

ORDINANCES
MILES CITY, MONTANA



Rec'd 3/21/11

CITY OF MILES CITY

17 S. 8th, P.O. Box 910
Miles City, MT 59301

Telephone: (406

March 21, 2011

VETO
Ordinance No. 1209

To the City Council of Miles City

On the morning of March 9th, Ordinance 1209: an ordinance imposing a moratorium upon the location, operation and licensing of establishments for growing, selling or distributing medical marijuana and directing the study of a new proposed ordinance to regulate such establishments, was presented to me for signature by the City Council. After solemn consideration of the provisions of the Montana Medical Marijuana Act, the passionate public comments submitted to the City Council concerning this issue, and the immediate and long-term liability hazard to Miles City created by the enforcement of Ordinance 1209, I have decided that it should not become law and will return it to the City Council with my objections.

It is a given that the use of marijuana, for either recreational or medical purposes, remains outside the letter of federal law. However, on October 19th, 2009, Attorney General Eric Holder issued formal federal enforcement guidelines concerning medical marijuana stating, *“It will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana, but we will not tolerate drug traffickers who hide behind claims of compliance with state law to mask activities that are clearly illegal.”* The takeaway from these guidelines is that only those who operate outside of both federal and state law will be prosecuted in federal court.

The State of Montana, along with 14 other states and the District of Columbia, has established law providing for the medical use of marijuana. The Montana Medical Marijuana Act was created by initiative with the support of 62% of voting Montanans and it provides clear limitations against certain uses of marijuana by qualified patients and caregivers, including a) the use of marijuana by caregivers, b) the operation of motor vehicles under the influence, c) the smoking of marijuana on public transportation, on school grounds, in correctional facilities, or in public parks, beaches, recreation centers, or youth centers. Otherwise, the use of medical marijuana by qualified persons is to be liberally construed as a clear right, upon which there shall be no infringement.

As a reminder, the medical use of marijuana is defined in §50-46-102, MCA as *“a) the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of*

ORDINANCES
MILES CITY, MONTANA

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."

Further, §50-46-201, MCA, outlines legal protections for the use of medical marijuana as follows, "*A person who possesses a registry identification card issued pursuant to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, if: a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed; or b) the qualifying patient uses marijuana for medical use.*"

Ordinance 1209 was developed using a template adopted by other communities. It was refined to the best ability of our City Attorney upon the direction of one of our councilmen. However, the "self-governing powers" established by chartered cities & towns are not enjoyed by Miles City, which operates under "general government" powers. Our powers are derived solely from the Montana Constitution and statute. Ordinance 1209 seeks to stretch our legitimate powers beyond their lawful limits.

By imposing a moratorium on the licensing of gardens and dispensaries by qualified caregivers, Ordinance 1209 violates the conditions of the MT. Medical Marijuana Act by penalizing a form of commerce, clearly allowed by our state and federal governments, on the basis of prejudice and, as a result, does harm to the health of qualifying patients. It is supported by at least a dubious argument concerning detrimental effects of medical marijuana that is unsupported by our experience in Miles City.

If Ordinance 1209 is allowed to stand and is enforced as prescribed, I am certain that our City will suffer an expensive civil suit for its abuse. I'm less concerned about being sued than I am about the strong likelihood that the plaintiffs will prevail. I'm not insensitive to the perceptions of parents, pastors, neighbors, or other businesses expressed in public comment about potential impacts to our community if Miles City continues to comply with the Medical Marijuana Act. However, most of the objections voiced, so far, have been anecdotal in nature and driven by ideology or fear of the unknown. Given our recent history, the greatest potential impact of sustaining Ordinance 1209 is in an expensive damage award levy, adverse health consequences to the chronically ill, and the opportunity cost of lost industry.

Consequently, I return Ordinance No. 1209 to this body for repeal.


Joe R. Whalen

ORDINANCES

MILES CITY, MONTANA

ORDINANCE NO. 1209

AN INTERIM ZONING ORDINANCE OF THE CITY OF MILES CITY IMPOSING A MORATORIUM ON THE OPENING, OPERATION, OR LICENSING OF ANY ESTABLISHMENTS THAT GROW, SELL, STORE, PROCESS, OR DISTRIBUTE MEDICAL MARIJUANA, AND DIRECTING THE STUDY OF NEW PROPOSED ORDINANCES AND ZONING PROVISIONS TO REGULATE THE LOCATION AND OPERATION OF SUCH ESTABLISHMENTS AND PROVIDING FOR THE IMMEDIATE EFFECTIVE DATE THEREOF.

WHEREAS, Montana voters approved Initiative 148 in 2004 to give Montanans with debilitating medical conditions protection under the law if they use marijuana to alleviate the symptoms of their debilitating medical conditions;

AND WHEREAS, 7,339 Montanans held cards allowing their medical use of marijuana as of December 31, 2009;

AND WHEREAS, the number of people approved for the medical use of marijuana increased to 19,635 in just 6 months, reflecting a 167% increase in cardholders between December 31, 2009, and June 30, 2010;

AND WHEREAS, numerous cities and towns around Montana have discussed or taken action on issues relating to the establishment of medical marijuana businesses within their boundaries or within certain areas of a city or town;

AND WHEREAS, the increase in the numbers of patients and caregivers has raised concerns not only for local governments but also for law enforcement, state regulators, and the medical marijuana industry itself;

AND WHEREAS, in the past year, there have been armed robberies, home invasions, burglaries, a homicide, and a firebombing related to medical marijuana, marijuana growers, and medical marijuana dispensaries in other Montana communities;

AND WHEREAS, recently medical marijuana dispensaries have opened in various areas of Miles City, and an application has been made for a home occupation permit in a residential area for a medical marijuana growing and dispensary operation;

AND WHEREAS, the establishment of medical marijuana growing and dispensing operations within the City of Miles City and within 1 mile of its city limits could have a detrimental effect on the health, safety or welfare of neighborhoods, schools, recreation facilities, places of worship, places of public gathering, and nearby businesses and residences

AND WHEREAS, an interim committee of the Montana legislature reviewed the above concerns during the 2009-2010 legislative interim;

AND WHEREAS the Montana legislature is now in session and there are currently at least seven separate bills before the legislature and five additional bills in the drafting process to either repeal the Montana Medical Marijuana Act, or to regulate the number, licensing, and/or location of medical marijuana growers and dispensaries,

AND WHEREAS, §76-2-306 MCA permits the adoption, as an urgency measure,

ORDINANCES

MILES CITY, MONTANA

of an interim ordinance prohibiting any uses which may be in conflict with a contemplated zoning proposal which the City Council is considering or studying or intends to study;

AND WHEREAS the City of Miles City desires for its Zoning Commission to conduct a comprehensive study of zoning provisions for medical marijuana growing operations and medical marijuana dispensaries, including appropriate zoning districts, locations, and regulations to protect the health, safety and welfare of the community;

AND WHEREAS, as a part of such study, the City of Miles City desires that pending legislation before the Montana legislature be determined and that any recommendations of the Zoning Commission be done in light of any legislation passed in the current legislative session concerning medical marijuana;

AND WHEREAS, the City Council has determined this to be a matter of urgency and has determined that six (6) months from the date of final passage of this Ordinance is a reasonable time in which to determine any revisions by the state legislature of the Montana laws concerning medical marijuana and for the Miles City Zoning Commission to conduct the study set forth herein and report back to the City Council with its recommendations;

BE IT ORDAINED by the City Council of the City of Miles City, Montana as follows:

Section 1. All of the recitals set forth above are hereby adopted as Findings of Fact and are made a part hereof by reference;

Section 2. The terms “marijuana”, “paraphernalia” “qualifying patient” and “caregiver” are as defined in the Montana Medical Marijuana Act, §50-46-101 et seq.

Section 3. The City of Miles City hereby directs its Zoning Commission to investigate and study the effect of the opening, location, and operation of establishments that grow, process, store, sell, or distribute medical marijuana or paraphernalia, and to make recommendations to the City Council concerning new zoning ordinances or regulations that could be adopted to abate any negative effect of such establishments on the health, safety, and/or welfare of the residents of the City of Miles City. Such investigation and report shall be made in conformance with any changes or additions to the laws of Montana concerning medical marijuana adopted by the current Montana legislature, and shall include any recommendations as to zoning districts, if any, where it is appropriate to locate such establishments, zones or areas in which such establishments should be prohibited, and appropriate safeguards and any other matters to alleviate or minimize any detrimental effect of the health, safety or welfare of neighborhoods, schools, recreation facilities, places of worship, places of public gathering, and nearby businesses and residences.

Section 4. The Zoning Commission shall provide to the City Council its recommendations, in writing, within four (4) months of the date of final passage of this ordinance so that the City Council will have sufficient time to consider such recommendations and draft and adopt any appropriate zoning ordinances.

Section 5. Until such new ordinances, zoning, or otherwise, are adopted and in effect to address the issues described above, any establishments, persons, or entities growing, selling, processing, storing, or distributing medical marijuana or

ORDINANCES

MILES CITY, MONTANA

paraphernalia, or attempting to do so, are hereby prohibited from locating, opening, operating, being licensed, or being granted an occupancy permit, within the City of Miles City or within one (1) mile beyond the city limits of the City of Miles City.

Section 6. This prohibition 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 the patient's own use.

Section 7. In addition to the provisions of this ordinance, the growing, selling or distribution of medical marijuana or paraphernalia shall be subject to all local, state and federal laws, rules and regulations, and nothing herein shall be considered as authorizing the violation of any such law, rule or regulation or as providing a defense or immunity from prosecution for the violation of any such law, rule or regulation.

Section 8. Any individual, entity or establishment that violates the terms of this ordinance, or any of the restrictions set forth herein, shall be guilty of a misdemeanor and shall be subject to prosecution and subject to the penalty set forth in Section 1-11 of the Miles City Code of Ordinances. Each day in violation of this ordinance shall constitute a separate offense. Any such individual, entity, establishment violating the terms of this ordinance shall be deemed as creating and maintaining a public nuisance and shall be subject to a civil action to enjoin or abate such nuisance as the City deems appropriate.

Section 9. This ordinance is expressly made retroactive and shall apply to all applications for building permits, zoning variances, conditional use permits, home occupation permits, business licenses, occupancy permits, safety inspection certificates, sanitation inspection certificates, development activity, land use activity, land use changes, and any other applications for approval of any type or nature which have been received or will be received by the City of Miles City and not yet granted or approved as of the date and time of first reading of this ordinance before the City Council.

Section 10. A public hearing shall be held upon this ordinance at 7:00 p.m. in the City Council Chambers at City Hall, 17 South 8th Street, Miles City, Montana on the 8th day of March, 2011. The City Clerk shall publish notice of such hearing twice with at least 6 days separating each publication and in compliance with §7-1-4127 MCA.

Section 11. In the event that any word, phrase, clause, sentence, paragraph, section, or other part of this ordinance set forth herein is held to be invalid by a court of competent jurisdiction, such holding shall affect only that part found invalid and the remaining provisions thereof shall continue in full force and effect.

Section 12. This ordinance shall become effective immediately upon its final passage by the City Council of the City of Miles City, Montana. This interim ordinance shall be of no further force and effect six (6) months from the date of its final passage, unless and until the term of this interim ordinance is altered or extended in compliance with 76-2-306(3) MCA.

SAID ORDINANCE READ AND PUT UPON ITS PASSAGE THIS 22ND DAY OF FEBRUARY, 2011.

ORDINANCES
MILES CITY, MONTANA

Joe Whalen, Mayor

ATTEST:

Rebecca Stanton
Rebecca Stanton, City Clerk

**SAID ORDINANCE FINALLY PASSED AND APPROVED BY A DULY
CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF
MILES CITY, MONTANA, THIS 8TH DAY OF MARCH, 2011.**

Joe Whalen, Mayor

ATTEST:

Rebecca Stanton
Rebecca Stanton, City Clerk

Affidavit of Publication

STATE OF MONTANA }
County of Custer } ss.

Mary Halvorson, being duly sworn on her oath, says that she has been the principal clerk of the printer of the MILES CITY STAR, a daily newspaper of general circulation, printed and published at Miles City, in said County and State. That the Ordinance 1209. A printed and true copy which, cut from the columns of said newspaper, is hereto attached, and made a part hereof, was printed and published in said newspaper, in the regular and entire issue of every number of the paper during the period, February 25 and March 4, 2011.

Signed Mary Halvorson
Subscribed and sworn to before me this 7th
day of March 2011
Sharon Cline



LEGAL NOTICE
NOTICE IS HEREBY GIVEN that the City Council of the City of Miles City at a Regular Council Meeting held on Tuesday, February 22, 2011 at 7:00 p.m., passed on first reading the following Ordinance:
Ordinance #1209: An Ordinance imposing a moratorium upon the location, operation and licensing of establishments for growing, selling or distributing medical marijuana and directing the study of a new proposed ordinance to regulate such establishments.
The above Ordinance is on file and available for public inspection at the City Clerk's Office at City Hall, 17 S. 8th Street, Miles City, Montana. You are further notified that objections to the final adoption of the Ordinance will be heard by the City Council, at its regularly scheduled meeting in the Council Chambers at City Hall 17 S. 8th Street, Miles City, Montana on Tuesday, March 8, 2011 at 7:00 p.m.
For information or questions you may contact the City Clerk, 17 S. 8th Street, Miles City, Montana 59301, at telephone number (406) 234-3462.
BY ORDER OF
THE CITY COUNCIL
Becky Stanton
City Clerk
(Published February 25, 2011 & March 4, 2011)