

ORDINANCE NO. 658

AN ORDINANCE CONTINUING IN FORCE ORDINANCE NO. 654, AN INTERIM ZONING ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POLSON, MONTANA, IMPOSING RESTRICTIONS UPON THE LOCATION, OPENING, OPERATION, AND 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., hereinafter “the Act,” 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 it's effects; and,

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

WHEREAS, establishments that grow, sell or distribute medical marijuana or paraphernalia could have a detrimental effect on the health, safety or welfare of neighborhoods or on nearby churches, schools or recreational facilities and can, through such an effect, create a public nuisance; and,

WHEREAS, it is not appropriate to allow establishments that grow, sell or distribute medical marijuana or paraphernalia to be located in every zoning district in the City of Polson; and

WHEREAS, §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 interim zoning ordinance may take effect immediately; and,

WHEREAS, §76-2-306, MCA, permits the City to adopt an interim zoning ordinance with immediate effect upon passage in order to protect public safety, health, and welfare without following the procedures otherwise required preliminary to the adoption of a zoning ordinance, and such interim ordinances may prohibit uses that may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time; and,

WHEREAS, the City intends to provide an opportunity to further study this issue and an opportunity to adopt appropriate ordinances, zoning or otherwise, to appropriately regulate medical marijuana establishments; and,

WHEREAS, after first having provided lawful public notice as required by §76-2-306(2), MCA, the City Council conducted a public hearing on March 15, 2010, with respect to this proposed Ordinance and invited public comment; and,

WHEREAS, the City/County Planning board did undertake the public information and hearings required by law, and did recommend that this Council continue the operation of Ordinance No. 654 in effect, until such time as the Legislature of the State of Montana provides further guidance on the subject of medical marijuana regulation, or until its expiration by operation of law; and,

WHEREAS, the City Council did cause notice to be published pursuant to Section 76-2-303, MCA, and hearing held pursuant to Section 76-2-306(2), MCA, and the Council did hear and consider the remarks made therein; and,

WHEREAS, the City Council believes it reasonable and prudent to re-state those certain portions of Ordinance No. 654 appearing herein, for the ease of use of the citizens:

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

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

Section 2: The terms "marijuana," "paraphernalia," "qualifying patient," and "caregiver," have the meanings attributed to those terms by the Medical Marijuana Act. "Establishment," as used herein, shall mean a for-profit commercial enterprise operated from a retail store-front or dispensary operation.

Section 3: The City of Polson hereby directs the City Manager or his designee 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 regulations that could be adopted to better regulate such establishments in order to limit, prohibit, or abate any negative effect implicating the health, safety, and/or welfare of the residents of the City of Polson. This activity is not to be undertaken until such time, if ever, that the Legislature of the State of Montana enacts statutes further addressing the regulation of medical marijuana within the State.

Section 4: At such time as Section 3 hereof is taken for action, the City of Polson hereby directs the City Manager to present findings and recommendations to the Polson City/County Planning Board. That Board shall then, pursuant to law, conduct the necessary hearing and/or hearings and subsequently provide its recommendation to the City Council so that the City Council may consider the issue further.

Section 5: Until such new ordinances, zoning or otherwise, are adopted and in place to regulate medical marijuana distribution, and except as provided herein, no establishment or caregiver operation may grow, sell, or distribute medical marijuana or

paraphernalia within any zoning classification within the City of Polson. 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 that patient's own use as provided in the Act. This prohibition shall further not apply to any caregiver operating a home-based business within a residential zoning classification that allows a home-based business and in possession of the proper permit; such permittee may grow, sell and distribute medical marijuana but may not sell or distribute paraphenalia. During the period of this interim ordinance, the number of plants in a permitted caregiver's possession may not exceed the number of plants allowed under the Medical Marijuana Act for two qualifying patients at any one time who must be registered to the caregiver.

Section 6: 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. This ordinance is not intended as, nor should it be relied upon as, a shield against prosecution, particular as to Federal drug laws related to the possession, consumption, growing and/or selling of marijuana.

Section 7: Any individual, entity or establishment that violates the terms or the restrictions set forth above shall be deemed to be committing a misdemeanor as provided in the City's municipal code, and shall be subject to prosecution in the same manner as one who violates any other City ordinance which the municipal code defines as a misdemeanor. Any such individual, entity or establishment shall also be subject to a civil action to enjoin or abate the public nuisance, as the City deems appropriate.

Section 8: Any caregiver wishing to establish a home-based business as set forth in Paragraph 5 hereof to grow, sell, or distribute medical marijuana shall first apply to the City of Polson for an appropriate permit, and pay a fee therefor of \$25.00, and the permit shall not issue if the proposed location is not in conformance with the terms of this Ordinance, or if the Chief of Police or his designee finds that the location cannot be made reasonably secure from unlawful intrusion. This Ordinance shall likewise shall apply to all applications including, but not limited to, those for building permits, zoning variances, conditional use permits, business licenses, safety inspection certificates, development activity, land use activity, land use changes, and any other applications for approval of any type or nature, which in the usual course of business are received by the City of Polson. Application for the permit shall constitute consent by the applicant for periodic inspection of the premises to assure conformance with the terms of the permit. The City shall maintain the privacy interests of all applicants, subject to the order of any competent court, or as the law may otherwise provide.

Section 9: In the event any word, phrase, clause, sentence, paragraph, section, or other part of the 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 10: This Interim Ordinance shall take effect immediately upon its passage at the second reading hereof, and shall remain in force and effect to, through, and including September 7, 2010, unless and until the term of this Interim Ordinance is altered or is extended pursuant to §76-2-306, MCA.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF POLSON, MONTANA, UPON TWO-THIRDS VOTE UPON THE FIRST AND SECOND READING HEREOF, THIS 8TH DAY OF SEPTEMBER, 2010.

Patricia DeVries, Mayor

Attest: _____
Kale Parker, City Clerk