

ORDINANCE NO. 149

AN INTERIM ZONING ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF DARBY, MONTANA, IMPOSING RESTRICTIONS UPON THE LOCATION, OPENING, OPERATION, AND LICENSING OF ANY ESTABLISHMENTS THAT GROW, SELL, OR DISTRIBUTE MEDICAL MARIJUANA AND DIRECTING THE STUDY OF NEW PROPOSED ORDINANCES TO REGULATE SUCH ESTABLISHMENTS.

WHEREAS, on November 2, 2004, Montana voters adopted the Medical Marijuana Act, which is codified at §50-46-101, MCA, et seq., and at that time and in subsequent legislative sessions the legislature failed to include language or authorize State agencies to promulgate administrative rules concerning a multitude of logistical issues surrounding the Act and the concerns of local governments about its application in their communities and the parameters under which a local government has authority to regulate it's effects; and,

WHEREAS, the Medical Marijuana Act permits the cultivation, manufacture, delivery, transfer, and transportation of marijuana or paraphernalia by a qualified patient or a caregiver, as those terms are defined in the Act; and,

WHEREAS, establishments that grow, sell or distribute medical marijuana or paraphernalia could have a detrimental effect on the health, safety or welfare of neighborhoods or on nearby churches, schools or recreational facilities and can, through such an effect, create a public nuisance; and,

WHEREAS, it is not appropriate to allow establishments that grow, sell or distribute medical marijuana or paraphernalia to be located in every zone district in the Town of Darby; and

WHEREAS, §76-2-306, MCA, permits a Town to adopt an interim zoning ordinance for the immediate preservation of the public peace, property, health, or safety, which interim zoning ordinance may take effect immediately; and,

WHEREAS, §76-2-306, MCA, permits the Town to adopt an interim zoning ordinance with immediate effect upon passage in order to protect public safety, health, and welfare without following the procedures otherwise required preliminary to the adoption of a zoning ordinance, and such interim ordinances may prohibit uses that may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time; and,

WHEREAS, the Town intends to provide an opportunity to further study this issue and an opportunity to adopt appropriate ordinances, zoning or otherwise, to appropriately regulate medical marijuana establishments; and,

WHEREAS, after first having provided lawful public notice as required by §76-2-306(2), MCA, the Town Council conducted a public hearing on April 13, 2010, with respect to this proposed Ordinance and invited public comment;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Darby, Montana, as follows:

Section 1: All the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: The terms "marijuana," "paraphernalia," "qualifying patient," and "caregiver," have the meanings attributed to those terms by the Medical Marijuana Act.

Section 3: The Town of Darby hereby directs the Mayor to investigate and study the effect of the opening of establishments that grow, sell, or distribute medical marijuana or paraphernalia; and, to make recommendations concerning new zoning ordinances that could be adopted to better regulate such establishments in order to limit, prohibit, or abate any negative effect implicating the health, safety, and/or welfare of the residents of the Town of Darby.

Section 4: The Town of Darby hereby directs the Mayor to present findings and recommendations to the Darby Zoning Commission. The Zoning Commission shall then provide its recommendation to the Town Council so that the Town Council may consider the issue within approximately three (3) months of the date of the enactment of this Ordinance.

Section 5: Until such new ordinances, zoning or otherwise, are adopted and in place to regulate medical marijuana distribution, any establishment attempting to grow, sell, or distribute medical marijuana or paraphernalia in the Town of Darby shall not be allowed. During the period of this interim ordinance, the number of plants in a caregiver's possession may not exceed the number of plants allowed under the Medical Marijuana Act for the number of qualifying patients who were registered to him or her on the effective date of this ordinance.

Section 6: In addition to the provisions of this ordinance, the growing, selling or distribution of medical marijuana or paraphernalia shall be subject to all local, State and Federal laws, rules and regulations. This ordinance is not intended as, nor should it be relied upon as, a shield against prosecution, particular as to Federal drug laws related to the possession, consumption, growing and/or selling of marijuana.


Section 7: Any individual, entity or establishment that violates the terms or the restrictions set forth above shall be deemed to be committing a criminal act,, shall be subject to prosecution in the same manner as one who violates Town ordinances and shall be subject to the general penalty set forth in §1-4-2 of the Darby Town Code (DTC). Any such individual, entity or establishment shall also be subject to a civil action to enjoin or abate the public nuisance, as the Town deems appropriate.

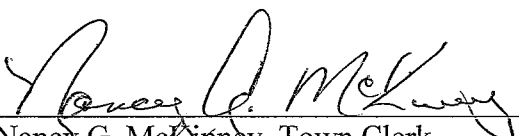
Section 8: This Ordinance shall be retroactive, and it shall apply to all applications including, but not limited to, those for building permits, zoning variances, conditional use permits, business licenses, safety inspection certificates, development activity, land use activity, land use changes, and any other applications for approval of any type or nature, which have been received by the Town of Darby and not yet granted or approved as of the effective date of this Ordinance.

Section 9: In the event any word, phrase, clause, sentence, paragraph, section, or other part of the Ordinance set forth herein is held to be invalid by a court of competent jurisdiction, such holding shall affect only that part found invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 10: This Interim Ordinance shall take effect immediately upon its adoption by the Town Council of the Town of Darby, Montana. No second reading shall be required. This Interim Ordinance shall be effective for a period of six (6) months from the date of its adoption unless and until the term of this Interim Ordinance is altered or is extended pursuant to §76-2-306, MCA.

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF
DARBY, MONTANA, THIS 13TH DAY OF APRIL, 2010.**


Rick Scheele, Mayor

Attest: 
Nancy G. McKinney, Town Clerk