

STILLWATER COUNTY

ORDINANCE 2018 - 01

AN ORDINANCE BY THE STILLWATER COUNTY BOARD OF COMMISSIONERS DECLARING THE OPERATION OF MEDICAL MARIJUANA STOREFRONTS TO BE PROHIBITED and PROVIDING FOR REGULATIONS TO REGULATE MEDICAL MARIJUANA PROVIDERS AND MARIJUANA-INFUSED PRODUCTS PROVIDERS WITHIN STILLWATER COUNTY, MONTANA

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STATE OF MONTANA STILLWATER COUNTY
RECORDED: 11/20/2018 2:50 PM KOT: ORDINANCE
Heidi Stadel CLERK AND REGISTER
Fee: 0.00 BY: DO NOT COPY DO NOT COPY
TO: FILED

WHEREAS, establishments that grow, sell, and distribute medical marijuana or paraphernalia are currently permitted within certain zoning districts in Stillwater County;

WHEREAS, establishments that grow, sell, or distribute medical marijuana or paraphernalia could have detrimental effects on neighborhoods or on nearby schools or recreational facilities, and can immediately threaten the peace, property, health, safety, and welfare of the County and its inhabitants;

WHEREAS, marijuana is a controlled substance in Montana, and is defined as “all plant material from the genus cannabis containing tetrahydrocannabinol (THC), or seeds of the genus capable of germination” in Montana Code Annotated § 50-32-101(18);

WHEREAS, tetrahydrocannabinol is a hallucinogenic substance listed as a Schedule 1 dangerous drug under federal law at § 21 USC 812 and under state law at Montana Code Annotated § 50-32-222;

WHEREAS, one of the purposes of the “Montana Medical Marijuana Act” is to “give local governments a role in establishing standards for the cultivation, manufacture, and use of marijuana that protect the public health, safety, and welfare of residents within their jurisdictions.” Montana Code Annotated § 50-46-301(i);

WHEREAS, Montana Code Annotated § 50-46-302(8) defines “Local Government” as a “county, a consolidated government, or an incorporated city or town”;

WHEREAS, Licensing for a Provider, a Marijuana-infused Products Provider, a dispensary, or a testing laboratory or an endorsement for chemical manufacturing is a privilege that the State may grant to an applicant and is not a right to which an applicant is entitled. Montana Code Annotated § 50-46-312(1).

WHEREAS, Montana Code Annotated § 50-46-312(3)(a) and (b) provides that the Department of Public Health and Human Services (Department) shall consider a county ordinance or resolution prohibiting an activity related to the medical use of marijuana or if the proposed registered premises would adversely affect the welfare of the people residing in or of retail businesses located in the vicinity for the county in which the provider is seeking licensing, in determining whether to accept an application for licensing;

WHEREAS, Montana Code Annotated § 50-46-312(4)(a)(i) and (ii) provides that the Department may deny a license or endorsement if the applicant’s proposed registered premises or testing laboratory is not approved by local building, health or fire officials, or is within 500 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school or postsecondary school other than a commercially operated school.

WHEREAS, Montana Code Annotated § 50-46-312(4)(b) provides that the Department may not approve a license for a provider, marijuana-infused products provider, or dispensary if a local government has adopted an ordinance or resolution prohibiting the operation of dispensaries or storefront businesses as allowed under § 50-46-328.

WHEREAS, Montana Code Annotated § 50-46-328(1) provides that to protect the public health, safety, or welfare, the Local Government may by ordinance or resolution regulate a provider or marijuana-infused products provider that operates within the local government’s jurisdictional area. The regulations may include but are not limited to inspections of registered

premises and testing laboratories in order to ensure compliance with any public health, safety, and welfare requirements established by the Department or the Local Government.

WHEREAS, Montana Code Annotated § 50-46-328(2), provides that the Local Government may adopt an ordinance or resolution prohibiting providers and marijuana-infused products providers from operating dispensaries or as storefront businesses.

WHEREAS, the Stillwater County Board of County Commissioners has determined that pursuant to Montana Code Annotated §§ 50-46-328(1) and (2), the enactment of an ordinance providing regulations for a provider or marijuana-infused products provider that operates within Stillwater County and providing for the prohibition against marijuana provider and marijuana-infused provider storefront businesses within Stillwater County to be necessary to protect and preserve the public peace, health, safety and welfare of the County.

WHEREAS, violation of this ordinance is a misdemeanor punishable by incarceration and/or fines; and

NOW, THEREFORE, BE IT ORDAINED BY THE STILLWATER COUNTY BOARD OF COMMISSIONERS THAT the “Stillwater County Medical Marijuana Provider and Marijuana-Infused Products Provider Regulations” are adopted as set forth below.

Section 1. Prohibitions

1. No individual, partnership, association, company, corporation, limited liability company, or organization operating a medical marijuana business shall operate a storefront business to provide marijuana or marijuana-infused products to registered cardholders within Stillwater County. This includes a provider’s “registered premises” and “dispensaries” if the registered premise or dispensary is being operated as a storefront business from those locations. This prohibition does not include the City of Columbus and its jurisdictional boundaries.

2. A medical marijuana provider or marijuana-infused products provider shall not operate a “registered premises” and/or “dispensary”:

a. within 500 feet of a school, post-secondary school or pre-school as defined in Mont. Code Ann. §20-5-402;

b. within 500 feet of property owned by a school district or a post-secondary school;

c. within 500 feet of property leased by a school district or a post-secondary school when the property is being used for school-related purposes;

d. within 500 feet of buildings used exclusively as a church, synagogue, or other place of worship; or,

e. within 500 feet of a public park or a public recreation center within Stillwater County.

Section 2. Penalty

A court may enjoin a person from conduct found to be in violation of the regulations. A court may not impose any criminal sanctions for a violation of the regulations. Nothing in these regulations prohibit criminal prosecution otherwise governed by Title 45, Chapter 9, Montana Code Annotated or any other provision of State or Federal law.

Section 3. Enforcement

The County Sheriff shall be primarily responsible for the enforcement of the regulations. Regulation complaints shall be forwarded to the Sheriff’s Office. The Sheriff’s Office shall investigate the complaints. If the Sheriff’s Office finds probable cause to believe that a violation has occurred, they may at their discretion either issue a warning to the person that advises the person to correct the situation or request the Stillwater County Attorney’s Office file a civil complaint to force the person to comply with the regulations. The Sheriff’s Office shall provide

the Stillwater County Attorney’s Office with the assistance it needs to successfully prosecute any civil complaint.

Section 4. Jurisdiction

The regulations apply to all locations and towns within Stillwater County that are outside of the jurisdictional limits of the incorporated city of Columbus.

Section 5. Definitions

“Dispensary” means a registered-premises from which a provider or marijuana-infused products provider is approved by the Department to dispense marijuana or marijuana-infused products to a registered cardholder.

“Marijuana” has the meaning provided in Mont. Code Ann. §50–32–101.

“Marijuana-Infused product” means a product that contains marijuana and is intended for use by a registered cardholder by a means other than smoking.

“Marijuana-Infused products provider” means a person licensed by the Department to manufacture and provide marijuana-infused products for a registered cardholder. The term does not include the cardholder’s treating or referral physician.

“Post-secondary school” as defined pursuant to Mont. Code Ann. §20-5-403(6) means a community college, a unit of the Montana university system, or a private university or college.

“Preschool” as defined pursuant to Mont. Code Ann. §20-5-403(7) means a place or facility that provides, on a regular basis and as its primary purpose, educational instruction designed for children 5 years of age or younger and that:

- a. serves no child under 5 years of age for more than 3 hours a day; and
- b. serves no child 5 years of age for more than 6 hours a day.

“Provider” means a person licensed by the Department to assist a registered cardholder as allowed under the Montana Medical Marijuana Act. The term does not include the cardholder’s treating physician or referral physician.

“Public Park” or “Park” means publicly owned open spaces designed for recreational activities that are characterized by unique scenery or other natural features of an aesthetic, historical, geological, archaeological or scientific nature or are designated as a “Park” by any governmental agency or are designated as such on a public record.

“Registered premises” means the location at which a provider or marijuana-infused products provider:

- a. has indicated that marijuana will be cultivated, chemical manufacturing will occur, or marijuana-infused products will be manufactured for a registered cardholder; or
- b. has established a dispensary for sale of marijuana or marijuana-infused products to a registered cardholder.

“Registered cardholder” or “cardholder” means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

“Storefront” shall mean any commercial establishment, structure, vehicle, or building that is accessible or visible from a public road, sidewalk or right-of-way.

“School” as defined pursuant to Mont. Code Ann. §20-5-403(8) means a place or institution for the teaching of individuals, the curriculum of which is composed of the work of:

- a. any combination of kindergarten through grade 12;

- b. a post-secondary school; or
- c. a preschool.

“Youth center” means any facility that’s primary purpose is to provide for a place of gathering of minors for recreation or social activities.

Section 6. Effective Date. This Ordinance shall become effective thirty (30) days after passage and approval upon second reading of the Stillwater County Commissioners.

Date of First Reading and Approval:

PASSED BY THE BOARD OF COUNTY COMMISSIONERS OF STILLWATER COUNTY, MONTANA, this 7th day of November, 2018.

By: ~~DO NOT COPY DO NOT COPY~~ Dennis Shupak Date: 11-7-18
 Dennis Shupak, Chair

By: ~~DO NOT COPY DO NOT COPY~~ Maureen Davey Date: 11-7-18
 Maureen Davey, Member

By: ~~DO NOT COPY DO NOT COPY~~ Mark Crago Date: 11-7-18
 Mark Crago, Member

ATTEST:
~~DO NOT COPY DO NOT COPY~~
Heidi Stadel, Clerk and Recorder



Date of Second Reading and Approval:

PASSED BY THE BOARD OF COUNTY COMMISSIONERS OF STILLWATER COUNTY, MONTANA, this 20th day of November, 2018.

By: ~~DO NOT COPY DO NOT COPY~~ Dennis Shupak Date: 11-20-2018
 Dennis Shupak, Chair

By: ~~DO NOT COPY DO NOT COPY~~ Maureen Davey Date: 11-20-2018
 Maureen Davey, Member

By: ~~DO NOT COPY DO NOT COPY~~ Mark Crago Date: 11-20-2018
 Mark Crago, Member

ATTEST:
~~DO NOT COPY DO NOT COPY~~
Heidi Stadel, Clerk and Recorder

