

By ELAINE FORMAN

Star Staff Writer

The Miles City Council is deciding whether or not to grant a home occupation permit request to Richard Flor for the growing and selling of medical marijuana.

At the Jan. 25 council meeting, the issue was referred to the Finance Committee, which will meet at noon Wednesday to discuss it further. The meeting is at City Hall.

Some cities have addressed the issue of medical marijuana. Charter cities like Billings and Missoula have taking steps to restrict it. Miles City is not a charter city.

Locally, the city council has wondered what could or should be done, if anything, on the issue.

Most cities are waiting to see the outcome at the Legislature, which will address it.

Flor has been growing marijuana since 2004, with the Eastern Montana Drug Task Force checking on the operation.

"I'm 100 percent legal. I haven't had any problems," he said.

Flor lives at 412 S. Stacy Ave., close to Highland Park School, which concerns some people. He has one crop a year and most of the growing season is when children are out of school for the summer.

When Flor spoke, he began with, "I know what I'm asking is controversial."

There are already three dispensaries in Miles City, he said.

He has 33 patients. "It's nice for them to come to my house and sit and talk. ... Every one of my patients is my friend."

He said he sees the marijuana really helping with their pain.

Former councilman Kelly Thibault read a Bible passage from Genesis 1:29, which quotes God as saying every seed-bearing plant will be food for his people.

Thibault had resigned from the council due to health issues and uses medical marijuana.

He said every time he goes to get some, even though Flor knows him, he must show his registration card.

He said Flor could have become a mobile unit that has less restrictions on him.

Thibault said the average age of Flor's medical marijuana patients is 50.

"These are not stoners," he said.

If Flor is denied a permit, all the patients that go to him could grow their own marijuana.

Thibault asked the council if they wanted 33 individual gardens scattered around town.

Thibault said his own yard is "within spitting distance" from a school.

He said there is no traffic generated as Flor usually gets only 6-8 people a day, so there is no impact on the neighborhood.

The item before Flor's request was a home occupancy permit for Kara Mader who has a secretarial work for the family's new business Yellowstone Environmental Contracting. It is an erosion control and revegetation-based business. It is based in her basement at 17 N. Custer Ave.

She got a 65 percent approval of her request from her neighbors, shown by their signature on a petition of support.

It was unanimously approved.

Flor received a 57 percent approval from his neighbors. Fifty percent approval is needed.

When Flor's request was referred to committee, Councilman Leif Ronning asked why, when the previous request wasn't.

Councilman Mark Ahner answered, "Unlike the previous request, a dispensary is more controversial and a concern to the public. I want to give the public more opportunity to respond."

Councilman John Uden reiterated his statements from previous meetings that he realizes medical marijuana is approved by state law, but it is still in violation of federal law and he

cannot support it.

Thibault asked why it is referred to Finance Committee and not the Public Safety Committee.

Ahner said because it is a commercial business and that Flor and he (Thibault) have stated it's not a public safety issue.

The council decided to refer it to committee by a vote of 6-2, with Jerry Partridge and Ronning voting against the referral.

Also at the Jan. 25 meeting:

- The National Guard will have disaster exercises locally on Feb. 14-17, using the scenario of an ice jam flood, where thousands of people are displaced.
- Resolution No. 3371 was unanimously approved, amending the final budget to include unanticipated National Trust Preservation Fund Grants to study the preservation of the NP depot.

The grant received was for \$1,500 to be used for a structural assessment of the depot.

- The council also unanimously approved Resolution No. 3372, to establish a budgetary fund for Business Improvement District No. 101, for tourism, promotion and marketing in the Miles City area.

- About \$34,000 of uncollected ambulance bills was sent to collections. Ahner said this is fairly routine and the city has spend a lot of time trying to collect on the bills.

- The council unanimously approved changes to the travel policy for training or education courses that is longer than four weeks, that if there is no city vehicle is available, the employees is reimbursed 21.9 cents per mile and that will include two trips home.

This mostly affects police officers attend the academy for 12 weeks.

Uden felt this is a hardship to young families and would like to see three trips home reimbursed.

A.C. Ronning said he thought the Finance Committee, which recommended the changes, was more than fair, since military personnel are gone much longer.

Ahner added that the officers are required to be at the academy for six or seven of the 12 weekends.

- The council unanimously approved Miles City Fire and Rescue to purchase a used rescue truck because the 1981 Chevy 1 ton currently used is not save. The purchase will not exceed \$25,000.

- December claims were approved. Ahner praised employee Billie Burkhalter for her help clarifying some of the claims.

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The first reading on the medical marijuana moratorium (Ordinance No. 1209) passed by a vote of 5-2 and now goes to the Finance Committee, which will make a recommendation to the council.

The ordinance imposes a moratorium upon the location, operation and licensing of establishments for growing, selling or distributing medical marijuana and directing the study of a new proposed ordinance to regulate such establishments while the Montana Legislature and the local Zoning Commission study the situation.

That study has up to four months to be completed.

The council is expected to vote on it for the final time on at the next council meeting on March 8.

Ward 4 councilmen and brothers Leif and A.C. Ronning voted against the moratorium.

Mayor Joe Whalen said that if the council passes it a second time, he has until March 22 to veto it, which he will.

If the council can override the veto by a two-thirds vote, they must do it on that date, if the members chose to.

If they are successful at overriding it, it will be 30 days before the ordinance goes into effect, which will be April 22, one day after the Legislature is scheduled to adjourn.

The ordinance would temporarily stop people from locating, opening, operating, being licensed or being granted an occupancy permit within the city or a one-mile limit outside the city until the issue has been resolved.

This does not apply to a qualifying patient who possess six plants or less and one ounce of usable marijuana solely for the patient's own use.

While this ordinance is in effect, anyone who violates any city, state or federal ordinances or laws will be subject to prosecution, it read.

At the beginning of the meeting, the public was allowed to comment.

Gary Cridland said there are many unanswered questions and a lot of conflict with the laws that he felt a moratorium is needed.

Richard Flor, who has applied for a home occupation permit for growing and dispensing medical marijuana said he was born in 1944 in Miles City and was raised here.

He moved away for a time and his wife was in an accident, which has caused her a great deal of pain.

She tried many prescriptions, including oxycontin, but they made her sick.

A doctor said marijuana may help and it did.

Before she was "wracked with pain" and now is on "an even keel," because of the medical marijuana, he said.

He's son's girlfriend had had cancer and medical marijuana helped her.

He said he began to take on patients after it became legal to do so and soon he had 33 patients he was growing for.

He said the concerns people have voiced "is all Reefer Madness," in reference to a 1936 melodramatic film on the supposed effects of using marijuana, where users become violent and descend into madness.

Flor said he wished people would do a little research on it. He said the average age of his patients is in their 50s and one is 88.

He said one of his patients is 83 and she gets two marijuana-zucchini muffins a day, one in the morning and one in the evening. She used to just sit in bed but now she jumps up and moves around.

Curt Almy, whose business office is next door to a different medical marijuana dispensary, said "it's very naive to think there isn't a lot of abuse" of medical marijuana.

He sees many young people "bouncing up there" to the dispensary and he has trouble believing they all have a serious illness.

He said the regulation of medical marijuana really needs to be looked at.

Custer County commissioners Vicki Hamilton and Jack Nesbit were in attendance. Hamilton said "most of all we (the commissioners) want to work together with the city" because if the city bans medical marijuana, the people will come out to the surrounding county area.

"We need to get educated about it," she said.

Nesbit offered their support and said the city was headed in the right direction (to study it further).

"I'm very disappointed in what the state did by not putting more regulations on it," he said.

He added they had no problem if the city wanted to extend the area from one-mile outside the city limits (as the ordinance reads now) to the three-mile area outside the city that the zoning commission has

authority in.

When the council picked up the discussion, John Uden said the issue of medical marijuana deserves consideration by the council.

Hollowell said any council action doesn't effect the usage, just the location.

He wants to see some kind of regulation and pointed out that the concerns are shared by the school board, commissioners and many members of the public.

Leif Ronning was puzzled why this ordinance was before the council when the last meeting the council members decided to table any decisions on medical marijuana until the Legislature ended and/or the Zoning Commission finished its study (it was given up to four months to do so).

A.C. Ronning asked why the council kept bringing this up when it was already decided to wait for the Legislature make it's decisions first.

Jerry Partridge said at one time he had a next-door neighbor selling marijuana out of the home. He reported it and nothing was done, because, he was told, the police were trying to get "the big guys." So it continued until the neighbors moved.

"I don't think it should be in a residential area," he said.

Whalen said this is an emotionally charged issue and Friday night when the story came out on the moratorium being on the agenda he received two e-mails and one phone call saying the city would be sued if it was passed. He received another communication Tuesday morning saying the same thing.

Hollowell, repeated that they are simply looking at location. He said even a church can be denied a location by the city. This is similar to what the city does with liquor licenses, he said.

Uden said he wouldn't have a problem if the medical marijuana was prescribed by a reputable doctor after the patient was given a thorough exam and it was dispensed out of a pharmacy.

City Attorney George Huss addressed Flor and said what this moratorium does is freezes everything. It stops the application from proceeding on and from any other applications from being accepted.

"Does it shut you down? No," he said. "...You are still in the same limbo as you are now."

Flor said he read in the ordinance that it would put him out of business. He said his lawyers are looking it over.

Whalen told the council that the quick increase of people using medical marijuana is not surprising, considering how many people in the state have cerebral palsy, cancer, and many other illnesses that marijuana relieves the pain for.

Many are bed-ridden, he added later.

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A moratorium on medical marijuana was passed by the Miles City Council in the second and final reading of Ordinance No. 1209 Tuesday night. The vote was 5-2.

The ordinance refers to the opening, operation or licensing of any establishment that grows, sells, stores, processes or distributes the substance.

At the last council meeting, Mayor Joe Whalen said he would veto the ordinance if it passed. He said he has been contacted by people who say that the city would be sued if the moratorium passed.

Whalen was out of town therefore wasn't at the meeting Tuesday.

At previous meetings the subject of medical marijuana has received many comments on both sides of the issue. Tuesday night only public six comments were made.

Zoning Commission Chairperson Amorette Allison said the commission was neither for nor against medical marijuana but according to the ordinance the group was to study the issue for up to four months. She said the members don't know what methodology they were to use for the study. They don't know what to study, how to study it and how they are to pay for it.

The study will probably need professional oversight which costs money, she added.

Four months is not very much time to do a study, she said.

Ahner said the time for the study can always be extended and the ordinance is similar to Forsyth and Glendive's moratorium and they have studied it. He suggested reviewing their studies.

Gary Cridland spoke in favor of the moratorium saying he didn't believe that what is happening now with medical marijuana was what the voters anticipated when voting for it.

He said the community needs to be proactive and set zoning for medical marijuana.

He added that the referendum for medical marijuana was not to give the growers an open ticket to sell marijuana where ever they choose.

"It just makes good sense to study it now," he said.

Raelee Hollowell believed the threats of the city being sued was just that, threats.

Richard Flor, who provides medical marijuana and his home occupation permit is currently at a stand still, said the lawsuit is not a threat.

He said medical marijuana businesses were being discriminated against and asked how providers "were going to get our medicine to our patients?"

Flor said he has spent \$10,000-15,000 since beginning his business by installing surveillance cameras, installing bullet proof glass, and more. He said his son sleeps outside during harvest to prevent any problems and they let no one into their home unless they have an appointment.

"If I call the police they are right there," he added.

Flor's wife Sherry said many of their patients will have to go out of town for the substance, and some of them are unable to drive.

Kimberly Evans said she believed there was a place for medical marijuana and said her aunt is terminally ill with cancer and uses it to ease her pain.

In the council members' comments, John Hollowell said to clarify, they are not looking to outright ban medical marijuana but to merely zone it — decide where it would be available.

He said Flor is currently in limbo with the ordinance but that doesn't prevent him from continuing his business since his application is in the process of being considered.

He added that if there was an attempt to ban him, it would be "unfair and unjust" because Flor had followed the law in applying for a permit.

This moratorium "doesn't stop you" from conducting his business, he said.

Jerry Partridge said no one pays attention to drug laws but felt this is a law that can be

enforced.

Leif Ronning said that since the police chief had said at a previous meeting that he had not problems with Flor's operation and that the city had been warned against a moratorium at state meetings, and since Whalen was going to veto it anyhow, he was against the ordinance.

He said he would vote against it and wait and see what the Legislature was going to do.

Mark Ahner said he originally agreed that he wanted to just wait for the Legislature, but is concerned that now there is talk of putting the issue back on the ballot.

"I'm not sure we'll have a solution by the end of the Legislature," he said.

He said the U.S. Attorney General Eric Holder recently gave a talk at a Montana campus and said if the Department of Justice believes there is a case of medical marijuana abuse, it will come in and address.

As far as potential litigation, there is always someone threatening to sue the city, Ahner said.

"I believe Mr. Huss did an excellent job in drafting the ordinance," Ahner said.

Hollowell said Department of Drug Enforcement Agency is enforcing the federal laws concerning medical marijuana, despite what is generally believed.

In the vote, Leroy Meidinger, Bill Melnik, Partridge, Ahner and Hollowell voted in favor of the ordinance and Leif and A.C. Ronning voted against it. John Uden was absent.

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The Miles City Council could not override Mayor Joe Whalen's veto on the medical marijuana moratorium (Ordinance No. 1209) Tuesday night.

The effort failed by a vote of 5-2. Six votes were needed to override it. Leif Ronning and A.C. Ronning voted against the effort. Bill Melnik was absent due to illness.

Wednesday morning, when asked what happens now, Whalen wrote, "As it stands, qualified caregivers are free to operate within the city limits of Miles City as long as they do not violate both state and federal law."

The ordinance would have temporarily stop people from locating, opening, operating, being licensed or being granted an occupancy permit for medical marijuana within the city or a one-mile limit outside the city while the Montana Legislature is in session and the Zoning Commission studied the situation.

This would not have applied to a qualifying patient who possess six plants or less and one ounce of usable marijuana solely for the patient's own use.

In his veto, Whalen wrote that although he is sensitive to the concerns of people, "Ordinance No. 1209 seeks to stretch our legitimate powers beyond their lawful limits," and is "certain that our City will suffer an expensive civil suit for its abuse," which he feels there is "the strong likelihood" that the city would lose.

During Tuesday's meeting, Councilman John Hollowell, who had requested the ordinance to be written, stressed that it addressed the zoning of medical marijuana businesses and not the banning of them.

He said cities always have been able to zone the location of businesses.

Hollowell said he has conducted an informal poll of 186 people. Of those 82 percent wanted the medical marijuana act repealed, 15 percent wanted some sort of regulation and 3 percent wanted the council to leave it alone.

He said he owns two properties and currently there is nothing to stop him from having a 15,000 square feet of marijuana farm next to a school.

Councilman Mark Ahner pointed to several recent articles in the newspapers about different problems that have occurred in Montana like: there were explosions in a Kalispell trailer home because medical marijuana providers was making hashish from marijuana plants and someone had mixed marijuana in butter and gave it to 8th graders to make cookies with and the cookies were being passed around at school and the students were acting spaced out and were expelled.

Councilman Jerry Partridge said he had taught 8th graders for a few years and "I wondered what the h-ll was wrong with them."

Ahner also mentioned a meeting of 60 attorneys in Butte on Friday where the lawyers asked Montana's U.S. Attorney Mike Cotter if they could lose their license if they offered legal advice to people growing medical marijuana and Cotter told them that no one can authorize violation of federal law.

Ahner thought the ordinance was "reasonable and (it was) prudent to take a time out."

Councilman Jerry Partridge told Whalen medical marijuana, "it's bad, it's pretty bad mayor and it's hard to imagine why anyone would want to defend it in anyway."

Before voting Whalen asked the councilmen if they had read the medical marijuana act. Most answered that they had read it and a few said they had read parts of it.

During public comments, medical marijuana provider Richard Flor said "marijuana doesn't really do any harm to a person" and it's the law.

"It seems you all have your minds made up," he added.

"If it was discovered today it would be deemed a miracle drug," Flor quoted an university professor saying

Rick Kuchynka said the benefits of medical marijuana isn't what's up for discussion but the ability of people being able to open up essentially "backyard pharmacies in any neighborhood in Miles City."

He said he was troubled when he read that a local medical marijuana provider installed bullet-proof glass in his home.

"That was supposedly an indication of how responsible these people were with their collection," but if he lived next door he would be very nervous.

"If this is allowed in Miles City, what can't you do. You might as well disband the zoning board and call it good," he said.

Muriel Selk pointed out that the federal government has been providing medical marijuana to patients since 1976.

Huss said the state law says medical marijuana providers can't be prosecuted or denied the right to grow medical marijuana but it doesn't say a city can't zone.

He added that he didn't think anyone has a right to have any business anywhere in the city at any time.

Flor thanked those councilmen who investigated Ordinance No. 1209.

He quoted comedic duo Cheech and Chong of the 1970s and '80s, saying "I was framed" referring to the recent stories of his home being raided by drug agents.

He asked the public not to judge him until he has told his story.

Whalen said, "you are innocent until proven guilty."

As far as Flor's home occupation permit request, on Feb. 8 it was tabled until the current Legislature defines the regulation of the Medical Marijuana Act, according to the council meeting minutes.