

Town of Silverton

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TOWN OF SILVERTON, COLORADO

ORDINANCE NO. 2010 - 01

AN EMERGENCY ORDINANCE IMPOSING A TEMPORARY MORATORIUM OF ONE HUNDRED TWENTY (120) DAYS IN DURATION ON THE PROCESSING AND APPROVAL OF ANY APPLICATION FOR A PERMIT OR LICENSE RELATED TO THE OPERATION OF A BUSINESS THAT SELLS MEDICAL MARIJUANA PURSUANT TO THE AUTHORITY GRANTED BY ARTICLE XVIII, § 14 OF THE COLORADO CONSTITUTION; DIRECTING THE PROMPT INVESTIGATION OF THE TOWN'S REGULATORY AUTHORITY OVER SUCH BUSINESSES; AND SETTING DETAILS IN REGARD THERETO.

WHEREAS, the Town of Silverton, in the County of San Juan and State of Colorado (the "Town"), is a statutory authority duly existing under the Constitution and laws of the State of Colorado and its Municipal Code; and

WHEREAS, the members of the Town Board of Trustees (the "Board") have been duly elected and qualified; and

WHEREAS, in the November 2000 general election, the voters of the State of Colorado adopted Amendment 20 to the Colorado Constitution (Article XVIII, § 14), which authorizes and limits the sale of medical marijuana for use in the treatment of certain medical conditions; and

WHEREAS, the Board is aware that staff has received inquiries from persons who are interested in opening and operating businesses and cooperatives that would offer medical marijuana for sale or distribution, including the cultivation of marijuana ("Medical Marijuana Dispensaries"); and

WHEREAS, the Town has no current land use or business regulations explicitly permitting the operation of Medical Marijuana Dispensaries; and

WHEREAS, the Board is aware of potential state legislation that will be considered by the Colorado Legislature during its 2010 legislative session, and that any such legislation may impact the Town's regulatory authority over Medical Marijuana Dispensaries; and

WHEREAS, the Board is aware of potential federal legislation (H.R. 2835) removing marijuana from the substances banned by the federal Controlled Substances Act in certain circumstances and

amending the Federal Food, Drug and Cosmetic Act, and any such legislation may impact the Town's regulatory authority over Medical Marijuana Dispensaries; and

WHEREAS, the Board is also aware of the of the Arapahoe County District Court's decision in the case of *Frasher, et al. v. City of Centennial*, Case No. 09 CV 1456, regarding the local regulation of Medical Marijuana Dispensaries within the City of Centennial and which may also have some bearing on municipalities' regulatory authority over Medical Marijuana Dispensaries; and

WHEREAS, the imposition of a moratorium on the processing and approval of applications for Town permits and licenses relating to the operation of Medical Marijuana Dispensaries will allow Town staff, the Town Attorney and the Board to investigate the Town's regulatory authority over Medical Marijuana Dispensaries; and

WHEREAS, one hundred twenty (120) days is a reasonable length of time for the Town to properly investigate the Town's regulatory authority over Medical Marijuana Dispensaries and consider any state legislation that passes out of the current legislative session, which is to conclude on May 12, 2010; and

WHEREAS, Silverton Town Code Section 2-16-5 provides that an ordinance may be passed as an emergency measure for the preservation of the public property, health, welfare, peace or safety, upon a $\frac{3}{4}$ affirmative vote of the Board; and

WHEREAS, proprietors of Medical Marijuana Dispensaries will not be unduly prejudiced by the imposition of such a temporary moratorium.

NOW, THEREFORE, BE IT ORDAINED, BY THE BOARD OF TRUSTEES OF THE TOWN OF SILVERTON, COLORADO that:

Section 1. Findings and Intent. The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Board.

Section 2. Temporary Moratorium. Upon the adoption of this Ordinance, a moratorium is imposed upon the processing and approval by the Town of applications for permits and licenses related to Medical Marijuana Dispensaries. Town staff is directed to refuse to process, review or approve any such applications for Medical Marijuana Dispensaries during the moratorium.

Section 3. Investigation and Evaluation. During the moratorium, Town staff, working with the Town Attorney, shall investigate and evaluate the regulatory authority of the Town over Medical Marijuana Dispensaries, including the impact of applicable court rulings and the proposed state and federal legislation, and determine whether the Town should allow Medical Marijuana Dispensaries within its boundaries, and if so, what regulations should govern such Medical Marijuana Dispensaries.

Section 4. Police Power Finding. The Board hereby finds, determines and declares that this Emergency Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town and the inhabitants thereof.

Section 5. Authority. The Board hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to: (i) the Local Government Land Use Control Enabling

Act, Article 20 of Title 29 C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) C.R.S. § 31-15-103, C.R.S. (concerning municipal police powers); (iv) C.R.S. § 31-15-401 (concerning municipal police powers); (iv) C.R.S. § 31-15-501 (concerning municipal power to regulate businesses); and (v) the powers contained in the Town of Silverton Municipal Code.

Section 6. Emergency Declared; Effective Date; Expiration. Pursuant to Section 2-16-5 of the Municipal Code, the Board finds, determines and declares that passage of this Emergency Ordinance is necessary for the immediate preservation of the public peace, health, and safety to prevent the processing and approval of any application for a Town permit or license relating to the operation of a Medical Marijuana Dispensary until the Town has had a reasonable opportunity to: determine the extent of the Town's regulatory authority over Medical Marijuana Dispensaries and investigate and evaluate the impact, if any, that potential state and federal legislation and court rulings have on the Town. The Board further determines that the adoption of this Ordinance as an emergency ordinance is in the best interest of the citizens of the Town. As per Town Code Section 2-16-6, the moratorium imposed by this Ordinance shall take effect five (5) days after adoption of this Ordinance and shall expire one hundred eighty (180) days thereafter, unless repealed prior to that date or extended, if necessary, as determined by the Town Board.

Section 7. Severance Clause. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Board hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

INTRODUCED AND FINALLY PASSED AS AN EMERGENCY MEASURE AND
ORDERED PUBLISHED ONCE IN FULL this 25th day of January, 2010.



Brian Carlson, Clerk-Treasurer



Terrence M. Kerwin, Mayor