



City Commission Special Meeting Agenda
2 Park Drive South, Great Falls, MT
Commission Chambers, Civic Center
April 19, 2022
4:00 PM

The agenda packet material is available on the City's website: <https://greatfallsmt.net/meetings>. The Public may view and listen to the meeting on government access channel City-190, cable channel 190; or online at <https://greatfallsmt.net/livestream>.

Public participation is welcome in the following ways:

- Attend in person. Please refrain from attending in person if you are not feeling well.
- Provide public comments in writing by 12:00 PM the day of the meeting: Mail to City Clerk, PO Box 5021, Great Falls, MT 59403, or via email to: commission@greatfallsmt.net. Include the agenda item or agenda item number in the subject line, and include the name of the commenter and either an address or whether the commenter is a city resident. Written communication received by that time will be shared with the City Commission and appropriate City staff for consideration during the agenda item and before final vote on the matter; and, will be so noted in the official record of the meeting.
- Call-in. Call in during specific public comment periods at 406-761-4786. Please note that the call in option may not be the most ideal option as there is a time delay between what is being aired/streamed and the live meeting, and there may be significant waiting times depending on how many calls are in the queue. Public would need to watch the meeting through the viewing methods listed above and call in when prompted by the Mayor. Calls will be taken in the order in which they are received. Callers will be restricted to customary time limits.

CALL TO ORDER

ROLL CALL / STAFF INTRODUCTIONS

AGENDA APPROVAL

CONFLICT DISCLOSURE / EX PARTE COMMUNICATIONS
PETITIONS AND COMMUNICATIONS

1. Miscellaneous reports and announcements.

(Public comment on agenda items or any matter that is within the jurisdiction of the City Commission. Please keep your remarks to a maximum of three (3) minutes. Speak into the microphone, and state your name and either your address or whether you are a city resident for the record.)

NEW BUSINESS

2. ADMINISTRATIVE APPEAL -- Appeal from City Staff Decision to Not Issue a Safety Inspection Certificate (SIC) to Janelle and Dale Yatsko for the Proposed Operation of an Adult-use Marijuana Dispensary with the City of Great Falls

ADJOURNMENT

(Please exit the chambers as quickly as possible. Chamber doors will be closed 5 minutes after adjournment of the meeting.)

Assistive listening devices are available for the hard of hearing, please arrive a few minutes early for set up, or contact the City Clerk's Office in advance at 455-8451. Wi-Fi is available during the meetings for viewing of the online meeting documents.

Commission meetings are televised on cable channel 190 and streamed live at <https://greatfallsmt.net>. A recording of this Special City Commission meeting will be made available on the City's Website at: <https://greatfallsmt.net/citycommission/city-commission-special-meeting-april-19-2022>.



Commission Meeting Date: April 19, 2022

**CITY OF GREAT FALLS
COMMISSION AGENDA REPORT**

Item: ADMINISTRATIVE APPEAL -- Appeal from City Staff Decision to Not Issue a Safety Inspection Certificate (SIC) to Janelle and Dale Yatsko for the Proposed Operation of an Adult-use Marijuana Dispensary with the City of Great Falls

From: Jeff Hindoien, City Attorney

Initiated By: Janelle and Dale Yatsko

Presented By: Jeff Hindoien, City Attorney

Action Requested: Conduct a Public Hearing and Uphold, Reverse or Revise the Staff Decision on the SIC Application

Public Hearing:

1. Mayor conducts public hearing, pursuant to OCCGF 1.2.050 and Title 17, Chapter 16, Article 6.
 2. Mayor closes public hearing and asks the will of the Commission.
-

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission deny the appeal and uphold the decision of City staff to not process or issue a Safety Inspection Certificate to the Appellants for the operation of an adult-use marijuana dispensary within the City of Great Falls”

OR

“I move that the City Commission grant the appeal and reverse the decision of City staff to not process or issue a Safety Inspection Certificate to the Appellants for the operation of an adult-use marijuana dispensary within the City of Great Falls.”

2. Mayor requests a second to the motion, Commission discussion, and calls for the vote.
-

Background: In early February, Janelle and Dale Yatsko completed an application for a Safety Inspection Certificate (SIC) for the operation of an adult-use marijuana dispensary within the City of Great Falls and contacted GFFR to secure an inspection of the proposed business site. Both GFFR and the City Attorney’s Office ultimately advised the Yatskos that their application for that type of business would not be processed.

The City Attorney's office then received a letter from legal counsel for the Yatskos on February 24, 2022 advising of their disagreement with the City staff decision, asserting that the Yatskos were entitled to operate an adult-use marijuana business within the City by virtue of state law, and requesting that the City immediately process and approve the SIC application. (*See attached Exhibit "A"*).

On March 16, 2022, City Manager Greg Doyon provided a written response to the letter from the Yatsko's counsel advising that:

- He was treating the letter as a written appeal from the denial of a request for an SIC under OCCGF 5.1.030;
- The City Commission had enacted Ordinance 3054 in June of 2010, codified as OCCGF 17.20.3.070, which provides as follows:

17.20.3.070 – Prohibited land uses. No use of land shall be permitted by right or conditionally permitted within the City of Great Falls that is in violation of federal, state or local law.

- The specific purpose behind Ordinance 3054 was to prohibit medical marijuana activities within the City of Great Falls; and
- Although the State of Montana has now legalized certain activities relating to adult-use marijuana, there have been no changes in terms of federal law continuing to prohibit marijuana-related activities.

(*See attached Exhibit "B"*). The City Manager's letter also advised that (1) the City disagreed with the assertion that it was, in the wake of I-190 and HB 701, legally required to allow the Yatskos to operate an adult-use marijuana dispensary within the City and (2) he was upholding the City staff decision to not process or issue an SIC to the Yatskos for that purpose.

The City Manager further advised that the Yatskos could appeal his decision to the City Commission under the provisions of OCCGF 5.1.030, which provides as follows:

If the City Manager upholds . . . the determination of the . . . certificate, the applicant may appeal the decision to the City Commission within fifteen (15) calendar days. The Commission shall review the application in a public meeting and uphold, reverse or revise the decision on the application. If applicant makes no such appeal, the City Manager's determination will stand.

On March 21, 2022, counsel for the Yatskos submitted an appeal of the City Manager's decision to the City Commission. (*See attached Exhibit "C"*).

Commission Action / Alternatives: As noted in the attached correspondence, the State of Montana has now legally authorized certain activities relating to adult-use marijuana, including but not limited to the authorization for the operation of adult-use marijuana dispensaries. There have, however, been no changes on the federal law front with respect to marijuana-related activities, either medical or adult-use. Thus, the City staff decision at issue, i.e., a decision to not process or issue an SIC for a proposed adult-use marijuana dispensary within the City of Great Falls, simply reflects the staff's application of the City's current zoning ordinance language.

I-190 as passed by the Montana voters in November of 2020 legalized a range of adult-use marijuana activities on a statewide basis. The language of I-190 as passed actually contained a provision that would have expressly prevented the City of Great Falls (or any other self-governing municipality) from completely prohibiting commercial adult-use activities (*see I-190, Section 37*). However, the 2021 Legislature **repealed** that specific restriction as part of its passage of the final statutory framework governing both medical and adult-use marijuana activities, i.e., HB 701 (*see HB 701, Section 106*).

As a self-governing local government, the City is allowed to exercise any power not specifically prohibited and any limitation on its authority has to be express, not implied. Thus, the City is in a position to assert that the Legislature's action to remove the express limitation on charter municipality authority from the I-190-enacted law means that there can be no "implied" restriction on the City's authority to prohibit adult-use marijuana activities.

As outlined in the Yatsko's appeal materials, however, there are legal arguments to the contrary and there remain legal questions as to both:

- the authority of any municipality within a county where the majority of voters voted in favor of I-190 in November of 2020 to completely prohibit adult-use marijuana activities; and
- the ability to rely on the type of "in violation of . . . federal law" land use ordinance that the City is presently relying on to prohibit both medical and adult-use marijuana activities.

Prior to the passage of I-190 and the enactment of HB 701, there were only two (2) other large Montana cities that had not previously allowed medical marijuana activities -- Kalispell and Billings. The City of Kalispell has since enacted a change to their zoning ordinance to allow and regulate adult-use and medical marijuana activities in certain limited zoning districts. The City of Billings, on the other hand, took action to refer the question of allowing (or prohibiting) adult-use marijuana activities within the City to the voters in November of 2021, and the voters enacted an ordinance via that referendum to ban such activities.

The options available to the Commission in addressing the current SIC appeal include the following:

OPTION 1: Deny the appeal and uphold the decision of the City Manager affirming the actions of City Staff to not process or issue an SIC to the Appellants for the operation of an adult-use marijuana dispensary within the City of Great Falls, with no further directive to staff.

OPTION 2: Grant the appeal and reverse the decision of the City Manager, and direct City staff to process and issue an SIC to the Appellants for the operation of an adult-use marijuana dispensary within the City of Great Falls.

OPTION 3: Deny the appeal and uphold the decision of the City Manager affirming the actions of City Staff to not process or issue an SIC to the Appellants for the operation of an adult-use marijuana dispensary within the City of Great Falls, and direct staff to:

- A. Prepare and bring forward to the Commission proposed changes to the City's zoning ordinance that would allow for the operation of adult-use marijuana-related activities within the City of Great Falls, and thus allow for the prospective issuance of SICs to operations to be established in compliance with those zoning regulations; OR

- B. Prepare and bring forward a proposed referendum package to refer an ordinance prohibiting adult-use medical marijuana-related activities to the voters of the City of Great Falls in November of 2021.

Staff does not recommend Option 2 because of the lack of any current zoning structure that would dictate the location or other attributes of an adult-use marijuana operation within the City. The Appellants have already indicated that they are prepared to pursue litigation if they believe their application for an SIC has been denied on an unlawful basis so Option 1 presumably carries the risk of litigation costs, expense and legal uncertainty.

Although Option 3(B) [referendum to the voters] would involve the cost of conducting a special election in the fall of 2022, both that particular Option and Option 3(A) [development of zoning regulations to allow for adult-use marijuana activities within the City] involve the least amount of legal uncertainty, risk or expense.

Attachments/Exhibits:

Exhibit “A”: February 24, 2022 Letter from the Yatskos to the City Attorney

Exhibit “B”: March 16, 2022 Letter from the City Manager to the Yatskos

Exhibit “C”: March 21, 2022 Letter from the Yatskos to the City Manager and City Attorney

EXHIBIT A

GRAYBILL

LAW FIRM, PC

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February 24, 2022

VIA EMAIL AND U.S. MAIL

Mr. Jeff Hindoien
 City Attorney
 City of Great Falls
 2 Park Drive South – Room 101
 P.O. Box 5021
 Great Falls, MT 59403
 (406) 455-8535
 jhindoien@greatfallsmt.net

Re: Janelle and Dale Yatsko Permit Application

Dear Jeff:

This office represents Janelle and Dale Yatsko in connection with their efforts to obtain a permit from the City to operate an adult-use marijuana dispensary within city limits.

Montana voters overwhelmingly approved Initiative 190 in 2020, which, as you know, legalizes the sale of marijuana for adult use. Cascade County voters approved I-190 by a wide margin.

The Yatskos have operated a successful medical marijuana dispensary in the county for years and are currently licensed to conduct adult-use sales at that location. Recently, the Yatskos secured a location within the City to operate an adult-use dispensary. An inspector with the State of Montana confirmed that the proposed location complies with state law site requirements.

On February 10, 2022, the Yatskos completed a Safety Inspection Certificate Application provided by the City of Great Falls and sought to obtain an inspection of their proposed adult-use dispensary site within city limits. Great Falls Fire Rescue personnel did not process the application and referred the Yatskos to your office. The Yatskos spoke to Neil Anthon who refused to process or otherwise assist them with their application. This is consistent with press reports that the City of Great Falls intends to prohibit—categorically—the sale of adult use recreational marijuana within City limits.¹

State law provides that adult-use marijuana sales are legal in Cascade County, including within city limits. It clearly preempts any contrary City policy or ordinance.

Local jurisdictions may regulate sales, but are not empowered to prohibit adult-use sales. *See* § 16-12-301(2)(a). The Legislature’s specific decision to allow adult-use sales in “green” counties in Title 16 overrides any generic self-government authorities the City might try to rely on to ban adult-use marijuana sales.

State law expressly forbids the operation of local ordinances that prohibit lawful business conduct, including those that “compel a private business to deny a customer of the private business access to the

¹ *See, e.g.,* <https://theelectricgf.com/2021/12/27/county-set-to-take-final-action-on-zoning-changes-for-recreational-marijuana/>

Jeff Hindoien
February 24, 2022

premises or access to goods or services” or “deny a customer of a private business the ability to access goods or services provided by the private business.” Section 7-5-103(2)(b)-(c), MCA.

The City cannot evade the clear requirements of state law by invoking the federal Controlled Substances Act, either. The City is a political subdivision of the State of Montana. Its operations, policies, and very existence arise under the Montana Constitution and state law. A political subdivision does not possess the independent authority to choose between state and federal regulatory regimes that best fit its policy preferences. Any conflict between state and federal law is for the two sovereigns—the State of Montana and the United States—to resolve, not the City of Great Falls.

State law entitles the Yatskos to operate their adult-use marijuana business within City limits; any contrary policy is preempted by state law. Please confirm that the City will process and approve the Yatsko’s application, immediately. The Yatskos are prepared to pursue litigation if the City denies their application on an unlawful basis or refuses to respond.

Thank you for your prompt attention to this matter. I will calendar 10 days for your response.

Thank you,

Raph Graybill

EXHIBIT B



March 16, 2022

VIA E-MAIL

Mr. Raph Graybill
Graybill Law Firm PC
300 4th Street N
Great Falls, MT 59403

RE: *Appeal from Denial of Janell & Dale Yatsko Permit Application*

Dear Mr. Graybill:

I am responding to your February 24, 2022 letter regarding the above-referenced matter.

Your letter indicates that the Yatskos sought to obtain a Safety Inspection Certificate (SIC) for the proposed operation of an adult-use marijuana dispensary site within the City of Great Falls and that their application was not processed.

Under Official Code of the City of Great Falls (OCCGF) 5.1.030, an applicant for an SIC may submit an appeal from a denial decision within fifteen (15) calendar days. Accordingly, I am treating your letter as a timely appeal submitted on behalf of the Yatskos from the City's denial of their SIC application.

By way of background, the City Commission adopted Ordinance 3054 in June of 2010 to enact what is now OCCGF 17.20.3.070, which provides as follows:

17.20.3.070 – Prohibited land uses. No use of land shall be permitted by right or conditionally permitted within the City of Great Falls that is in violation of federal, state or local law.

That amendment to the City's zoning regulations was enacted specifically to prohibit any medical marijuana activities inside the City and was similar to provisions enacted in other cities for that same purpose.

Although the State of Montana has now legally authorized certain activities relating to adult-use marijuana, there have been no changes on the federal law front with respect to marijuana-related activities, either medical or adult-use. From the City's perspective, its zoning ordinance

Raph Graybill
March 16, 2022
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currently stands with respect to both medical marijuana (a context in which it was never challenged during its decade-plus existence) and adult-use marijuana.

The City disagrees with the assertion that “[s]tate law provides that adult-use marijuana sales are legal in Cascade County, including within city limits” and that state law “clearly preempts any contrary City policy or ordinance.” Although I-190 as passed by the voters in November of 2020 contained language that would have prevented the City of Great Falls (or any other self-governing municipality) from completely prohibiting commercial adult-use activities (*see I-190, Section 37*), the 2021 Legislature **repealed** that specific restriction as part of its passage of HB 701 (*see HB 701, Section 106*).

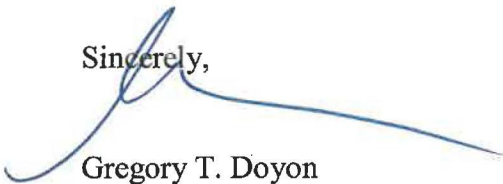
As a self-governing local government, the City is allowed to exercise any power not specifically prohibited and any limitation on its authority has to be express, not implied. As noted, the Montana Legislature specifically repealed the express limitation on the City’s authority in this area as previously enacted by I-190. Since the Legislature’s actions have meaning and intent, the Legislature’s action to remove that express limitation from the law means that there can be no “implied” restriction on the City’s authority to prohibit adult-use marijuana activities.

Finally, in terms of your reference to the new provisions in §§ 7-5-103(2)(b) and (c), MCA, those were enacted in response to the public health measures taken during the pandemic to restrict the operating hours and capacity limits of certain types of businesses. They do not operate to restrict the ability of local governments to regulate land use from a zoning perspective, i.e., they do not allow individuals to set up any type of business they want anywhere they like in a municipality without regard to zoning requirements.

Based on this rationale, I am upholding the City staff decision to not issue an SIC to the Yatskos for the proposed operation of an adult-use marijuana dispensary within the City of Great Falls.

Under OCCGF 5.1.030(B), the Yatskos may appeal my decision to the City Commission within fifteen (15) days of the date of this letter. If they submit an appeal to the City Commission, we will schedule the matter for consideration by the Commission in a public meeting as outlined in City code. If the Yatskos choose not to take an appeal, then my determination in this matter would remain.

Sincerely,



Gregory T. Doyon
City Manager

Encl: February 24, 2022 Letter

c: COGF Legal Department
GFFR / Fire Protection Bureau

GRAYBILL

LAW FIRM, PC

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February 24, 2022

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Jeff Hindoien
February 24, 2022

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Thank you,

Raph Graybill

EXHIBIT C

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March 21, 2022

VIA EMAIL

Mr. Gregory T. Doyon
City Manager
Mr. Jeff Hindoien
City Attorney
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Great Falls, MT 59403
(406) 455-8535
gdoyon@greatfallsmt.net
jhindoien@greatfallsmt.net

Re: Janelle and Dale Yatsko Permit Application

Dear Greg and Jeff:

I am in receipt your letter and decision dated March 16, 2022. The Yatskos appeal. Please submit this appeal to the Commission and inform me when a hearing is scheduled.

I appreciate your assistance.

Thank you,

GRAYBILL LAW FIRM, P.C.



By: _____
Raph Graybill