

**MONTANA EIGHTH JUDICIAL DISTRICT COURT
CASCADE COUNTY**

MONTANA DISPENSARY
LIMITED, a Montana for-profit
corporation; and EMMA ALBERS,

Plaintiffs,

vs.

CITY OF GREAT FALLS, a duly
incorporated political subdivision of
the State of Montana,

Respondent.

Cause No: BDV-24-0394

Hon. Elizabeth A. Best

ORDER

Defendant City of Great Falls (City) filed a Motion for Summary Judgment on November 26, 2025. (Doc.17). Plaintiffs, Montana Dispensary Limited and Emma Albers (Albers), opposed and filed a Cross-Motion for Partial Summary Judgment on March 9, 2026. (Doc.29). The City responded on April 13, 2026. (Doc. 39). Albers responded on April 27, 2026. (Doc.39).

The Court held a hearing on June 16, 2026. (Doc.42). For the reasons set forth below, the

ANALYSIS

I. Relevant Facts

Beginning in 2019, Albers leased the premises located at 1427 3rd Avenue North in Great Falls (Location). Albers intended to use it eventually to operate a state-licensed marijuana dispensary. The Location is zoned single-family high density (R-3), but it has consistently operated as a legal nonconforming use for commercial operations since at least the 1990s.

In 2019, the City issued its original Safety Inspection Certificate (SIC) based on Alber's statements of an intent to, "maintain the commercial status of the building" and to operate as, "sales and boutique," the same status as the previous occupant, an antique store. After the State legalized recreational marijuana on October 19, 2021, Plaintiffs submitted an SIC Application to update the use of the Location to a dispensary.

The City refused to process the application, relying on Ordinance 3054, OCCGF §17.20.3.070, which prohibited dispensaries from operating in Great Falls. The City returned Plaintiffs' application and fee. The City's justification under Ordinance 3054 has since been rejected by another department in this District. *See* Doc. No. 15 ("The City's ordinance [wa]s not a valid regulation.").

It is undisputed that the Plaintiffs' subsequent attempts to resubmit an SIC application, one on April 18, 2022, and again on October 27, 2022, were denied

based on the City's then-existing zoning regulations, amended after 2021. There is no evidence that the City ever considered the proposed use as a prior existing nonconforming use despite its discretion to do so. Moreover, evidence in the record reflects that the City specifically chose not to consider, "something as politically charged as a marijuana dispensary." *See* Exhibit 20 to Doc. 31.

The facts surrounding the Location's history and Plaintiffs' intended use are undisputed. The Location is busy one way through-street, 15th Street North, and is only a few blocks from other commercial spaces, including several other dispensary locations within less than a half mile. Traffic at this Location is on par with other commercial areas, higher than the average residential area, and is located on what the City considers a "Principal Arterial." Traffic counts for the Location are comparable, if not greater than high traffic streets in areas the City have expressly zoned for commercial use. This Location has been used exclusively for commercial operations for decades, including immediately prior to the Plaintiffs' lease. Uses in the area include a massage parlor, for example. The City does not dispute Plaintiffs' assertion that the proposed use would not increase or expand off-street parking or loading, or impacts from noise, dust, smoke or other environmental impacts.

Also undisputed is that improvements were made to the building were provisionally approved before the dispensary moratorium. The only impediment to operating a dispensary at the Location is the withheld Safety Inspection Certificate.

The parties do not raise material disputes about the applicable zoning regulations at play.

1. Official Code of the City of Great Falls (OCCGF) § 17.20.3.020 states:

Because the list of uses cannot include every conceivable type of activity, those uses that are listed shall be interpreted to include other uses that are of a similar nature and have similar impacts to the listed use.

2. OCCGF § 17.64.020 states that the City has the discretion to change or expand a prior existing nonconforming use if the following criteria have been met:

- (i) The off-street parking and loading requirements for and traffic generated by the proposed, expanded or increased use do not exceed that of the existing or most recent use.
- (ii) The proposed use is permitted in the same zoning district in which the existing or most recent use is first permitted in Table 20-1 of Chapter 20 to this Title. For the purposes of this Chapter, "first permitted" shall mean the first zoning district in Table 20-1 in which a "P" occurs, when reading the table from left to right.
- (iii) The intensity of onsite and offsite impacts from noise, dust, smoke and other environmental impacts associated with the proposed, expanded or increased use is equal to or less than that associated with the existing or most recent use.

In 2021, when Plaintiffs submitted an SIC application after recreational marijuana was legalized but before the City changed its regulations, the City did not expressly identify in which zoning districts marijuana dispensaries were permitted. The City later limited dispensaries to areas zoned industrial, I-1 and I-2.

II. Legal Standard

To prevail on summary judgment, the moving party bears the burden to show “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Hamilton Southside Historic Pres. Ass’n v. Zoning Bd. of Adjustment of the City of Hamilton*, 2023 MT 119, ¶ 10, 412 Mont. 519, 531 P.3d 584 (citations omitted); Rule 56(c) Mont. R. Civ. P.. The moving party must demonstrate “a complete absence of any genuine issue as to all facts considered material in light of all the substantive principles that entitle the moving party to a judgment as a matter of law and all reasonable inferences are to be drawn in favor of the party opposing summary judgment.” *Flathead Citizens for Quality Growth, Inc. v. Flathead Co. Bd. of Adjustment*, 2008 MT 1, ¶ 31, 341 Mont. 1, 175 P.3d 282.

When construing ambiguity in zoning ordinances, § 76-2-308, MCA applies. Subsection (3) states:

Enforcement and interpretation of zoning regulations and ordinances.

(3) In interpreting a use and in determining whether a use violates this part or a resolution adopted under this part, *any ambiguity* or uncertainty in the zoning regulations as to whether the use is in violation *must be interpreted in favor of the use in question*.

(emphasis added)

III. Specific Claims

A. Defendant's Motion for Summary Judgment on Counts III, IV, and IV is denied.

Plaintiffs' Complaint asserts three constitutional claims: (1) Tortious Interference with Economic Advantage, (2) Constitutional Tort, Violation of Due Process; and, alternatively, (3) Inverse Condemnation. Defendant moved for summary judgment on all three claims.

Each count requires findings of fact. The City's internal communications, documents relating to the City's past analyses regarding the Location before the 2021 SIC Application, the sworn testimony of Plaintiff, Emma Albers, demonstrate genuine disputes of material fact. These disputes defeat summary judgment. The City filed no sworn testimony to rebut the evidence filed by Albers and concedes in its briefing that fact issues remain. (Doc. No. 37, p. 22). Construing these facts in favor of Plaintiffs as the non-moving party, genuine issues of material fact exist preclude summary judgment.

i. Tortious Interference with Economic Advantage

To establish tortious interference with an economic advantage, Plaintiffs must show that the City's refusal to process their 2021 SIC Application was: (a) intentional or willful; (b) calculated to cause damage to Plaintiffs' business; (c) done with the unlawful purpose of causing damage or loss, *or* without right or justifiable cause; and (d) resulted in actual damages or loss. *Maloney v. Home &*

Inv. Ctr., Inc., 2000 MT 34, ¶ 41, 298 Mont. 213, 994 P.2d 1124 (citation omitted).

The question is whether the City committed intentional acts “disrupting the business relationship.” *Maloney*, ¶ 42.

The City argues that it had the authority to enforce its regulations, so cannot be held liable for damages caused by its exercise of that authority. However, in Montana, “[e]very governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties,” unless a statute provides for governmental immunity. § 2-9-102, MCA. While the City does have authority to enforce its zoning laws, it cannot do so arbitrarily. A tortious interference claim can be brought against a governmental agency, even if acting under that authority, if that enforcement is not a constitutional exercise of police power. In 2021, the City was not acting within its authority when it refused to process Plaintiffs’ SIC Application. Similarly, the record reflects evidence that the City’s refusal to consider the SIC application at all, which is probative on Plaintiffs’ claim of tortious interference.

Plaintiffs filed evidence that the City’s motivation to refuse to consider Plaintiff’s 2021 Application, and deny their subsequent attempts to apply, was, at least in part, on political animus against marijuana operations. For example, on August 19, 2022, Tom Micuda, Deputy Director of the City’s Planning Division,

responded to an inquiry about Plaintiffs' intentions to operate a dispensary at the

Location:

This one won't need to go to Craig [Craig Raymond, Planning Director] because I definitely know what he would do. Craig would never approve a written request to elevate the status of this building from a distribution/storage space to a dispensary. ... [H]e has the latitude to allow increases or expansions for nonconforming uses, but he would never use it for something as politically charged as a marijuana dispensary.

Doc. No. 31, Ex. 24. The City denies *animus*, but concedes that, "this email expresses animus or an intent to deprive Plaintiffs of an economic advantage is a question for the jury and inappropriate for summary judgment." (Doc. No. 37, p. 22). Being as it was the *City* and not the Plaintiffs that filed for summary judgment on this issue, the Court takes this as a concession by the City that its motion on this Count should be denied.

ii. Constitutional Tort, Violation of Due Process

The City argues that Plaintiffs have not established a genuine issue of material fact on their due process claim, because they do not have a property interest in operating a marijuana dispensary at the Location and that the City provided sufficient notice and opportunity to be heard for an application it refused to process. The record reflects that the City summarily denied the SIC Application in 2021 with no analysis. *See* June 16, 2026 hearing transcript (Doc. 43.) p. 10:5-21:

THE COURT: I'm asking about an analysis. Is there evidence of an analysis?

MR. BONILLA: To the – I mean, I guess it depends on what you mean. In the initial submission it was immediately denied.

THE COURT: In 2021.

MR. BONILLA: Right. ... But, in terms of the initial submission of the SIC application, it was immediately rejected under the old ordinance.

THE COURT: Without analysis.

MR. BONILLA: I mean, to the extent that it was based solely on they saw that it was a marijuana dispensary it was immediately rejected on that basis.

TR 10:5-21. The Plaintiffs raised a genuine issue of material fact, presenting probative facts on their substantive due process claim for the City's application of an invalid ordinance. Substantive due process focuses on the constitutionality of an underlying rule. *Raisler v. Burlington N.R. Co.*, 219 Mont. 254, 263, 717 P.2d 535, 541 (1985) ("The essence of substantive due process is that the State cannot use its police power to take unreasonable, arbitrary or capricious actions against an individual."). Ordinance 3054 was not a valid regulation. The City made no effort to analyze whether the proposed use was otherwise permitted at the Location.

The City urges that Plaintiffs do not have a property interest because State issued cannabis dispensary licenses are a privilege and not an entitlement. However, Plaintiffs have presented unrebutted evidence that they made significant investment in the Location and have a lease obligation. Significantly, there is now a state-wide moratorium on issuing new dispensary licenses. Even if Plaintiffs found another location in Great Falls where they could obtain the City's approval to operate a

dispensary, they would not be able to acquire a new dispensary license for that location until the moratorium is lifted. The Plaintiffs have raised genuine issues of material fact on this disputed issue.

iii. Inverse Condemnation (Alternative Count)

A party may maintain an inverse condemnation claim even when they are not deprived of “all economically beneficial us[e]” of their property. *Kafka v. Mont. Dep't of Fish, Wildlife & Parks*, 2008 MT 460, ¶¶ 67-69, 348 Mont. 80, 201 P.3d 8 (citations omitted). “[E]ven when a compensable property interest still retains economic value, just compensation may be required if, ‘justice and fairness’” requires the damage be compensated by the government, “rather than disproportionately concentrated on a few persons.” *Id.*, ¶ 69. To determine if Plaintiffs have a compensable property interest that warrants compensation, the court must engage in an “ad hoc, *factual* inquiry” based on the specific circumstances of that case. *Id.* (citation omitted).

Both parties have raised genuine material fact issues, including whether and to what extent denial of the SIC application interfered with Plaintiffs’ investment backed expectations. Plaintiffs have raised genuine issues of material fact, making summary judgment inappropriate.

B. Cross-Motion for Summary Judgment on Counts I and II.

i. Declaratory Relief

The Uniform Declaratory Judgments Act (UDJA), §§ 27-8-101 through -313, MCA, permits any person whose rights, status, or other legal relations are affected by a statute, or municipal ordinance to obtain a declaration of rights status, or other legal relations thereunder. § 27-8-202, MCA; *Mitchell v. Town of West Yellowstone* (1988), 235 Mont. 104, 107, 765 P.3d 745, 747. Plaintiffs ask the Court to declare that a marijuana dispensary is of a similar nature, with similar impacts, as prior commercial uses of the Location and that operating their dispensary at the Location is a legal nonconforming use.

The applicable regulations are found in the OCCGF under the Land Development Code. When considering whether to change or expand an existing nonconforming use to another, the City of Great Falls considers the following criteria:

- (i) The off-street parking and loading requirements for and traffic generated by the proposed, expanded or increased use do not exceed that of the existing or most recent use.
- (ii) The proposed use is permitted in the same zoning district in which the existing or most recent use is first permitted in Table 20-1 of Chapter 20 to this Title. For the purposes of this Chapter, "first permitted" shall mean the first zoning district in Table 20-1 in which a "P" occurs, when reading the table from left to right.
- (iii) The intensity of onsite and offsite impacts from noise, dust, smoke and other environmental impacts associated with the proposed,

expanded or increased use is equal to or less than that associated with the existing or most recent use.

OCCGF § 17.64.020.

The City did not dispute the Plaintiffs' showing the proposed use will not impact off-street parking, traffic, nor will it increase noise, dust, smoke and other environmental impacts—two requirements that need to be met for a use to be considered a legal nonconforming use. OCCGF § 17.64.020 (i) and (iii). Based on the record, Court declares that Plaintiffs satisfied (i) and (iii) of OCCGF § 17.64.020.

Subsection (ii) of OCCGF § 17.64.020 requires that the proposed use is permitted in the same zoning district in which the existing or most recent use is first permitted, in this case, Zone C-1. Assuming an applicant could meet the other elements of nonconforming use, the following types of businesses could potentially be allowed to operate at the Location: “convenience sales, general sales, off-site liquor sales, secondhand sales, administrative services, financial services, funeral home, general services, professional services, veterinary clinic for small animals.” *Id.* Table 20-1.

At the time of Albers' first SIC application, marijuana dispensaries were an “unlisted use.” This made it impossible for Plaintiffs' to explicitly meet this subsection, but unlisted uses are still permitted under § 17.20.3.020. Thus, the analysis turns to whether the proposed use is of a similar nature with similar impacts to uses permitted in the zoning district at issue here, C-1.

The City has not rebutted the evidence Albers offers that the proposed use will not increase parking or loading requirements or increase the impacts to noise, dust, smoke or other environmental impacts. Therefore, as a matter of law, Plaintiffs have established that the proposed marijuana dispensary has a similar impact as other permitted uses in zoning district C-1. Second, the record is replete with examples of the Location's many varied commercial uses, none of which were genuinely disputed.

The question then becomes whether the proposed use is of a similar nature to other permitted uses in C-1. The City asserts that the proposed use is not of a similar nature, including that operating a dispensary is not akin to other "professional services," the last issued SIC category, and that the cannabis industry is highly regulated. The City attempts to distinguish its category of "general services" versus the definition of "general services," which includes "administrative services, commercial services, funeral homes, professional services, sexually-oriented businesses, and veterinary clinics" and one that does not. Instead of supporting the City, it points up the ambiguity in the City's ordinances, which must be resolved in favor of the proposed use, as required by § 76-2-308, MCA.¹

¹ The Court agrees with Plaintiffs that this statute is not an impermissible retroactive application of a substantive law, but rather a procedural mechanism that applies to an *existing duty* of the City, that is to enforce its regulations. Further, rather than a retroactive application, it is applied to the analysis that the City has yet to undertake. *See also Carelli v. Hall*, 279 Mont. 202, 210, 926 P.2d 756, 761 (1996) (a statute

To meet subsection(ii) of OCCGF § 17.64.020, a marijuana dispensary must be of a similar nature to any other permitted uses in C-1, the first zone that the most recent use is permitted. It need not be of a similar nature *only* to “professional services,” nor even “general services,” but rather, similar to any of the uses permitted in C-1. Those permitted land uses include a wide variety of commercial business, including convenience sales and off-site liquor sales.² Exhibit 20-1 to OCCGF § 17.20.3.060. Plaintiffs’ proposed use is of a similar nature to other permitted uses in C-1, the first permitted zone for “professional services.” The clearest example of permitted use in zoning district C-1 that is of a similar nature to a marijuana dispensary is an off-site liquor store.

The City urges that the Court distinguish the facts here from the facts in a case involving another marijuana dispensary located within City limits. *See Green Creek LLC, et al. v. City of Great Falls*, ADV-22-0530 (Nov. 28, 2022). The location at issue in the *Yatsko* case previously operated as a micro-brewery. The Court determined that a marijuana dispensary at that location was a legal nonconforming use. Similarly, the City concedes that Plaintiffs’ use beginning in 2019 was a legal

does not operate retroactively merely because it is applied to conduct occurring prior to its enactment.)

² *See Green Creek LLC, et al. v. City of Great Falls*, ADV-22-0530 (Nov. 28, 2022). The location in this case previously operated as a micro-brewery. The Court determined that a marijuana dispensary at the location was a legal nonconforming use.

nonconforming use, and that it did not analyze whether it could change that legal nonconforming use to a dispensary in 2021.

Applying (ii) of § 17.64.020, Plaintiffs need not show only that their proposed use is similar in nature to the most previous use, but rather that it is similar to any permitted use in the first zoning district in which the existing use is permitted, in this case C-1. Like the Yatskos, Plaintiffs showed that a marijuana dispensary is of a similar nature to a commercial business that sells alcohol, a mind-altering substance in a highly regulated industry. The City concedes that Plaintiffs operated an existing legal nonconforming use first permitted in a C-1 zoning district. The analysis here is nearly indistinguishable with that in *Yatsko*—namely, whether the proposed use is similar nature to other another permitted use where alcohol can be sold.

Statutorily, any ambiguity created by the interplay of unlisted uses and the analysis required prior existing nonconforming uses must be construed in Plaintiffs' favor. A marijuana dispensary is of a similar nature to other commercial uses permitted in C-1. Thus, the Court DECLARES that Plaintiffs have satisfied (ii) of OCCGF § 17.64.020. The City has not rebutted Plaintiffs' evidence that the proposed use would have a similar impact. The material facts are not genuinely in dispute. Accordingly, as a matter of law, the Motion is GRANTED.

ii. Supplemental Relief

Section 27-8-313, MCA, provides that, “[f]urther relief based on a declaratory judgment or decree may be granted whenever necessary or proper.” The relief Plaintiffs seek will provide “complete and effectual relief to the declaratory judgment.” *Goodover v. Lindsey’s, Inc.* (1990), 246 Mont. 80, 83, 802 P.2d 1258, 1260. Their request for supplemental relief is necessary and proper to effectuate the Court’s declaration as stated above. **Within 14 days of this Order**, the City must issue the Safety Inspection Certificate allowing Plaintiffs to operate a marijuana dispensary at the Location.

iii. Attorneys’ Fees and Costs

Plaintiffs moved for their attorneys’ fees and costs, based on: (1) § 27-8-313, MCA; (2) § 25–10–711(1), MCA; or (3) the *Foy* exception. The City did not respond to this portion of Plaintiffs’ Motion. The Court considers the request under Rule 56.

First, under *City of Helena v. Svee*, 2014 MT 311, ¶¶ 9-15, 377 Mont. 158, 339 P.3d 32, the Supreme Court held that a governmental agency is not similarly situated to individual party who has “significantly less” resources. Here, likewise, the parties are not similarly situated. Plaintiffs have shown that (1) the City possesses what Plaintiffs seek in the declaratory action, namely, approval of the SIC Application; (2) a declaration is necessary for Plaintiffs to operate a dispensary

because the City refused to process or approve the 2021 SIC Application; and (3) declaratory relief is necessary in order to change the status quo. *Id.*, ¶ 22.

Further, § 25-10-711(1), MCA applies. The City continues to refuse to reconsider its failure to review the 2021 SIC Application and forced Plaintiffs to file suit without a reasonable factual or legal basis, despite the Order in *Green Creek, LLC et al. v. City of Great Falls*, DV-7-2022-308 (June 27, 2022). Because the City continued to enforce an invalid ordinance against Plaintiffs, under these statutory bases as well as this Court's powers in equity, Plaintiffs are entitled to their reasonable attorneys' fees and costs.

For the above reasons, the Court hereby ORDERS:

- 1) The City's Motion is DENIED;
- 2) Albers' Motion is GRANTED;
- 3) The Court DECLARES that Albers' business (Montana Dispensary) location is a legal nonconforming use;
- 4) The City SHALL approve, through a Safety Inspection Certificate, that the Alberses may operate as a marijuana dispensary at the Location within 14 days of this Order; and
- 5) The City SHALL pay the Alberses their reasonable attorneys' fees and costs incurred in this cause pursuant to §§ 27-8-313 and § 25-10-711(1), MCA; and

- 6) Within 30 days of the date of this Order, counsel for Plaintiffs SHALL file
and serve an affidavit attorney's fees and costs.

ELECTRONICALLY SIGNED AND DATED BELOW.

cc: Jordan Y. Crosby, Esq.
James R. Zadick, Esq.
David G. Dennis, Esq.
Angela M. LeDuc, Esq.
Erin T. McGarvey, Esq.