

## **ORDINANCE NO. 2010-2**

### **AN INTERIM ZONING ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELGRADE, MONTANA, IMPOSING A MORATORIUM ON THE OPENING, OPERATION OR LICENSING OF ANY ESTABLISHMENTS THAT GROW, SELL OR DISTRIBUTE MEDICAL MARIJUANA, AND DIRECTING THE STUDY OF NEW PROPOSED ORDINANCES TO REGULATE SUCH ESTABLISHMENTS.**

**WHEREAS**, on November 2, 2004, Montana voters adopted the Medical Marijuana Act, which is codified at §50-46-101, MCA, et seq; and at that time and in subsequent legislative sessions the legislature failed to include language or authorize State agencies to promulgate administrative rules concerning a multitude of logistical issues surrounding the Act and the concerns of local governments about its application in their communities and the parameters under which a local government has authority to regulate its effects; and

**WHEREAS**, the Medical Marijuana Act permits the cultivation, manufacture, delivery, transfer, and transportation of marijuana or paraphernalia by a qualifying patient or a caregiver, as those terms are defined in the Act; and

**WHEREAS**, establishments that grow, sell or distribute medical marijuana or paraphernalia are currently permitted within certain zoning districts established by the City of Belgrade; and

**WHEREAS**, establishments that grow, sell or distribute medical marijuana or paraphernalia could have a blighting or detrimental effect on neighborhoods or on nearby schools or recreational facilities, and can through such blighting in effect create a public nuisance; and

**WHEREAS**, section §76-2-306, MCA, permits a city to adopt an interim zoning ordinance for the immediate preservation of the public peace, property, health, or safety, which the interim zoning ordinance may take effect immediately; and

**WHEREAS**, State law allows the City to adopt an interim zoning ordinance to protect public safety, health, and welfare without following the procedures otherwise required preliminary to the adoption of zoning ordinances, and such interim zoning ordinances may prohibit uses that may be in conflict with a contemplated zoning proposal, which the legislative body is considering or intends to study within a reasonable amount of time; and

**WHEREAS**, the City Council of the City of Belgrade has determined that the licensing, opening, or operation or any establishments that grow, sell or distribute medical marijuana or paraphernalia within the City limits of Belgrade, could be immediately detrimental to, harmful to, and a threat to the peace, property, health, safety, and welfare of the City and its inhabitants, until such time as the City has had an

opportunity to further study such issue and an opportunity to adopt appropriate ordinances, zoning or otherwise, to appropriately deal with any such establishments; and

**WHEREAS**, after first having provided lawful public notice, as required by Section §76-2-306 (2), MCA the City Council conducted a public hearing on \_\_\_\_\_, 2010, with respect to this proposed Ordinance, and invited public comment;

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Belgrade, Montana, as follows:

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

Section 2: The terms “marijuana,” “paraphernalia,” “qualifying patient,” and “caregiver” have the meaning attributed to those terms by the Medical Marijuana Act.

Section 3: The City of Belgrade hereby directs the Belgrade City-County Planning and City Building Departments to investigate and study the effect of the opening of establishments that grow, sell or distribute medical marijuana or paraphernalia and to make recommendations concerning new zoning ordinances 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 Belgrade, Montana, or blight, upon the City (and its entire zoning jurisdiction and its inhabitants), or the schools, recreational facilities, or neighborhoods located therein.

Section 4: The City of Belgrade directs the Belgrade City-County Planning and City Building Departments to present the findings of its investigation and its recommendations to the Belgrade City-County Planning Board, who in turn will provide their recommendations to the City Council, so that the Council may consider the issue within approximately six (6) months of the date of 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 establishments attempting to grow, sell or distribute medical marijuana or paraphernalia are hereby prohibited from being opened, operated, or licensed within the City of Belgrade. The prohibition in the preceding sentence 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 that patient’s own use, nor shall it apply to a caregiver, who has a city business license on the effective date of this ordinance, and possesses not more than six (6) marijuana plants and one (1) ounce of usable marijuana solely for each of his or her qualifying patient’s use. During the period of this interim ordinance, the number of plants in a caregiver’s possession may not exceed the number of plants allowed under the Medical Marijuana Act of the number of qualifying patients, which were registered to him or her on the effective date of this ordinance.

Section 6: Any individual, entity, or establishment that violates the terms of the restrictions set forth above shall be deemed to be creating a public nuisance, and shall be subject to prosecution in the same manner as one who violates City ordinances, and shall further be subject to such civil action to restrain or abate, as the City deems appropriate. Such ability of the City to prosecute and/or enjoin or abate is an addition to any other remedies available to the City, at law or in equity.

Section 7: This Ordinance is made expressly retroactive and shall apply to all applications of building permits, zoning variances, conditional use permits, zoning changes, and all other applications for building and land use permits, developmental activity, land use activity, land use changes, business licensing, and any other applications for approval of any type or nature, which have been received by the City of Belgrade 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: This Ordinance shall take effect immediately upon its adoption by the City Council of the City of Belgrade, Montana, and signing of the Mayor thereof. No second reading shall be required.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELGRADE, MONTANA, THIS \_\_\_\_DAY OF \_\_\_\_\_, 2010.**

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Russell C. Nelson, Mayor

Attest:

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Marilyn Foltz, Director of Finance