

ORDINANCE 148

AN ORDINANCE OF THE DARBY TOWN COUNCIL AMENDING DARBY TOWN CODE TITLE 5 ENTITLED "MOTOR VEHICLES AND TRAFFIC" BY ADDING CHAPTER 16 ENTITLED "REFUSAL TO SUBMIT TO ALCOHOL AND/OR DRUG TESTS" AND ENACTING SECTIONS 5-16-1 THROUGH 5-16-3.

NOW THEREFORE, BE IT ORDAINED BY THE DARBY TOWN COUNCIL THAT DARBY TOWN CODE TITLE 5, CHAPTER 16, SECTIONS 5-16-1 THROUGH 5-16-3, BE ADDED AS FOLLOWS:

Chapter 5-16 REFUSAL TO SUBMIT TO ALCOHOL AND/OR DRUG TEST

Section 1.

5-16-1 Purpose and intent. Any person operating or in actual physical control of a motor vehicle while under the influence of alcohol and/or drugs creates a significant risk to public safety, health and general welfare. To help secure public safety, health and general welfare for all persons, the Town of Darby adopts this chapter in an effort to deter persons from engaging in this dangerous activity. This chapter is adopted pursuant to Mont. Code Ann. §61-12-101, which grants authority and powers to local authorities to regulate the operation of motor vehicles by a person while under the influence of alcohol and/or drugs. This chapter is also adopted pursuant to other provisions of Montana State law allowing town governments to regulate traffic upon streets such as Mont. Code Ann. §§ 7-14-4102 and 7-14-4103 as well as pursuant to the exercise of the Town of Darby's self-government powers granted by the Town of Darby Charter.

Section 2.

5-16-2 Unlawful to refuse to submit to a breath or blood test for alcohol and/or drugs. It is unlawful and constitutes a misdemeanor offense for any person operating or in actual physical control of a motor vehicle suspected of doing so under the influence of alcohol and/or drugs to refuse to submit to one or more tests to detect alcohol and/or drugs requested and designated by any peace officer as defined by Montana State law. Prior to charging a person with a violation of this section a peace officer shall inform the person requested to take the designated test that refusing the test is a misdemeanor offense under the Darby Town Code and identify the penalties associated with the offense. If any arrested person refuses to submit to one or more tests requested and designated by a peace officer as provided for pursuant to Montana State law, the refused test may not be given. However, the person refusing to submit to any such requested tests may be charged with a misdemeanor offense pursuant to this section.

Section 3.

5-16-3 Penalties. The penalties for violation of this chapter are established pursuant to this section. Incarceration is not a penalty for violation of this chapter. A person convicted under this

chapter shall be subject to a fine of ~~\$1,000.00~~-\$500.00, no portion of which may be suspended, waived or deferred by the court. (MCA 7-1-111(8))

Section 4.

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed the ordinance and each section, subsection sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.


Section 5.

Effective Date. This ordinance shall be in full force and effect thirty-days (30) after passage of the second and final reading by the Darby Town Council.

PASSED by the Town Council of the Incorporated Town of Darby on first reading, at a regularly scheduled session thereof on the 23rd day of February 2010.



Mayor Rick Scheele




Attested: Town Clerk, Nancy G. McKinney

PASSED, APPROVED AND ADOPTED by the Town Council of the Incorporated Town of Darby, Darby MT on second and final reading, at a regularly scheduled session thereof held on the 9th day of March 2010.



Mayor Rick Scheele



Attested: Town Clerk, Tari Conroy