

ORDINANCE NO. 8995-17

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA, IMPOSING A TEMPORARY MORATORIUM ON THE OPERATION OF ANY ADDITIONAL “DISPENSING ORGANIZATIONS” THAT DISPENSE “LOW-THC CANNABIS” OR “MEDICAL CANNABIS” OR ON THE OPERATION OF “MEDICAL MARIJUANA TREATMENT CENTERS” WITHIN THE CITY FOR A PERIOD OF SIX (6) MONTHS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 8, 2016, Florida voters approved an amendment to the Florida Constitution, titled “Use of Marijuana for Debilitating Medical Conditions” (“Amendment 2”); and

WHEREAS, Amendment 2, which has an effective date of January 3, 2017, has legalized under state law throughout the State of Florida the medical use of cannabis for a “Debilitating Medical Condition,” which is defined to mean “cancer, epilepsy, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), post-traumatic stress disorder (PTSD), amyotrophic lateral sclerosis (ALS), Crohn’s disease, Parkinson’s disease, multiple sclerosis, or other debilitating medical conditions of the same kind or class as or comparable to those enumerated, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient”; and

WHEREAS, Amendment 2 has legalized under state law throughout the State of Florida the operation of a “Medical Marijuana Treatment Center” (“MMTC”), which is defined to mean “an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department [of Health]”; and

WHEREAS, Amendment 2 requires the Florida Department of Health to adopt specified regulations pertaining to MMTCs within 6 months from the effective date of the amendment, such as procedures for the registration of MMTCs that include procedures pertaining to the issuance, renewal, suspension and revocation of registration, and standards ensuring proper security, record keeping, testing, labeling, inspection, and safety, as well as regulations defining the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients’ medical use, based on the best available evidence; and

WHEREAS, Amendment 2 authorizes the Florida legislature to enact laws consistent with the Department of Health’s constitutional duties; and

WHEREAS, on June 16, 2014, Governor Rick Scott signed Senate Bill 1030, also known as the "Compassionate Medical Cannabis Act of 2014," which created Section 381.986, Florida Statutes, resulting in the legalization of the cultivation, processing, and dispensing of low-tetrahydrocannabinol (THC) cannabis, such as the strain called "Charlotte's Web," by "Dispensing Organizations" for medical patients suffering from cancer or "a physical medical condition that chronically produces symptoms of seizures," such as epilepsy, "or severe and persistent muscle spasms" (the measure became effective on January 1, 2015); and

WHEREAS, on March 25, 2016, the Florida Legislature amended Section 381.986, Florida Statutes, to make various revisions, including a revision to the definition of "dispensing organizations" to allow dispensing organizations to transport cannabis, a revision allowing the use of "medical cannabis" for eligible patients with terminal conditions, and a revision allowing municipalities to determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, dispensing facilities of such "dispensing organizations" located within its municipal boundaries; and

WHEREAS, Rule 64-4.002(2)(c)3., Florida Administrative Code, adopted by the Florida Department of Health, includes "the ability to obtain zoning approval" as a factor that the Florida Department of Health currently considers when reviewing an application submitted by those seeking to operate as a "Dispensing Organization" pursuant to Section 381.986, Florida Statutes; and

WHEREAS, the dispensing of cannabis is currently illegal under federal law, and cannabis remains a Schedule I drug under federal law; and

WHEREAS, due to the historical prohibition of cannabis, the City of Clearwater does not currently have any land development regulations governing the use of real property for purposes of cultivating, processing, distributing or selling cannabis or related activities; and

WHEREAS, potential adverse impacts on the health, safety, and welfare of residents and business from secondary effects associated with the distribution of cannabis exist, potentially including, offensive odors, trespassing, theft, fire hazards, increased crime in and about the dispensary, robberies, negative impacts on nearby businesses, nuisance problems, and increased DUI incidents; and

WHEREAS, Florida laws relating to the cultivation, production, and dispensing of cannabis products are rapidly changing -- raising substantial questions about whether cannabis-related land uses, as a category of commercial use, may have deleterious and negative secondary effects on surrounding land uses and communities; and

WHEREAS, future constitutional amendments and legislation may further expand the legal use of cannabis in Florida; and

WHEREAS, in order to promote effective land use planning, the City Council wishes to preserve the status quo while awaiting the promulgation of regulations by the Florida Department of Health and the possible adoption of laws by the Florida legislature pertaining to MMTCs and while also affording the City of Clearwater an opportunity to research, study and analyze the potential impact of MMTCs and "Dispensing Organizations" upon adjacent uses and the surrounding area and the effect of MMTCs and "Dispensing Organizations" on the general welfare; and

WHEREAS, the City Council finds that a temporary moratorium on the operation of MMTCs or the operation of any additional "Dispensing Organizations" will allow the City of Clearwater a sufficient period of time to determine what uses are best suited to particular zoning categories and how best to formulate land development regulations that appropriately govern the use of real property for purposes of cultivating, processing, distributing, or selling marijuana or for related activities; now therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
CLEARWATER, FLORIDA:

Section 1. A temporary moratorium is hereby imposed on the operation of "Medical Marijuana Treatment Centers" or the operation of any additional dispensing facilities of "Dispensing Organizations" within the corporate limits of the City of Clearwater.

Section 2. For purposes of the temporary moratorium, a "Medical Marijuana Treatment Center" means an entity, as defined in Amendment 2, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies to qualifying patients or their caregivers. "Dispensing organization" means an organization approved by or seeking approval from the Florida Department of Health to dispense low-THC cannabis and medical cannabis pursuant to Section 381.986, Florida Statutes.

Section 3. This ordinance shall take effect immediately upon adoption. The temporary moratorium shall terminate six (6) months from January 3, 2017, the effective date of Amendment 2, unless the City Council rescinds or extends the moratorium by subsequent ordinance.

Section 4. During the period of this moratorium, the City shall not process or issue any comprehensive plan amendments, rezonings, development approvals, development orders, building permits, or other related permits, nor shall it process applications concerning such matters.

Section 5. Nothing in this temporary moratorium shall be construed to prohibit the medical use of cannabis or low-THC cannabis by a qualifying patient, as determined by a licensed Florida physician, or delivery of cannabis in compliance with Florida law.

PASSED ON FIRST READING

PASSED ON SECOND AND FINAL
READING AND ADOPTED

George N. Cretekos
Mayor

Approved as to form:



Robert J. Surette
Assistant City Attorney

Attest:

Rosemarie Call
City Clerk