

CITY OF GREAT FALLS, MONTANA
A G E N D A R E P O R T

AGENDA # 10A
DATE February 4, 2003

ITEM Ord. #2843, An Ordinance immediately establishing a moratorium within Great Falls city limits denying the issuance of building and occupancy permits for gambling establishments and sexually oriented businesses for six months pending the adoption of a growth policy and a land development and zoning code.

INITIATED BY John Lawton, City Manager.

ACTION REQUESTED Acceptance Ord. #2843 on First Reading and set Public Hearing.

PRESENTED BY John Lawton, City Manager & David V. Gliko, City Attorney.

RECOMMENDATION:

It is recommended the City Commission accept Ordinance 2843 on First Reading and set public hearing on February 18, 2003.

MOTION:

I move the City Commission accept Ordinance 2843 on First Reading to immediately establish a moratorium within the Great Falls city limits denying the issuance of building and occupancy permits for gambling establishments and sexually oriented businesses for six months pending the adoption of a growth policy and a land development and zoning code; and set a public hearing thereon for February 18, 2003.

SYNOPSIS:

Due to citizens' concerns expressed in the Neighborhood Council and at City Commission meetings about the expansion of gambling establishments, i.e. casinos, in the City of Great Falls and because of the City Commission's desire to limit sexually oriented businesses to appropriate zoning areas; and because of the urgency to address such issues which can otherwise be covered in the adoption of a growth policy and new land development and zoning code; it is deemed urgent and necessary to adopt a six month moratorium on the issuance of building and occupancy permits for such establishments pending the adoption of a growth policy and land development and zoning code.

BACKGROUND:

Because of the general public's and citizens' concern expressed in recent neighborhood council meetings and at City Commission meetings regarding the future expansion of gambling, i.e. casinos, in the City of Great Falls, it appears urgent and necessary to take action to immediately address the issue. There is also urgent concern by the City Commission to address the zoning limitations for sexually oriented businesses (selling, displaying or performing obscene material or conduct as defined in Title 45, Chapter 8, MCA) by the City Commission's direction to staff to develop an ordinance regulating and limiting such businesses to

appropriate zoning areas within the City to promote the health, safety, morals and general welfare of the citizens. Such regulation of gambling and sexually oriented businesses will ultimately be addressed through the adoption of a growth policy as required by 7-2-4734, MCA, (Resolution 9286, adopted January 21, 2003, directs the Planning Board to prepare and present a growth policy for final approval on or before May 6, 2003) and by the adoption of a modernized zoning and unified development code for the entire city (Request for Proposals for professional assistance has been issued and funds have been identified therefore). Therefore, it is deemed appropriate to adopt a moratorium for the issuance of building permits and occupancy permits for said uses pending the adoption of the growth policy and land development and zoning code.

In 1979, the Montana Supreme Court recognized the validity of such moratoriums through implied authority and enacted as urgency measures under the procedures set forth in 76-2-306, MCA. *Diehl Company v. City of Helena*, 181 Mont. 306. Further, in 1995, Attorney General Mazurek issued an Opinion also acknowledging the legality of such moratoriums and held that such ordinances are “excluded from the zoning commission (Planning Board) hearing and report requirements imposed under 76-2-307, MCA.” See also *Diehl Company v. City of Helena*, supra at 313.

The Court in the *Diehl* case, opined for strict compliance with the notice procedures in 76-2-306 MCA requiring a public hearing before final adoption with notice published at least 7 days before the hearing. Therefore, a public hearing with proper notice must be held on February 18, 2003, prior to final consideration of Ordinance 2843.

Subsequent to the initial 6 month period, 76-2-306, MCA, allows a 1 year extension (“not more than two such extensions may be adopted”) after additional notice and public hearing. Therefore, if additional time beyond the initial 6 months becomes necessary to complete the new land development and zoning code, two extensions of 1 year each are available.