended in accordance with the will of the majority of electors.

NOW, WHEREFORE, BE IT ORDAINED by the City Council of the City of Billings, Montana, as follows:

Section 1: Recitals. All the Recitals set forth above are hereby adopted as Findings of Fact:

Section 2: New Article. That the Billings Montana City Code be amended to add new Article 7-1700, Sections 7-1701 through 7-1703, to read as follows:

ARTICLE 7-1700. MARIJUANA BUSINESSES

Sec. 7-1701 Definitions

As used in this Article, the following definitions apply:

(1) "Adult-use dispensary" means a licensed premises from which a person licensed by the department may sell marijuana or marijuana products to both registered cardholders and adults that are 21 years of age or older.

(2) "Consumer" means a person 21 years of age or older who obtains or possesses marijuana or marijuana products for personal use or for use by persons who are at least 21 years of age, but not for resale.

(3) "Department" means the Montana Department of Revenue.

(4)(a) "Marijuana" means all plant material from the genus *Cannabis* containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(b) The term does not include hemp, including any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis, or commodities or products manufactured with hemp, or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

(c) The term does not include a drug approved by the United States food and drug administration pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S. C. 301, et seq.

(5) "Marijuana product" means a product that contains marijuana and is intended for use by a consumer by a means other than smoking. The term includes but is not limited to edible products, ointments, tinctures, marijuana derivatives, and marijuana concentrates.

(6) "Medical marijuana" means marijuana or marijuana products that are for sale solely to a registered cardholder who is registered under Montana Code Annotated (MCA) Title 16, Chapter 12, Part 5.

(7) "Medical marijuana dispensary" means the location from which a registered cardholder who is a Montana resident with a debilitating medical

condition may obtain marijuana and marijuana products.

(8) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

Sec. 7-1702. Adult-use dispensaries prohibited.

(a) As authorized by MCA Section 16-12-301, and based upon the November 2, 2021, election results, adult-use dispensaries are prohibited from opening or operating within the city limits.

(b) This section does not prohibit medical marijuana dispensaries operating in compliance with state law and city code, including licensing requirements and zoning restrictions.

(c) This section prohibits the sale of marijuana and marijuana products by a former medical marijuana licensee under MCA Section 16-12-201, other than to registered cardholders, within the city limits.

Sec. 7-1703. Penalties.

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 section 1-110 and shall further be subject to civil action to restrain or abate as authorized in 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 3: Severability. 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 effective.

Section 4: Referral to Electors. This ordinance was referred to the electors of the City of Billings at an election held on November 2, 2021. The results of that election were certified on November 9, 2021.

Section 5: Effective Date. This ordinance shall be effective thirty (30) days after Second Reading and final adoption as provided by law, but the amendment to the Billings Montana City Code shall be effective immediately upon approval by the electors as provided by law.

PASSED by the City Council on First Reading this 22nd day of November, 2021.

PASSED, ADOPTED and APPROVED on Second Reading this 13th day of December, 2021.



CITY OF BILLINGS

BY: William A. Cole
William A. Cole, Mayor

Attest:

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