

ORDINANCE NO. 2010-6

AN EMERGENCY ORDINANCE OF THE TOWN OF SWINK, COLORADO, ESTABLISHING A TEMPORARY SUSPENSION UNTIL 1-31-2011 OF THE ACCEPTANCE, PROCESSING AND APPROVAL OF APPLICATIONS FOR A USE PERMIT OF ANY NATURE, VARIANCE, BUILDING PERMIT, BUSINESS LICENSE, SALES TAX LICENSE OR OTHER APPLICABLE ENTITLEMENT FOR USE OF ANY PROPERTY, SPACE OR LOCATION FOR A MEDICAL MARIJUANA DISPENSARY; PROHIBITING THE ESTABLISHMENT OF A MEDICAL MARIJUANA DISPENSARY IN ANY MANNER DURING THE MORATORIUM; DIRECTING THE TOWN AND STAFF TO CONDUCT SUCH STUDIES AS MAY BE REQUIRED TO DETERMINE WHAT MEASURES RELATED TO MEDICAL MARIJUANA DISPENSARIES, IF ANY, SHOULD BE ADOPTED TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE AND MAKE RECOMMENDATIONS TO THE BOARD OF TRUSTEES AS TO MEDICAL MARIJUANA DISPENSARIES WITHIN THE TOWN OF SWINK; DECLARING AN EMERGENCY; AND SETTING FORTH OTHER DETAILS RELATED THERETO.

WHEREAS, on November 7, 2000, Colorado voters adopted Section 14 of Article XVIII of the Colorado Constitution permitting the use and possession of marijuana for medical purposes under limited and specific circumstances; and

WHEREAS, the Town of Swink has recently received inquiries from members of the public as to the permitting process and zoning regulations for operating medical marijuana dispensaries within the Town and based on recent trends in Swink and other local governments in Colorado, the Board of Trustees believes that it is likely that it will receive a growing number of inquiries for such dispensaries, including an application in the immediate future; and

WHEREAS, the Town Municipal Code does not expressly allow as use-by-right or conditional use of medical marijuana dispensaries in any of the zone districts established pursuant thereto; and

WHEREAS, the Board of Trustees finds and determines that it is necessary for the Town to conduct such studies and analysis of the potential negative impacts on the public health, safety and welfare arising from medical marijuana dispensaries, including, but not limited to, criminal incidents, loitering, disturbing the peace and adverse impacts on the surrounding neighborhood and properties; and

WHEREAS, if medical marijuana dispensaries were allowed to be established in the Town without appropriate regulations, such uses might be established in areas that would conflict with the Comprehensive Plan and the Municipal Code, be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare; and

WHEREAS, issuing permits, business and tax licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries prior to the completion of the study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety and welfare, and that a temporary moratorium on the issuance of such permits, licenses and entitlements is thus necessary; and

WHEREAS, for the protection of the public's health, safety and general welfare, the Board of Trustees desires to adopt this moratorium to maintain the current status quo and to provide time for the Town, Town Attorney and staff to study applicable law, a permit or licensing procedure, the appropriate zoning and land use regulation for such uses, and recommend adoption of regulatory standards and conditions to be imposed on such operations to comply with federal and state law; and

WHEREAS, in order to protect the public health, safety and general welfare of the inhabitants of the Town of Swink, and in order to eliminate any ambiguities as to whether medical marijuana dispensaries constitute a lawful use under the Swink Municipal Code, the Board of Trustees of the Town of Swink, Colorado, hereby finds and determines that an emergency exists, and it is necessary and appropriate to institute a temporary suspension on the acceptance, processing and approval of use permits, variances, building permits, business licenses, sales tax licenses or other applicable entitlements for use; during which time the Board of Trustees shall consider the advisability of permitting medical marijuana dispensaries within the Town; amendments to the Swink Municipal Code concerning the location of medical marijuana dispensaries within the Town of Swink, and appropriate regulations and requirements governing such businesses.

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

Section 1. Upon the effective date of this Ordinance as an emergency ordinance, and continuing until January 31, 2011, or until further action of the Board of Trustees by ordinance, whichever is earlier, no application for a use permit, variance, building permit, business license, sales tax license or other applicable entitlement for use as a medical marijuana dispensary shall be accepted or processed by the staff of the Town; nor shall the same be approved or issued for the establishment of a medical marijuana dispensary, and no person shall otherwise establish a medical marijuana dispensary within the Town of Swink.

Section 2. For purposes of this Ordinance, a "medical marijuana dispensary" shall mean any facility or location where a primary care-giver intends to or does make available, sell, transmit, give, or otherwise provide medical marijuana to: a patient, a person with a registry identification card, or another primary care-giver. For purposes of this ordinance, the terms "primary care-giver," "patient," and registry identification card" shall have the same meaning as that set forth in Section 14, Article XVIII of the Colorado Constitution.

Section 3. That the moratorium herein adopted shall expire by its own terms on January 31, 2011 unless earlier terminated or specifically extended by ordinance of the Board of Trustees.

Section 4. The Town, Town Attorney and Town staff are directed to conduct such studies and analysis as herein above identified and to develop appropriate recommendations and proposed regulations or amendments to the Municipal Code, and to present to the Board of Trustees within a reasonable time.

Section 5. The provisions of this ordinance are temporary in nature and are intended to be removed in totality or replaced by subsequent legislative enactment. Notwithstanding the terms of Section 1 and 3 above, this ordinance may be extended by action of the Board of Trustees, if the Board of Trustees finds that such an extension is necessary for the preparation and implementation of legislative enactments, and that such extension is in the public interest and would not result in undue hardship to affected parties.

Section 6. **Purpose.** The purpose of this ordinance is to provide for the health, safety and welfare of the people.

ADOPTED and approved as an Ordinance this 9th day of August, 2010.

TOWN OF SWINK

By: Steve Cordova, Mayor

ATTEST:

Terry CLodfelter, CMC, Town Clerk