

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELGRADE, MONTANA, CREATING CHAPTER 4 OF TITLE 4 OF THE BELGRADE CITY CODE PROHIBITING THE DISPLAY, CONSUMPTION, OR SMOKING OF MEDICAL MARIJUANA IN PUBLIC

WHEREAS, Section 7-1-101, MCA, states, “As provided by Article XI, section 6, of the Montana constitution, a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter;” and

WHEREAS, Section 7-1-104, MCA, states, “The powers of a self-government unit, unless otherwise specifically provided, are vested in the local government legislative body and may be exercised only by ordinance or resolution;” and

WHEREAS, Section 7-1-105, MCA, states, “All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner provided in chapter 5, part 1 and subject to the limitations provided in this part;” and

WHEREAS, Section 7-1-106, MCA, states, “The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority;” and

WHEREAS, Section 7-1-113, MCA, states, “(1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control. (2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation. (3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency;” and

WHEREAS, Title 7, Chpt. 5, Part 1, MCA, provides standards and procedures for adoption of local ordinances; and

WHEREAS, the voters of the State of Montana adopted Initiative 148 (the Medical Marijuana Act, Title 50, Chpt. 46, MCA (the "Act")) in November 2004 decriminalizing the use of marijuana if conducted for medicinal purposes subject to specific legal processes and restrictions; and

WHEREAS, marijuana continues to be classified as a Schedule I narcotic under the federal Controlled Substances Act and is listed as an illegal drug under Montana law such that the growing, distribution, and possession of marijuana, except as provided for in the Act, constitutes criminal activity; and

WHEREAS, the City Council finds a legitimate governmental interest exists in prohibiting the display, consumption, or smoking of marijuana in an open or visible manner on the ways of the city open to the public, in enclosed public places, and in or on property owned or leased by a government entity, because the inadvertent direct and indirect exposure to marijuana has the potential to significantly affect the health, legal, and financial interests of the citizens of Belgrade; and

WHEREAS, the City Council finds a legitimate governmental interest in prohibiting the display, consumption, or smoking of marijuana in an open or visible manner on the ways of the city open to the public, in enclosed public places, and in or on property owned or leased by a government entity, because the display, consumption, or smoking of marijuana in an open or visible manner is detrimental to the public health, safety, and general welfare as these acts are visually indistinguishable for the general public from the open public smoking of illegal marijuana and these acts have the potential to lead to an increase in the use of illegal marijuana; and

WHEREAS, the City Council finds prohibiting the display, consumption, or smoking of marijuana on the ways of the city open to the public, in enclosed public places, and in or on property owned or leased by a government entity, in an open or visible manner, is vital to maintaining a community that is free from the negative effects of the illegal use of drugs yet the Council also recognizes medical marijuana is lawful under state law and nothing in such a prohibition unduly burdens a person's exercise of the privilege of using medical marijuana; and

WHEREAS, the City Council finds a prohibition on the open public display, smoking, or consumption of medical marijuana on the ways of the city open to the public, in enclosed public places, and in or on property owned or leased by a government entity, is narrowly tailored to these concerns as a prohibition of the open public display, smoking, or consumption of marijuana in no way reduces a qualifying patient's ability to display, smoke, or consume medical marijuana in a private residence or on private property that is beyond the ways of the city open to the public and outside of public view; and

WHEREAS, the City Council finds a prohibition on the display, consumption, or smoking of marijuana on the ways of the city open to the public, in enclosed public places, and in or on property owned or leased by a government entity, in an open or visible manner, is in keeping with the spirit of the Act in that the Act currently lists numerous locations where the smoking of medical use of marijuana is specifically prohibited and a prohibition on the open public display, smoking, or consumption of medical marijuana is consistent with the Act's existing prohibitions; and

WHEREAS, the City Council intends the phrase "open or visible manner" to include but not be limited to visual or sensory observations either during the act or within a reasonable time thereafter; and

WHEREAS, the City Council intends a violation of the prohibition on public display, smoking, or consumption of medical marijuana on the ways of the city open to the public to be an absolute liability offense.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Belgrade, Montana, that a new chapter of the Belgrade City Code, Chapter 4 of Title 4, shall be created to read as follows:

Chapter 4, Title 4

PUBLIC USE AND DISPLAY OF MEDICAL MARIJUANA.

Sections

4-4-1 Purpose and Intent.

4-4-2 Definitions.

4-4-3 Public Display, Smoking, or Consumption of Medical Marijuana – Prohibited

4-4-4 State law superseded and applicable.

4-4-5 Violation and Penalty.

4-4-6 No Private Right of Action.

4-4-1 Purpose and Intent.

- A. The purpose of this chapter is to identify acts regarding the medical use of marijuana within the city of Belgrade that are not authorized to be conducted in a manner open or visible to the general public. In addition, the purpose of this chapter is to identify that acts related to smoking, consuming, or displaying Medical Marijuana in certain public areas are to be punished as criminal acts and as such shall be subject to criminal penalties. The purpose of establishing these acts where the use is further limited by the City as criminal is to protect the public's health, safety, and general welfare.
- B. It is the intent of this chapter that the visible or open display, smoking, or consumption of Medical Marijuana is to be confined to private property where that property or portions thereof are not adapted and fitted for public travel or are not in common use by the public.

4-4-2 Definitions.

- A. "Enclosed Public Place" has the meaning provided in 50-40-103, MCA (2009).
- B. "Marijuana" has the meaning provided in 50-32-101, MCA (2009).
- C. "Medical Marijuana" means the uses of marijuana described in 50-46-102(5), MCA. Other phrases herein such as the "use of medical marijuana" or "the medical use of marijuana" shall have the same meaning and includes the term "usable marijuana."
- D. "Ways of the City Open to the Public" means any highway, road, driveway, alley, lane, parking area, sidewalk, park, trail, or other public or private place within the city of Belgrade that is adapted and fitted for the use of the public and that is in common use by the public.

4-4-3 Public Display, Smoking, or Consumption of Medical Marijuana–Prohibited

No person authorized by Title 50, Chpt. 46, MCA, to acquire, possess, cultivate, manufacture, deliver, transfer, or transport Medical Marijuana, shall, on the Ways of the City Open to the Public, in an

Enclosed Public Building, or in or on property owned or leased by a governmental entity, display, smoke, or consume Medical Marijuana, in an open or visible manner. A violation of this section is an absolute liability offense.

4-4-4 State law superseded and applicable.

The provisions of this chapter shall supersede Title 50, Chpt. 46, MCA, only in so far as this chapter expands the limitations on the use of Medical Marijuana. All other provisions of state law related to Medical Marijuana or Marijuana shall be applicable.

4-4-5 Violation and Penalty.

A violation of section 4-4-3 is a misdemeanor and upon conviction a person shall be subject to penalty as provided in section 1-4-1 of this code. A person so convicted shall also be required to pay all costs and expenses of prosecution and the courts as authorized by law.

4-4-6 No Private Right of Action.

Nothing in this chapter shall be construed to create a private right of action regarding the acquisition, possession, cultivation, manufacture, delivery, transfer, or transport of either Marijuana or Medical Marijuana.

FINALLY PASSED by the City Council of the City of Belgrade, Montana, on second reading at a regular session held on the _____ day of _____, 2010.

Russell C. Nelson, Mayor

ATTEST:

Marilyn Foltz, Director of Finance