

Town of Basalt Colorado
Ordinance No. 14
Series of 2009

WHEREAS, the Town of Basalt (the "Town") is a legally and regularly created, established, organized and existing municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado and the home rule charter of the Town (the "Charter"); and

WHEREAS, Section 4.7 of the Charter authorizes the Town Council to enact emergency ordinances for the preservation of public peace, health or safety upon the affirmative vote of every member of the Council present or by affirmative votes equal to a quorum plus one, whichever is less; and

WHEREAS, the Town of Basalt currently regulates land uses within the Town limits in accordance with Chapters 16, 17, and 18 of the Basalt Municipal Code pursuant to its Home Rule Constitutional authority and the Local Government Land Use Control Enabling Act of 1974, as amended, §§29-20-101, *et seq.* C.R.S.; and

WHEREAS, The Town Council has been made aware that staff has received an inquiry from persons who may be interested in opening and operating a business within the Town which would offer medical marijuana for sale and such activities

WHEREAS, the sale of medical marijuana was authorized and limited by Article 18, Section 14 of the Colorado Constitution, adopted by the voters of the State of Colorado on November 7, 2000; and

WHEREAS, The imposition of a ninety (90) day moratorium on the submission, acceptance, processing, and approval of all applications for Town permits, licenses, and land use approvals relating to the operation of a person that grows, produces or sells medical marijuana will allow the Town staff and the Town Council to investigate the Town's ability to regulate such uses, and to develop and implement any appropriate regulations deemed necessary by the Town Council.

WHEREAS, because the Town does not have any current regulations pertaining to persons that grow, produce or sell medical marijuana, the Town will suffer irreparable harm if a short, temporary moratorium on the submission, acceptance, processing, and approval of Town permits, licenses, and land use applications related to the operation of such facilities is not imposed.

WHEREAS, the duration of the moratorium imposed by this ordinance is reasonable in length, and is no longer than is required for the Town to properly investigate, develop, and if appropriate, adopt and implement any regulations deemed necessary with respect to persons that grow, produce or sell marijuana.

WHEREAS, proprietors and other persons desiring to open a business that grows, produces or sells medical marijuana or persons that wish to grow or produce marijuana will not be unfairly prejudiced by the imposition of the short, temporary moratorium imposed by this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, THAT:

Section 1. Imposition of Temporary Moratorium on Applications for Permits, Licenses, and Land Use Approvals Related to Persons that Grow, Produce, or Sell Medical Marijuana. Upon the adoption of this ordinance, a moratorium is imposed upon the submission, acceptance, processing, and approval of all applications for permits, licenses, and land use approvals by the Town of Basalt related to a person that grows, produces or sells, or proposes to grow, produce or sell medical marijuana pursuant to the authority granted by Article 18, Section 14 of the Colorado Constitution. The Town Staff, is directed to refuse to accept for filing, and not to process or review any such new applications during the moratorium period.

Section 2. Effective Dates of Moratorium. The moratorium imposed by this ordinance shall commence as of the date of the adoption of this ordinance, and shall expire ninety (90) days thereafter, unless sooner repealed and the period of effectiveness of this Ordinance is referred to herein as the "Effective Period".
Section 3. Application of Moratorium. As the growing, production and sale of marijuana is not currently addressed in the Town Code, the growing, production and sale of marijuana shall not be permitted within Basalt during the duration of the moratorium. Any notice of intent received prior to the date of this moratorium may proceed on a temporary basis dependent upon the outcome of the proposed regulations.

Section 4. Staff and Attorney to Investigate and Prepare Proposed Regulations. Before the expiration of the moratorium imposed by this ordinance, the Town Staff, working with the Town Attorney, shall carefully review the legal authority of the Town to regulate persons growing, producing and selling medical marijuana pursuant to Article 18, Section 14 of the Colorado Constitution. Such investigations shall be completed promptly and with due diligence. The Town Attorney shall prepare appropriate new regulations with respect to such persons for consideration by the Town Council.

Section 5. Police Power Finding. The Town Council hereby finds, determines, and declares that his 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 of Basalt and the inhabitants thereof.

Section 6. Authority. The Town Council 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) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401C.R.S. (concerning municipal police powers); (v) Section 31-15-501 (concerning municipal power to regulate businesses); (vi) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vii) the powers granted by the Basalt Town Charter.

Section 7. Emergency Declaration. The Town Council of the Town of Basalt hereby finds, determines, and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public property, health, welfare, peace or safety. The adoption of this ordinance on an emergency basis is necessary in order to prevent a person from filing an application for a Town permit, license, or land use approvals relating to the operation of a person that grows, produces or sells medical marijuana until the Town has had a reasonable opportunity to determine: (i) the extent of the town's regulatory authority over persons that grow, sell, or produce medical marijuana; and (ii) what regulations, if any, should be imposed by the Town upon such persons. Failure to immediately impose the moratorium provided for in this ordinance will potentially allow a person to submit an application for a permit, license, or land use approval from the Town (including but not limited to an application for a development permit; an application for a business license; an application for sales tax license; or a land use application), and to possibly acquire certain rights with respect to the processing of such applications before the Town has the reasonable opportunity to evaluate the possible community impacts that might be associated with the operation of facilities farming, producing, or selling medical marijuana and to implement appropriate regulations with respect to such facilities. This could lead to the Town being forced to allow the operation of a facility that sells medical marijuana in a location or in such a manner that would be out of character with the community and which would negatively affect the cultural, environmental, and neighborhood areas of the Town, and potentially present issues related to crime. The Town Council further determines that the adoption of this ordinance as an emergency ordinance is in the best interest of the citizens of the Town of Basalt.

Section 8. Publication.

The Town Clerk is directed that publication of this ordinance shall be made as soon as practical and no later than ten (10) days following final passage.

Section 9. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and shall not affect the validity of the remaining portions thereof.

Section 10. Existing Litigation.

This ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances amended as herein provided, and the same shall be construed and concluded under such prior ordinance.

INTRODUCED AND READ as provided by law as an emergency ordinance by the Town Council, of the Town of Basalt this 11th day of August, 2009.

TOWN OF BASALT, COLORADO

By: _____
Leroy Duroux, Mayor

ATTEST:

Pam Schilling, Town Clerk

FINALLY adopted, passed and approved by a vote of 5 to 0, with 1 abstention this 11th day of August, 2009.

- the unanimous vote of all Town Council members present; or
 a vote of a quorum plus one council member.

Leroy Duroux, Mayor

ATTEST:

Pam Schilling, Town Clerk