

LOCAL GOVERNMENT SUGGESTIONS As Provided to the Montana League of Cities and Towns

FROM THE CITY OF MISSOULA

List of Medical Marijuana Concerns:

- List of patients for each caregiver
 - The City does not know the number of registered patients for each of the caregivers, and thus it is hard to track the number of patients in the city, or how much medical marijuana each caregiver can legally handle/distribute.
 - Having a list, can the local municipality double check to ensure that a qualified patient is not registered with more than one qualified caregivers.
- The idea of a Medical Marijuana Dispensaries, according to the state, needs to be defined or made illegal.
 - This is an area that needs to be address. The problem that we are facing is that there is multiple "dispensaries", I can't imagine that the owner of the business is personally distributing to their own qualified patients, or all the employees are distributing to their own qualified patients.
- Growing for the sale to other caregivers.
 - There is nothing in the MCA that address the sale of unprocessed/processed medical marijuana from one caregiver to another. Or obtaining medical marijuana from out of state. I have heard multiple "caregivers" or applicants state "the guy that supplies me is very dependable, and has good stuff".
- Home Occupation vs. Commercial Business
 - Need some direction as to define what would constitute a home based Medical Marijuana business and what would constitute a commercial base medical marijuana business.
 - How many plants/qualified caregivers would be allowed in a residential neighborhood for a home based business?
 - What zoning areas would allow medical marijuana? Is medical marijuana considered medical, industrial etc.? What zoning districts is medical marijuana allowed in?

- What authority and how to monitor medical caregivers sales operations and/or grow operations? Who will actually be monitoring to ensure compliance with the Montana “MEDICAL MARIJUANA ACT” in title 50, chapter 46?
- Can the location where medical marijuana caregivers and/or grow operations are established able to be regulated by local government zoning regulations?
- In addition to the statutory limitations set forth in section 50-46-205 MCA of the Medical Marijuana Act, can either users of medical marijuana and/or medical marijuana caregiver operations and/or grow operations be required to be located a certain minimum distance (such as 1,000 feet) from locations where youth under eighteen (18) might congregate, such as schools, day cares, park playgrounds, park playfields, theaters; etc.,etc.?
- Can medical marijuana users be regulated with respect to locations where they may utilize medical marijuana in addition to the statutory limitations in section 50-46-205 MCA?
- Are there chemical, etc. hazards associated with the medical marijuana operations that are able to be regulated by local governments?
- Are local governments able to establish building code provisions pertaining to medical marijuana grow operations, such as addressing the electrical aspects of the amount of electricity that may be utilized?
- Are local governments able to require that medical marijuana grow operations be located in standalone independent buildings or structures and not in buildings that share walls with other independent property owners and/or converted duplexes, four-plexes, apartment buildings, etc.?
 - Can this extend to mixed use zoning, such as Commercial on the bottom floor and residential on the second, third, fourth and etc. floors?

FROM THE CITY OF BILLINGS

1. **“Amortization”** is one of the issues we will likely face in our handling of medical marijuana. I suppose it could be considered covered loosely under the local zoning section of the memo and of course we do not expect someone else to do our research for us on such an issue.

As applied with zoning and medical marijuana amortization would be similar in application to amortization on so-called SOBs or sexually oriented businesses. In Billings, amortization may take several alternative forms: Allow grandfathered (existing) MM businesses that were open and in operation when our interim ordinance was adopted but give these business 2,3 or 4 years to migrate or move into allowed districts where the business may lawfully operate. Another amortization variation is to allow them in certain designated commercial or industrial zoning districts and require a 1000 foot separation from schools, churches, parks, daycares, etc and allow the business 2,3 or 4 years to move so

they comply with this separation requirement. Yet another is an complete prohibition of MM businesses within the city limits and allow these businesses a period of 2,3 or 4 years to move outside the city.

2. Local Authority and Options to Regulate or Prohibit MM: The memo did not discuss the possibility of allowing local cities and counties to completely prohibit MM or alternatively to regulate it. Colorado recently passed House Bill 10-1284, which among many other things allows a Colorado city or county to "...adopt and enforce a resolution or ordinance licensing, regulating or prohibiting the cultivation or sale of medical marijuana." This is found at section 12-43.3(2)(a) of the Bill. Also note that Colorado a passed Senate Bill 10-109 which is a much shorter bill in text length and focused on the physician/ patient relationship in medical marijuana and among other things provides specific provisions concerning medical board review and control of that relationship.

Many legislative remedies and adjustments are possible but Colorado's HB 10-1284 at least gives local control as to regulating or completely prohibiting MM.

Also, the applicability of MCA section 45-9-109 to the caregiver/retail business of selling to a qualified patient needs to be clarified. In other words, if a caregiver has a storefront he/she operates from that sells to their qualified patients, and that business is within 1000 feet of a school, can/should that caregiver be charged with a violation of 45-9-109? Some in Billings are arguing that this statute prohibits the City from allowing a caregiver business to operate closer than 1000 feet of a school. I am providing that statute below.

45-9-109. Criminal distribution of dangerous drugs on or near school property -- penalty -- affirmative defense. (1) A person commits the offense of criminal distribution of dangerous drugs on or near school property if the person violates 45-9-101 in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school.

(2) Except as provided in 46-18-222, a person convicted of criminal distribution of dangerous drugs on or near school property:

- (a) shall be imprisoned in the state prison for a term of not less than 3 years or more than life; and
- (b) may be fined an amount of not more than \$50,000.

(3) It is not a defense to prosecution under subsection (1) that the person did not know the distance involved.

(4) It is an affirmative defense to prosecution for a violation of this section that:

- (a) the prohibited conduct took place entirely within a private residence; and
- (b) no person 17 years of age or younger was present in the private residence at any time during the commission of the offense.

FROM THE CITY OF HELENA

Be able to zone, create prohibited areas (schools, jails, pre-release centers), to prohibit transfer, sale and public use all together, and sales taxation authority.

FROM THE CITY OF BOZEMAN

(The subcommittee) is already fully aware of the most important consideration for local government: do not take away local government's authority to manage MMJ as each local government sees fit. I believe local governments with self government powers already have that authority as long as the justification is not full of red herrings. Moreover, the legislature needs to be reminded (as I have already done with the CFHHS committee) that general powers governments need to be given express tools to manage MMJ through a mechanism other than zoning.

The city commission here passed on first reading last Monday a prohibition on smoking, consumption and display in public. This type of prohibition is not only consistent with the MMJ Act, is clearly justifiable and authorized under self government powers. ...

(The) idea of specific language in the MMJ Act that would allow local governments to establish reasonable amortization periods for business licenses is necessary.

Please review the CFHHS work group's recommendations for amendments to the MMJ Act.